

## The Niagara River Greenway: Fulfilling the Promise

### Executive Summary

According to the law and the settlement agreements that created it, the Niagara River Greenway was meant to be a linear system of parks, trails, and conservation areas linking Lake Erie to Lake Ontario. Progress on the Greenway has been hampered by the fact that Greenway funds are being spent on a wide variety of projects which, however worthy, bear little or no relation to a linear system of parks and trails. Only about one half of the projects funded have advanced the Greenway as originally envisioned.

*Greenway funds are being spent on a variety of projects with no relation to parks and trails – in part because the Greenway Plan defines the Greenway much more broadly than it was defined in the law and settlement agreements that created it.*

One key reason for the diffusion of funds is that the Greenway Plan defines the Greenway much more broadly than the law does and allows for projects far from the River and projects unrelated to parks and trails. Another challenge is fragmented governance: the Niagara River Greenway Commission (NRGC) is charged with developing the Greenway, but funding decisions are made separately by four Standing Committees not tied to the NRGC. This fractured system has impeded the creation of an implementation strategy to develop the Greenway as a unified system rather than a miscellaneous collection of projects.

To restore the original focus of the Greenway and ensure that it becomes a world-class destination:

- The State should amend the law to clarify that Greenway funds may be used only for the creation, enhancement, and management of the linear system of parks, trails, and conservation areas;

- The NRGC should work with the Standing Committees, municipalities, and community groups to develop an implementation strategy for the linear system; and
- The Standing Committees should tighten their funding criteria to prioritize development of the linear system in accordance with the implementation strategy.

### **Creating the Greenway: NRGC Law and NYPA Settlements**

During the process of relicensing the Niagara Power Plant, many local residents expressed interest in the creation of a Niagara River Greenway – a system of parks and trails along the Niagara River all the way from Lake Erie to Lake Ontario, similar to the much-admired Niagara River Recreation Trail on the Canadian side of the River. Governor Pataki and the state legislature embraced the idea, and in 2004 the state passed legislation to create the Niagara River Greenway Commission (NRGC).<sup>1</sup>

The law explains the purpose of the NRGC as to “implement or cause to be implemented a linear system of parks and conservation areas that will . . . redefine the Niagara riverfront.”<sup>2</sup> The law defines the Greenway as “a linear system of state and local parks and conservation areas linked by a network of multi-use trails.”<sup>3</sup>

The NRGC law asks a great deal of the NRGC. It states that the purpose of the NRGC is to “undertake all necessary actions” to facilitate the creation of a Niagara river greenway.”<sup>4</sup> It gives the NRGC the broad power to “do all things necessary and convenient to carry out its purposes.”<sup>5</sup> But the law also severely limits the real power of the NRGC. First, it is a revenue neutral bill. It does not identify any funding for the operations of the NRGC or for the creation and operation of the Greenway. Second, the law requires that the local legislative body of each city, town, and village within the Greenway Plan’s boundaries must approve the plan.<sup>6</sup> Third, the law states that “no power is provided to the commission to operate any portion of the greenway, to impose operating standards upon any component of the system, or to take property by eminent domain.”<sup>7</sup>

#### **NRGC Commissioners**

*The NRGC is composed of fourteen members. The governor appoints eight of the commission members. Two of the governor’s appointees are based on the recommendation of the president of the state senate and two are appointed following the advice of the speaker of the assembly. The term of office for appointees is four years and appointees must reside in a municipality adjacent to the Niagara River. In addition, voting positions are held by a representative from each of the following state departments: State; Parks, Recreation and Historic Preservation; Conservation; Transportation; Economic Development; and the New York Power Authority.*

The Governor and legislators correctly envisioned that the funding for the Greenway would come from the New York Power Authority (NYPA) as a result of the relicensing. Indeed, as part of the relicensing, NYPA reached settlement agreements that created four separate streams of Greenway funding, flowing through four Standing Committees. Taken together, these four streams amount to \$9 million per year for the life of the relicensing agreement, from 2005 to 2055, for a total funding commitment of \$450 million.

When NYPA reached the settlement agreements in 2005 and 2006, the focus of Greenway funding was clearly on the Greenway as a linear system of parks and trails, as specified by the legislation. The Relicensing Settlement Agreement uses the same definition of “Niagara River Greenway” as the legislation.<sup>8</sup> But there was surprisingly little coordination between the legislative process and the settlement process, and the settlements set up a system outside of the NRGCC to create the Greenway. Most importantly, the settlement agreements did not fund the NRGCC’s operations and did not give the NRGCC any control over the Greenway funds. Rather, each of the four Standing Committees separately reviews proposals for Greenway funding – each according to its own criteria and schedule. While funding applicants must consult with the NRGCC, and while the Committees must find that the proposals are consistent with the Greenway Plan, the Committees need not follow the NRGCC’s advice. As a result, the Greenway development is splintered and lacks a unifying focus and a strategy to prioritize and phase in projects.

### **The Greenway Plan**

The Greenway Plan, which was completed in April 2007, dramatically broadened the concept of the Greenway. Most importantly, it defined the boundary of the Greenway as the municipal lines of the towns bordering the River. This boundary was the subject of intense discussion during the planning process. Its breadth reflects, among other things, the fact that the Greenway law required the approval of all the relevant municipalities, some of which wanted the maximum latitude possible for projects, including projects far from the river.

*The Plan does not define the Greenway in the same way as the NRGCC law, even though it was the law that mandated the Plan. Instead, it broadens the Greenway to the eastern borders of all the municipalities.*

The Plan also created a vision of the Greenway that goes well beyond the statutory definition of a “linear system of state and local parks and conservation areas linked by a network of multi-use trails.” The Vision Statement of the Plan is:

The Niagara River Greenway is a world-class corridor of places, parks and landscapes that celebrates and interprets our unique natural, cultural, recreational, scenic and heritage resources and provides access to and connections between these important resources while giving rise to economic opportunities for the region.<sup>9</sup>

In the Plan, the Greenway includes not just parks, but also other “places” and “landscapes,” and the Greenway is not a linear system but a “corridor.” The Plan includes a focus area by the River and a priority for projects alongside it, but it also explicitly allows for projects away from the River. While many of the guiding principles favor the linear Greenway, others, such as “celebrate local history, diversity, cultural resources, and the natural and built environments,” open the door to projects such as streetscape improvements in Sanborn, far away from the Niagara River.<sup>10</sup>

Most strikingly, the Plan does not define the Greenway in the same way as the NRG law, even though it was the law that mandated the Plan. The Plan includes a section titled “What is a Greenway?” and offers five other greenway definitions, including one from Florida’s statutes and one from Pennsylvania’s Greenways plans, but it does not quote the NRG law’s definition exactly or accept it as authoritative; instead it merely mentions as one fact among others that the “legislation establishing the Niagara River Greenway envisioned the Niagara River Greenway as a linear system of state and local parks and conservation areas linked by a network of multi-use trails.”<sup>11</sup>

The Plan is filled with good information, ideas, and guidelines, and it remains extremely useful. But because it departs from the statutory definition and vision, it does not do what the law asked it to do. In other words, it does not say, “This is what we need to do to create the linear system, and this is how we are going to do it.” It does include five priority projects designed to fill gaps in the trail network: Black Rock Channel, Niagara River Parkway, Grand Island Boulevard, Devil’s Hole/Power Project Area, and Lower River Road (Lewiston to Youngstown). But there are so many competing values, principles, and priorities in the Plan – such as “revitalizing urban centers” and “promote heritage and cultural centers” – that the idea of filling the gaps does not rise to the top.

*The Plan includes five priority projects designed to fill gaps in the trail network: Black Rock Channel, Niagara River Parkway, Grand Island Boulevard, Devil’s Hole/Power Project Area, and Lower River Road (Lewiston to Youngstown).*

## Implementation of the Law, Settlement Agreements, and Plan

The net effect of the legislation, settlement agreements, and Plan is to create an unusually diffuse and fragmented set of apparatuses that must function together to create the Greenway. Unlike other greenways, the Niagara River Greenway lacks a central entity empowered to plan, create, and operate the Greenway. The NRGC has depended on ad hoc appropriations from the state for its operations budget, and it has functioned since its inception with a paid staff of one.

Greenway projects are being funded each year, and they are resulting in countless improvements to the Niagara River corridor, most of them concentrated on or near the River. The lack of centralized decision-making and narrowly focused funding, however, is resulting in a dispersed set of projects that may never to cohere into the world-class system of parks, conservation areas, and trails envisioned by the advocates and elected officials who brought the Greenway into being.

We examined 94 projects funded by the Standing Committees, at a total cost of \$46.7 million. Of these projects, we estimate that 52 projects, funded with \$23 million, advanced the Greenway as defined by the state law. Even among these projects, almost none are projects that acquire new land for parks and trails, by purchasing it outright or purchasing an easement through it. Many of the projects are improvements and renovations to existing parks and trails along the Greenway, such as the Fort Niagara electrical distribution system upgrade (\$1.9 million) or the Cave of the Winds Access Trail Renovation (\$1.1 million). Others add new amenities such as restrooms, monuments, and signage.

*Of 94 funded projects, only 52 appear to advance the Greenway as defined by state law.*

Of the 42 projects that do not advance the statutory Greenway, some are events, such as the Lewiston Jazz Festival, the 1812 Bicentennial Commemoration, Boundary Waters Treaty Celebration, or 125<sup>th</sup> Anniversary Celebration of Niagara Falls State Park. Others are physical improvements not related to parks and trails, such as the Sanborn “Main Street” Streetscape Improvement, and the Sanborn Area Historical Society improvement.

The problem is not, in general, that the Standing Committees are funding projects deemed inconsistent by the NRGC. We found only two projects of this type: renovations to the Palace Theater in Lockport and the \$4.6 million renovation of the Lewiston-Porter School District’s athletic complex. The NRGC is approving almost all projects as consistent. In the votes we examined, the NRGC ruled 116 projects consistent, and 10 inconsistent.

Within the NRG, there is clearly some disagreement as to how strictly to determine consistency. Of the 116 projects deemed consistent, in 23 cases at least one member voted inconsistent. For example, five commissioners voted inconsistent on the Niagara Wheatfield Central School District Eco-Campus proposal – a project that may have advanced some of the Plan’s goals around sustainability, but did so far from the Niagara River. Three members voted against the Sanborn Historical Society project, and five against the 1812 Bicentennial Commemoration. The disagreements are understandable. Some commissioners appear to be looking for consistency with the original vision of the Greenway as set forth in the legislation and settlement agreements, while others are looking for consistency with the Plan. In reality, a project should be consistent with both in order to get funded. In the future, we recommend that the NRG make a two-part determination. First, to cross the initial threshold, is the project consistent with the legislation’s definition of the Greenway?

*The NRG has ruled 116 projects consistent, and 10 inconsistent. Of the 10 ruled inconsistent, two projects have been funded anyway by the Standing Committees: the Lew-Port athletic fields and a theater marquee in Lockport.*

If no, the project should be rejected as inconsistent. If yes, then the NRG should go on to make a point-based evaluation of the project based on its consistency with the Plan – especially factors such as impact, feasibility, and leveraging of other funds.

Returning to the original vision of the Greenway will also ease and improve efforts by the NRG and others to educate the public about the Greenway. The Plan’s version of the Greenway muddies the waters by making virtually every historic site, cultural attraction, and natural amenity in Buffalo-Niagara a part of the Greenway. The NRG’s brochure titled “Trail Map and Attractions,” for example, tries to do justice to this huge variety, rather than clearly showing people how to get from Lake Erie to Lake Ontario via a linked system of parks and trails and what to do along the way. Meanwhile, the NRG’s web site, which has statutory language about the Plan at its center, has a bureaucratic feel and does little to make visitors want to go to the Greenway. The NRG and others can do much more to promote the Greenway, but, it is crucial to note, the NRG’s ability to do so will be sharply limited if it remains staffed with only one person, however talented that person may be.

In aiding the NRG, Buffalo Niagara Riverkeeper has a special role as a community group deeply responsible for the creation of the Greenway and a group whose mission closely complements that of the Greenway. It has a large staff of planners, scientists, and advocates. It has deep institutional knowledge of the Greenway. It has the ability to raise private money and receive charitable contributions and foundation grants, in addition to Greenway funds. It can acquire land and easements along the Greenway and has the

capacity to maintain and operate them. It has a base of volunteers that it mobilizes for events like shoreline clean ups. It has close connections with other community groups active on and near the River. Riverkeeper should consider making the Greenway one of its primary focus areas and work closely with the NRGC, the state, the municipalities, and other community partners to advocate for the changes listed above and to help develop and execute an Implementation Strategy.

One final challenge meriting special attention is operations and maintenance funding. One important reason for the paucity of projects adding to the Greenway is the reluctance of the Office of Parks and of local parks departments and governments to add to their annual operations and maintenance commitments, given their challenges in operating and maintaining their existing resources. Given the lingering effects of the Great Recession, rising health care and pension costs, climate-change-related impacts such as Hurricane Sandy, and a pervasive resistance to increased taxes, the fiscal constraints on state and local governments are unlikely to ease. While the Standing Committees should continue to ask applicants to make aggressive attempts to leverage funds, they should also recognize current realities and make operations and maintenance funding available for true Greenway projects.

## Recommendations

### 1. New York State

The New York State Legislature should amend the NRGC law to

- a. Specify that NYPA Greenway Funds may only be used for projects that advance the Greenway as defined in the NRGC law: “a linear system of state and local parks and conservation areas linked by a network of multi-use trails.”
- b. Define the Greenway project area boundaries as equal to those used for the Focus Area in the Greenway Plan.
- c. Require that all projects funded with Greenway Funds be certified as consistent with the NRGC law by the NRGC.<sup>12</sup>

*Clarify that Greenway funds may only be used to advance the Greenway as defined by state law.*

### 2. NRGC

- a. Advocate for changes to the law and Standing Committee protocols.
- b. Adopt an objective, point-based evaluation system for project proposals. Proposals that do not advance the Greenway as defined by the NRGC law should be deemed inconsistent. Projects that do advance the Greenway



should be scored based on conformity with the Plan – especially factors such as impact, feasibility, and leveraging of other funds.<sup>13</sup>

- c. Work with the Standing Committees, municipalities, and community groups to craft an Implementation Strategy for the creation and enhancement of the

*Craft an Implementation Strategy for the linear system of parks, conservation areas, and trails.*

“linear system of state and local parks and conservation areas linked by a network of multi-use trails.” The Implementation Strategy will:

- i. guide the work of NRGC staff, commissioners, and volunteers as they work with multiple partners, including municipalities, state agencies, non-profits, and citizens, to create the Greenway;
  - ii. outline, in priority order, recommended projects to fill in gaps, improve access points and linkages, and improve existing trails and parks, and recommend partners and funding mechanisms to achieve those projects;<sup>14</sup>
  - iii. include the education, civic engagement, and communication strategies necessary to draw citizens to the Greenway and to the process of creating and improving the Greenway; and
  - iv. incorporate the planning work already done or underway in plans and studies such as the Greenway Plan, the Niagara Gorge Rim Study, and Buffalo Niagara Riverkeeper’s current work on a Riverwalk Plan.
- d. Form committees composed of NRGC Commissioners, Standing Committee members, volunteers, governmental staff, and non-profit staff to help realize the Implementation Strategy.
- e. Advocate for the NRGC to be housed within the Office of Parks, Recreation, and Historic Preservation and given line-item funding to employ at least three staff: an executive director, a planner, and a director of programs, education, and communications. One logical source for the funding would be revenue generated by Niagara Falls State Park.
- f. If necessary, apply to the Standing Committees for adequate funding (the settlement agreements forbid funding for “operation and maintenance of any projects existing as of August 31, 2007,” but that should not prevent funding for the NRGC to plan and market the Greenway).<sup>15</sup>
- g. Seek a regular supply of graduate and undergraduate interns and AmeriCorps volunteers to supplement the work of NRGC.



### 3. Standing Committees

Regardless of any action by the State, the four Standing Committees should amend their protocols to:

- a. Specify that NYPA Greenway Funds may only be used for projects that advance the Greenway as defined in the NRG law: “a linear system of state and local parks and conservation areas linked by a network of multi-use trails.”
- b. Require that any project funded must be ruled consistent with the NRG law by the NRG;
- c. Give highest priority to projects that add new parks, conservation areas, and trails to the Greenway;
- d. Give higher priority to permanent physical improvements than to temporary improvements or events;
- e. Forbid the funding of events except where those events have as their primary purpose to promote the Greenway as a greenway;
- f. Explicitly allow multi-year funding for operations and maintenance for new projects that advance the Greenway as defined in the NRG law.
- g. If the NRG adopts a point-based evaluation system, then specify that the committees will use the NRG’s scoring to evaluate proposals and that if they depart from that scoring they will give a written explanation consistent with the NRG law. If the NRG does not adopt a point-based evaluation system, then each committee should adopt a point-based system for evaluating projects and publish that system.

*Prioritize new parks, trails, and permanent improvements, and limit funding of events.*

If it is not possible to get unanimous support for these changes from the four Standing Committees, then each Committee that does support them should adopt them individually.

### 4. Municipalities

With or without the changes recommended above, the municipalities can greatly advance the Greenway. Most of them are in the unique role of being able both to dispense and receive Greenway funds, which gives them significant control over the process. The municipalities should:

- a. Work closely with the NRG and other partners to develop the Implementation Strategy that identifies and prioritizes the projects needed to complete the Greenway; and
- b. Prioritize Greenway projects in municipal capital budgeting processes, and seek federal and state funding for those projects as well.

## 5. Prioritizing Projects

Following is a rough guide to priorities for completing and improving the Greenway:

- a. **Filling in gaps.** Add parks or trails where nothing exists. An example is the City of Buffalo from the West Side Rowing Club to West Ferry. Currently the trail follows a very ugly, ill-maintained, and dangerous-feeling overpass over the 190 to Niagara Street, where there is no bike path or bike lane.
- b. **Adding waterfront.** Create waterfront parks, routes, and access points. One example is Cherry Farm, a 55 acre site on the water. There is a trail in this section, but it follows an inland road, rather than the waterfront. Another example is the NFTA land on the Outer Harbor. Trails exist, but there is a great opportunity to add a significant park, as proposed by Citizens for a 21<sup>st</sup> Century Park.
- c. **Improving linkages and signage.** There are many parts of the Greenway where trails exist, but the connections between them are difficult, hard to find, unsafe, or unsightly. There are many spots where a biker or hiker cannot easily find signs pointing the way to go.
- d. **Creating dedicated spaces.** There are parts of the Greenway where bike/pedestrian paths are right alongside busy roads and need to be moved. An example of this is Wheatfield, where a proposed rails-to-trails project will move the Greenway away from the road to a dedicated path.
- e. **Creating and improving hubs and access points.** Millions of people visit the Falls each year, and thousands visit CanalSide, Lewiston, Youngstown, Fort Niagara, etc., but the Greenway does not yet capitalize on these natural hubs and access points and use them to get people onto the Greenway. For example, Niagara Falls State Park lacks bike lanes, bike rentals, and good signage directing people to the Greenway. There is no good, well-marked connection between Canal Side and the Greenway heading north or south.
- f. **Creating and improving amenities.** There is a need for amenities that draw people to the Greenway and tend to their needs once they are there. Examples include boat launches, playgrounds, food services, fishing spots, fish cleaning stations, bird-watching posts, rest rooms, and picnic tables.

*Fill in gaps such as on Buffalo's West Side, add parks in places such as Cherry Farm and the Outer Harbor, and improve linkages and access points.*

## 6. Education, Communication, Events

- a. **Use the Falls.** Niagara Falls is the obvious biggest opportunity to draw people onto the Greenway. It should become very popular to rent bikes at the Falls and ride to Devil’s Hole, Artpark, Fort Niagara, or downtown Buffalo. “Bike to the Falls” should be a popular slogan.
- b. **From Erie to Ontario.** Just as people like to boast that they have biked the Erie Canal, hiked the Appalachian trail, or climbed to the top of Mount Marcy, they should like to boast that they have biked or hiked from Lake Erie to Lake Ontario or vice versa – along the Niagara River Greenway.
- c. **Focus on bicyclists.** Bicyclists are the most obvious constituency for the Greenway – the ones most easily able to take advantage of a linked system of parks and trails. Boaters, walkers, drivers, and others are all important, too, but it makes sense to focus heavily on attracting bicyclists from the area and from all over the world with bicycle amenities (rentals, bike stands), maps, events (races, charity events), tour packages, and marketing.
- d. **Focus on dense populations near the Greenway.** To have the most impact, prioritize the people already living near the Greenway and easily able to walk or bike to it. Thus, the access points in dense population centers like Buffalo and Niagara Falls need particular attention. Currently, access points such as the Irene Gardner pedestrian bridge in Riverside or Hamilton Street in Black Rock are very unappealing or obscure.
- e. **Collaborate.** The NRG, Riverkeeper, and other partners should create a rich network of community groups collaborating on Greenway events and projects that are co-branded as Greenway events. For example, some charity walks or races could take place along the Greenway. The NRG and Audubon Society could hold bird watching events on the Greenway. The cultural festival of an immigrant group at Lasalle Park could become a Greenway event, too. Anything that gets people to the shoreline and includes the word Greenway will help advance the mission.
- f. **Wayfinding.** Currently, even experienced bikers get lost trying to stay on the Greenway. There is a huge need for signage, integrated public art, information kiosks, detailed maps (in print and on line), and, ideally, a Greenway app that allows people to easily access information from smart phones.

*Use the Falls, focus on bicyclists and dense populations, and collaborate with multiple partners.*

## Appendix: Greenway Projects Funded

<b>Host Communities Standing Committee Projects</b>	<b>Amount Funded</b>
Veteran's Memorial Park	\$6,288,000
Historic Palace Theatre, Lockport, NY	\$151,000
Hartland Town Park	\$244,000
Wilson Walkway & Bicycle Trail and Greenwood Veteran's Monument	\$90,350
Olcott Beach Carousel Park/ Newfane Comfort and Information Station	\$52,644
Kiddieland by Carousel Society of the Niagara Frontier	\$30,000
Safety and Access improvements Gratwick Riverside Park	\$248,600
Town of Lockport Lytle Nature Preserve	\$94,802
The Charles Rand Penney Collection	\$176,025
Niagara County Parks & Signage Project	\$362,935
Gratwick Riverside Park	\$248,600
Artpark's Summer Programs Support Project	\$160,000
Joseph Davis State Park Phase I Capital Improvement Project	\$5,700,000
Battle of Queenston Heights Commemoration/ War of 1812 Re-enactment	\$25,000
Tuscarora Heroes Monument	\$300,000
Historic Lewiston Jazz Festival	\$15,000
Colonial Village	\$99,450
Toohey Park	\$76,500
Lower Niagara River Road Comfort Station	\$30,000
Porter on the Lake Recreational Master Plan	\$20,000
Village of Lewiston's Historic Piper Law Office Welcome Center	\$54,000
Sanborn "Main Street" Streetscape Improvement	\$323,799
Kiwanis Park Playground Structure Replacement	\$240,000
Sanborn Area Historical Society Improvement	\$260,000
Lewiston Plateau Dog Park/Nature Preserve	\$51,500
Lewiston Pathway Scenic Project	\$210,000
Freedom Crossing Monument	\$180,000
Lewiston-Porter Recreational Complex	\$4,620,000
Griffon Park Improvements	\$200,000
Restoration of Hyde Park Comfort Station & Lounge	\$200,000
LaSalle Waterfront Park	\$850,000
Gill Creek Park Lighting	\$102,000
Centennial Circle	\$335,000
93rd Street Bridge Replacement	\$138,812
Customhouse Interior Restoration	\$100,000
Parks Planning Project	\$75,000
Riverview Trail Comfort Station	\$76,475
LaSalle Blueway Trail	\$105,500
Gill Creek Educational Nature Trail Project	\$102,000
NWSD Eco-Campus Conservation, Recreation & Education	\$6,094,000
<b><i>Committee Total</i></b>	<b>\$28,730,992</b>

## Appendix: Greenway Projects Funded

<b>Greenway Ecological Standing Committee</b>	<b>Amount Funded</b>
Ecological Restoration of the Niagara Gorge Rim	\$115,000
Niagara River Riparian Restoration	\$330,985
Muskellunge Study	\$148,617
Niagara River Greenway Regional Habitat Restoration	\$137,785
Tuscarora Wetland Restoration	\$196,599
Outer Harbor Bell Slip Stabilization Project	\$55,000
Tree Regeneration at Tift Nature Preserve Project	\$300,000
Union Ship Canal Public Open Space Project	\$92,000
Enhancement of Bird Habitat: Joseph Davis State Park	\$195,550
<i>Committee Total</i>	<b>\$1,571,536</b>
<b>New York State Office Parks, Recreation &amp; Historic Preservation (State Park) Standing Committee</b>	<b>Amount Funded</b>
Three Sisters Island-Niagara Reservation State Park	\$650,000
Cave of the Winds Access Trail Renovation	\$1,100,000
Luna Island & Stedman's Bluff Restoration	\$700,000
Whirlpool State Park Rim Trail Restoration	\$500,000
Niagara Gorge Trail Whirlpool-Devil's Hole	\$675,000
Beaver Island State Park	\$175,000
ArtPark Theater Stairs Replacement	\$280,000
Heritage Park Restoration (AKA Petticoat park)	\$10,000
Comprehensive Operations Plan for Niagara Falls	\$250,000
Goat Island Restoration Planning	\$75,000
Boundary Waters Treaty Celebration	\$15,000
125th Anniversary Celebration of Niagara Falls State Park	\$15,000
Old Fort Niagara Improvements	\$879,000
Fort Niagara Electrical Distribution System Upgrade	\$1,875,000
East River Marsh Enhancement Project	\$76,000
Four Mile Creek State Park Comfort Station	\$540,000
Fort Niagara Soccer Field Comfort Station	\$560,000
<i>CommiteeTotal</i>	<b>\$8,375,000</b>
<b>Buffalo &amp; Erie County Greenway Fund Standing Committee</b>	<b>Amount Funded</b>
Fisherman's Landing	\$400,482
Shoreline Trail Signage	\$180,000
Scajaquada Creekside Trail	\$1,210,467
LaSalle Park	\$654,830
Park Pavilion	\$866,970
Minnow Pools at Riverside Park	\$305,000
Union Ship Canal	\$385,000

## Appendix: Greenway Projects Funded

Riverside Park Concourse	\$56,175
Land Acquisition Study	\$100,000
LaSalle Park Phase 2/Porter Avenue	\$993,506
Riverfest Park	\$410,000
Nature Preserve Sustainability Center Expansion	\$225,000
Buffalo Museum of Science	\$275,000
Tift Street Pier	\$470,000
Fenian Invasion Marker	\$21,108
Adaptive Paddle Sports Launch System	\$75,325
Black Rock Heritage Trail War of 1812 Project	\$105,000
Black Rock Canal Park Improvements	\$900,000
River Fest Park Phase II	\$250,000
Fireboat Cotter	\$60,000
Bird Island Pier Project	\$750,000
War of 1812 Bicentennial Signage	\$15,000
Tonawanda Shoreline Stabilization Proposal	\$250,000
Riverrock Gardens	\$220,350
Front Park	\$435,000
Riverfest Park	\$104,000
Scenic Woods Bicentennial	\$164,371
1812 Bicentennial Commemoration	\$128,000
<i>Committee Total</i>	<b>\$10,010,584</b>

<b>Total of 94 Projects</b>	<b>\$46,688,112</b>
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<sup>1</sup> Title G, Article 39, NYS Parks, Recreation and Historic Preservation.

<sup>2</sup> Section 39.01.

<sup>3</sup> Section 39.03(1).

<sup>4</sup> Section 39.07.

<sup>5</sup> Section 39.09(15).

<sup>6</sup> Section 39.07(15).

<sup>7</sup> Section 39.09(15).

<sup>8</sup> Relicensing Settlement Agreement Addressing New License Terms and Conditions, July 18, 2005, Section 1.1. The Host Community Agreement also incorporates the statute's definition. See Host Community Relicensing Agreement Addressing New License Terms and Conditions, June 27, 2005, Section 1.1.

<sup>9</sup> Niagara River Greenway Plan and Final Environmental Impact Statement (April 4, 2007), i.

<sup>10</sup> Plan, iii.

<sup>11</sup> Plan, 5.

<sup>12</sup> The constitutional limits on the impairment of contracts would not prevent any of these amendments. The Constitution forbids a substantial alteration to parties' rights and obligations under a pre-existing contract, where such an impairment is not a reasonable and necessary way to accomplish a public purpose. Narrowing the scope of Greenway funding would not impair the NYPA settlement agreements because those settlements used the same definition of Greenway as the legislation; it was only the Plan, which was drafted and approved after the settlement agreements, which broadened the scope of the Greenway. Requiring proposed projects to be deemed consistent with the NRG law by the NRG also would not alter the parties' rights and obligations under the settlement agreements, since the settlement agreements clearly contemplated that projects would be consistent with the law's definition of the Greenway and required consultation with the NRBC. If a court found an impairment, it would not likely find the impairment to be substantial. And even if the impairment were considered substantial, it would still be legal as a reasonable and necessary way for the legislature to accomplish a legitimate public purpose.

<sup>13</sup> The NRG law does not ask the NRG to make consistency determinations. In the most closely relevant provision, it requires that "Each state agency shall review its actions within the greenway in relation to the consistency of such actions with the approved Niagara river greenway plan." (Section 39.19). This provision only applies to state agencies, and it requires them to make their own consistency reviews, and to do so for all their actions within the Greenway, not just for Greenway-funded projects. The settlement agreements also do not require the NRG to make consistency determinations (nor could they, since the NRG is not a party to them). The agreements do require the standing committees to ensure that the proposed projects are consistent with the Greenway Plan, but this duty is laid on the committees, not on the NRG (thus allowing for situations like the Lewiston-Porter recreational complex). The agreements also require proposals to evidence consultation with the NRG. (See, for example, Host Communities Agreement, Section 7.3).

<sup>14</sup> The potential projects identified in the Greenway Plan offer a starting point but do not function as this type of prioritized strategy.

<sup>14</sup> Host Community Agreement, Section 7.3



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