



**ENVIRONMENTAL  
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**Via Facsimile**

The Honorable Bill de Blasio  
Mayor of the City of New York  
City Hall  
New York, NY 10007

**Re: Composting in New York City Parks**

Dear Mayor de Blasio,

The Environmental Law Committee of the New York City Bar Association recently reviewed the attached December 4, 2020 letter you received from the Natural Resources Defense Council, New York Lawyers for the Public Interest, and the New York City Environmental Justice Alliance regarding your Administration's handling of two community composting sites that have been operating successfully on Parks Department property for many years. We are writing now to explain that we share similar concerns to the ones raised by those and other organizations. In our view, the composting facilities run by the Ecology Center and Big Reuse do not constitute improper parkland alienation. We urge you to support community composting, consistent with your Administration's climate change and zero-waste goals, by rethinking your approach to those facilities and working to ensure that they can continue to operate their composting programs in New York City parks.

**1. Composting Plays an Important Role in the City's Environmental Goals**

As you know, food scraps and yard waste comprise a significant portion of the City's entire waste system. Most of that waste is now sent to landfills or incinerators. Landfills generate

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methane,<sup>1</sup> a powerful greenhouse gas with a much higher global warming potential than carbon dioxide.<sup>2</sup> Trash burning at incinerators also emits particulates and toxic chemicals that pose even more immediate public health threats to nearby communities. Composting food scraps and yard waste diverts significant amounts of waste away from these harmful practices. Your Administration has recognized the critical role of composting in achieving the City’s zero-waste and carbon neutrality goals.<sup>3</sup> And composting does not just reduce environmental pollution—it also serves the public interest because members of the public have the opportunity to visit composting sites, learn about the process, and use finished compost in their own yards and gardens.

## **2. The Parks Department’s Actions Threaten the Survival of Two Community Composting Sites**

Despite the significant benefits of community-based composting programs, your Administration has taken a position towards two community composting organizations—Lower East Side Ecology Center (Ecology Center) and Big Reuse—that puts their continued operation in jeopardy.<sup>4</sup>

The Ecology Center has a compost yard in East River Park that occupies less than one acre. The yard has been operating for two decades, providing free educational programming in addition to processing food scraps, leaves, and woodchips into finished compost—including for use by the Parks Department. The use of the site for composting has never been challenged and currently is not being challenged. Despite this, the Ecology Center’s license to use its current space was not renewed when it expired recently. Although we understand that East River Park is undergoing major construction, the Parks Department has not confirmed that a temporary space will be made available for the composting yard or provided assurances that the Ecology Center will be able to return to East River Park once construction is complete.

Similarly, Big Reuse has run a successful community composting site on Department of Parks property under the Queensboro Bridge in Long Island City since 2011. Big Reuse works with local Parks districts to compost leaves and woodchips, along with residential food scraps

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<sup>1</sup> EPA, *Landfill Methane Outreach Program*, <https://www.epa.gov/lmop/basic-information-about-landfill-gas#methane> (All sites last visited May 5, 2021).

<sup>2</sup> The “global warming potential” of a greenhouse gas reflects the amount of heat it traps in the Earth’s atmosphere relative to carbon dioxide. Methane has a 20-year global warming potential of 84 to 87, meaning that it traps up to 87 times more heat in the earth’s atmosphere than carbon dioxide on a pound for pound basis, in the first 20 years after it is released. See U.S. Environmental Protection Agency, *Understanding Global Warming Potentials*, GREENHOUSE GAS EMISSIONS, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (last updated Feb. 14, 2017). Using a 20-year span for methane is appropriate because methane remains in the atmosphere for under two decades. IPCC, *Climate Change 2013, The Physical Science Basis*, Chapter 8, 714 (Sept. 2013).

<sup>3</sup> See, e.g., *ONENYC 2050: BUILDING A STRONG AND FAIR CITY* (2015), Vol. 7 at 19.

<sup>4</sup> We understand that another important community composting site, the Earth Matter NY site located on Governors Island, is also potentially under threat in relation to a development proposal advanced by the Trust for Governor’s Island. The Earth Matter site is a beloved facility that people from all over the city use and enjoy and that provides valuable educational and composting services, and we encourage the City to commit to supporting its continued operation on Governors Island as part of its review of development plans on the Island.

collected at community gardens and farmers markets. The finished compost is provided to local groups for community gardens and street tree care. In 2016-17, with the support of the Parks Department and the Department of Sanitation, Big Reuse transformed its half-acre parks space into a modern community garden and composting site. The Parks Department signed a three-year lease agreement for Big Reuse to operate its community composting program at the site. By all accounts this program has been an unqualified success; in 2019 alone, Big Reuse brought in almost 1000 volunteers to work at the site and learn about composting, and distributed approximately 1.5 million pounds of compost to community groups. In addition, again, there has never been and is not now a challenge to or litigation over the use of the site for composting. Yet, rather than renew Big Reuse's license, a mere three years after retrofitting the site to host a compost program, we understand that the Parks Department plans to eject the organization and use the site for vehicle parking.

As we understand it, community members have shown unanimous support for these facilities.<sup>5</sup> Uprooting these two composting sites is contrary to the City's goals of achieving zero waste and maintaining a livable climate. Particularly given the limitations the City has imposed on composting during the COVID-19 pandemic, the City should instead seek to sustain existing community composting efforts.

### **3. The Doctrine of Parkland Alienation Does Not Compel the Parks Department's Position**

It is our understanding that the Parks Department is concerned that renewing the licenses of the Ecology Center and Big Reuse would constitute improper parkland alienation. But this interpretation is not compelled by the law and it puts countless small community composting operations at risk. We urge the City, including the Parks Department and the Law Department, to rethink its approach.

The Court of Appeals has explained that "parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes."<sup>6</sup> Accordingly, "legislative approval is required when there is a substantial intrusion on parkland for non-park purposes."<sup>7</sup> The composting sites at issue, however, are not substantial intrusions onto parkland. Rather, by cultivating volunteerism, educating the public, processing landscape waste, and producing finished compost that is used on parkland, the composting programs advance purposes that are central to our City's parks. In addition, as

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<sup>5</sup> See Joint Hearing, Committee on Parks and Recreation and Committee on Sanitation and Solid Waste Management, <https://citylimits.org/2020/12/21/opinion-parks-plan-to-evict-beloved-composting-sites-would-strike-blow-to-nyc-climate-goals/>; Melissa Iachan & Eric A. Goldstein, Opinion: Parks' Plan to Evict Beloved Composting Sites Would Strike Blow to NYC Climate Goals, City Limits Newsletter, <https://citylimits.org/2020/12/21/opinion-parks-plan-to-evict-beloved-composting-sites-would-strike-blow-to-nyc-climate-goals/>.

<sup>6</sup> *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 630 (2001).

<sup>7</sup> *Id.*

gardeners well know, distributing compost helps build fertile, healthy soils, which goes hand in hand with sustainable usage of parkland.

*Raritan Baykeeper v. City of New York* does not undermine this point. In that case, a Supreme Court held that under the alienation doctrine, a 20-acre industrial composting facility could not operate in Spring Creek Park without state legislative approval.<sup>8</sup> The facts of the case make clear, however, that the case is inapposite to the situations of the Ecology Center and Big Reuse sites, and does not require the Parks Department to uproot those organizations.

In *Raritan Baykeeper*, the facility at issue occupied a 20-acre swath of the park that was, as a result, inaccessible to the public.<sup>9</sup> By contrast, the Ecology Center and Big Reuse composting programs require less than one acre each, and critically, bring members of the public onto parkland for volunteer and educational opportunities. Moreover, the facility in *Raritan Baykeeper* processed a number of types of organic matter, including manure, generating odors in the nearby community and leading the court to characterize it as “a working garbage dump.”<sup>10</sup> The composting programs at issue do not create this type of nuisance. As explained above, there are no complaints about the facilities. Instead, the community greatly supports the sites.

*Raritan Baykeeper* does not stand for the proposition that a composting site will always implicate the doctrine of parkland alienation. Instead, the court went to great pains to emphasize the facility’s large, industrial nature and the fact that the facility precluded the public’s use of the occupied 20-acres<sup>11</sup>—characteristics that completely distinguish the *Raritan Baykeeper* facility from the composting sites at issue here, which are small and facilitate enjoyment of the park by integrating members of the public into their operations.

Other cases on parkland alienation further demonstrate that the Ecology Center and Big Reuse programs do not run afoul of the doctrine. For example, in *Friends of Petrosino Square ex rel. Fleischer v. Sadik-Khan*, a Supreme Court held—and the Appellate Division affirmed—that the installation of a bike share station in a park did not violate the public trust doctrine.<sup>12</sup> The court explained that the test of a non-park purpose is “whether the facility concerned offers substantial satisfactions to the public, which would only be possible in a park setting.”<sup>13</sup> As discussed, the Ecology Center and Big Reuse programs serve the public by promoting volunteerism, recreation, and education; and given the nature of composting, the programs need to take place in a park setting. Additionally, the court in *Friends of Petrosino Square* determined that a bike share station

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<sup>8</sup> *Raritan Baykeeper v. City of New York*, 2013 N.Y. Slip Op. 52258(U) (Sup. Ct. Kings Cty. Dec. 20, 2013).

<sup>9</sup> *Id.* at \*2, \*6.

<sup>10</sup> *Id.* at \*2, \*7.

<sup>11</sup> See, e.g., *id.* at \*6 (operation of the facility “precludes the use of the 20 acre portion of the Park for recreational enjoyment by the public”); *id.* (“the composting facility is set aside and unavailable for use by the public”); *id.* at \*7 (the facility “is a large scale solid waste facility” that is “inaccessible to the public and provides no typical benefits that are expected of a park”); *id.* (“The public is denied the use of the 20 acres.”); *id.* at \*8 (discussing “the size and scope of this Facility” and that “the activity is fenced-off from the general public”).

<sup>12</sup> 42 Misc.3d 226 (Sup. Ct. New York Cty. 2013), *aff’d*, 126 A.D.3d 470, 5 N.Y.S.3d 397 (1st Dep’t 2015).

<sup>13</sup> 42 Misc.3d at 230–31.

is a proper park purpose in part because biking has long been considered a proper use of parkland.<sup>14</sup> Similarly, composting has taken place on New York City parkland for many years—not only at the Ecology Center and Big Reuse sites, but also at the Hudson River Park in Manhattan, where a composting site begun in 2015 has grown into a park-wide operation that turns thousands of pounds of food scraps and yard waste into compost each year.<sup>15</sup>

Evicting the Ecology Center and Big Reuse sends a harmful and negative signal to countless composting programs around the city. Many community gardens in the New York City parks system engage in composting. The Central Park Conservancy has a large on-site composting operation at a location called “The Mount,” a program which is crucial to the park’s ability to process plant waste on site. For many City park users and community gardeners, community composting is just as integral to their enjoyment of the parks as “batting cages, golf courses, skating rinks, boat launches and marinas, and the associated equipment concessions.”<sup>16</sup>

Moreover, the Court of Appeals has recognized that the Parks Department enjoys discretion in interpreting the parkland alienation doctrine.<sup>17</sup> For the reasons discussed above, the Ecology Center and Big Reuse’s composting programs fall squarely within the definition of a park purpose. Were this issue to come before the courts, it seems very likely that the City would prevail if it took the position that these community composting sites, and other sites like them, serve vital park purposes.

For these reasons, we urge you to recommit to promoting composting as a means of advancing your zero-waste and carbon neutrality goals. We join NYLPI, NRDC, New York City Environmental Justice Alliance, and other community organizations in asking you to direct the Parks Department to find a way to accommodate the Ecology Center’s operation during the East River Park construction and assure its return to East River Park thereafter, and to allow Big Reuse to remain in its current location.

Sincerely,

L. Margaret Barry, Co-Chair  
Bethany Davis Noll, Co-Chair  
Environmental Law Committee

Cc: New York City Law Department  
NYC Council Member Carlina Rivera  
NYC Council Member Jimmy Van Bramer  
NYC Council Member Peter Koo

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<sup>14</sup> *Id.* at 232.

<sup>15</sup> Hudson River Park, *Community Compost Program*, <https://hudsonriverpark.org/the-park/sustainability/community-compost-program/> .

<sup>16</sup> Handbook on the Alienation and Conversion of Municipal Parkland (2017).

<sup>17</sup> *Union Square Park Community Coalition, Inc. v. New York City Dep’t of Parks*, 22 N.Y.3d 638, 655 (2014).

## NYC Council Member Antonio Reynoso

### **Contact**

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