

NATURAL RESOURCE DAMAGES

LEGAL AUTHORITIES, CLAIMS AND DAMAGES

BILL JACKSON

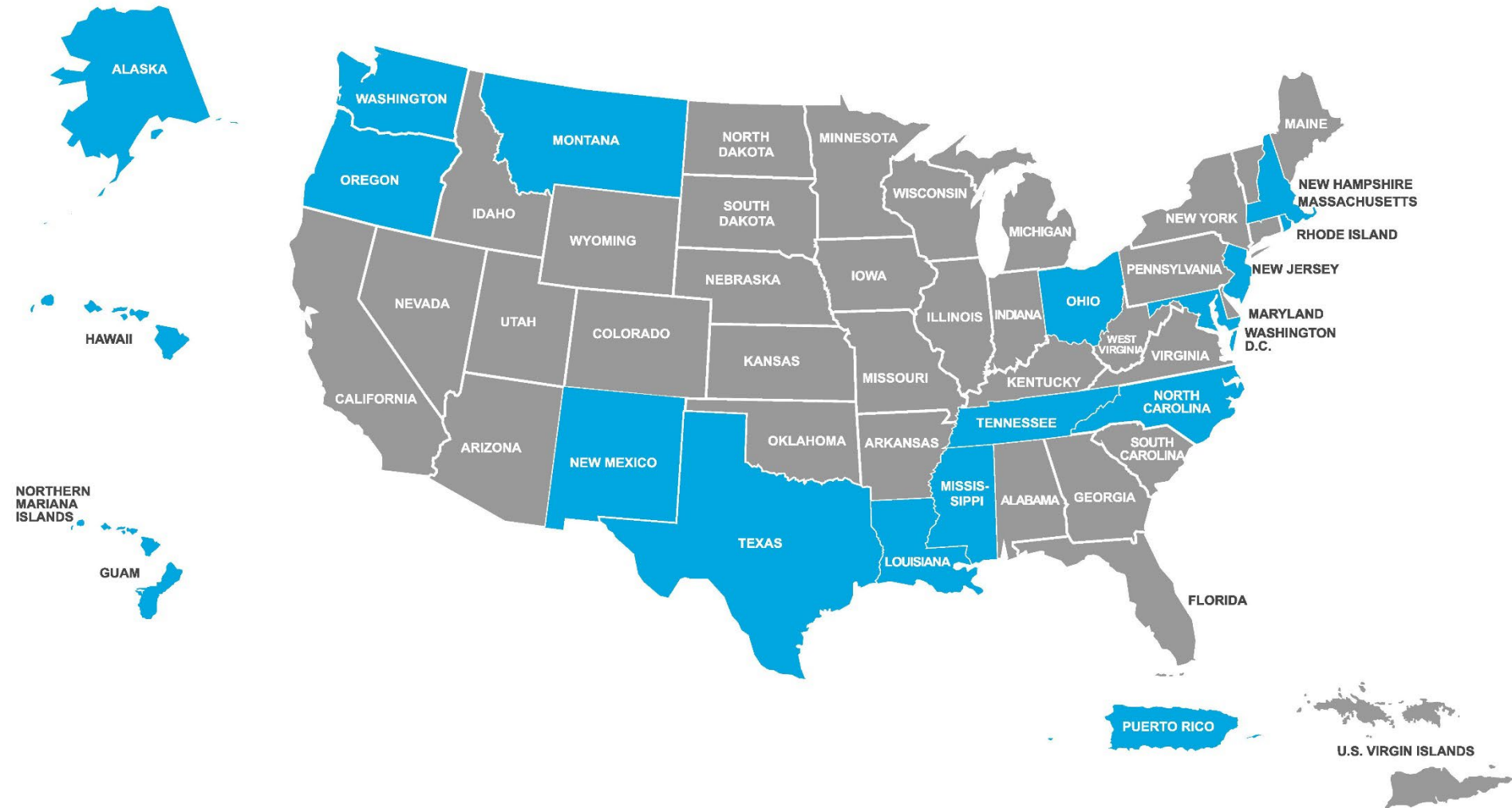
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State NRD/Environmental Representation



Natural Resource Injuries and Evolving Challenges

- Global impacts and cross-border issues (e.g., climate change and water rights)
- States: Primary right and *obligation* to protect their natural environment and resources
- Future of cooperative federalism and joint trusteeship?
- Shrinking scope of Congressional delegation and federal agency powers (*West Virginia v. EPA*)
- Shrinking scope of federal jurisdiction over Waters of the United States (*Sackett v. EPA*)
- Watch the State Trustees!

FEDERALISM & STATE POWERS

THE UNDERPINNINGS OF

N R D



Cooperative Federalism

- Dual sovereignty; federal government has specific enumerated powers and states have broad residual powers.
- 10th Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the state respectively, or to the people.”
- While there are some areas where federal government has exclusive authority, federal and state regulation and power typically overlap
- Consider: **The Environment and Natural Resources**

The Public Trust Doctrine

States are the trustees of the natural resources within their borders:

- “At common law, the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation.... Upon the American Revolution, these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the Constitution to the United States.” *Shively v. Bowlby*, 152 U.S. 1, 57 (1894)
- “The State is responsible, as trustee of the state’s natural resources, to manage these natural resources for the benefit of the present and future citizens of New Jersey.” *Arnold v. Mundy*, 6 N.J.L. 1, 10 Am. Dec. 356 (1821).

Obligation to Protect Trust Corpus

- “The original purpose of the [public trust] doctrine was to preserve for the use of all the public natural water resources for navigation and commerce, waterways being the principal transportation arteries of early days, and for fishing, an important source of food.” *N.J. v. Jersey Cent. Power & Light Co.*, 125 N.J. Super. 97 (N.J. Super. App. Div. 1978).
- “If the State is deemed to be the trustee of the waters, then, as trustee, the State must be empowered to bring suit to protect the corpus of the trust-i.e., the waters-for the beneficiaries of the trust-i.e., the public.” *State of Md., Dept. of Nat. Resources v. Amerada Hess Corp.*, 350 F.Supp. 1060 (D.Md. 1972)

Parens Patriae

- “Parent of the Nation” – Police Powers
- Standing doctrine that encompasses the government’s power to sue over sovereign or quasi-sovereign interests, including interests that “lie in the well-being of the populace.”
- Famous formulation in *Alfred Snapp* case:
“[A] State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982).

Injuries to quasi-sovereign interests: separate from injuries to citizen's rights

- “This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. **It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.**” *State of Ga. v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907) (Holmes, J.)
- “It has long been established ... that a State has sovereign interests in its coastal waters and marine life, as well as in its other natural resources, which interests are separate and distinct from the interests of its individual citizens”. *Maine v. M/V Tamano*, 357 F.Supp. 1097 (D. Me. 1973).

Preemption and Savings Clauses

- Presumption against federal preemption
- Courts begin with the “assumption that the historic police powers of the States were not to be superseded ... unless that was the clear and manifest purpose of Congress.” *City of Milwaukee v. Illinois*, 451 U.S. 304, 316 (1982).
- States are independent sovereigns and the Supreme Court has “long presumed that Congress does not cavalierly pre-empt state law causes of action.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 494 (1996) (citations omitted)
- Conflict Preemption & Savings Clauses

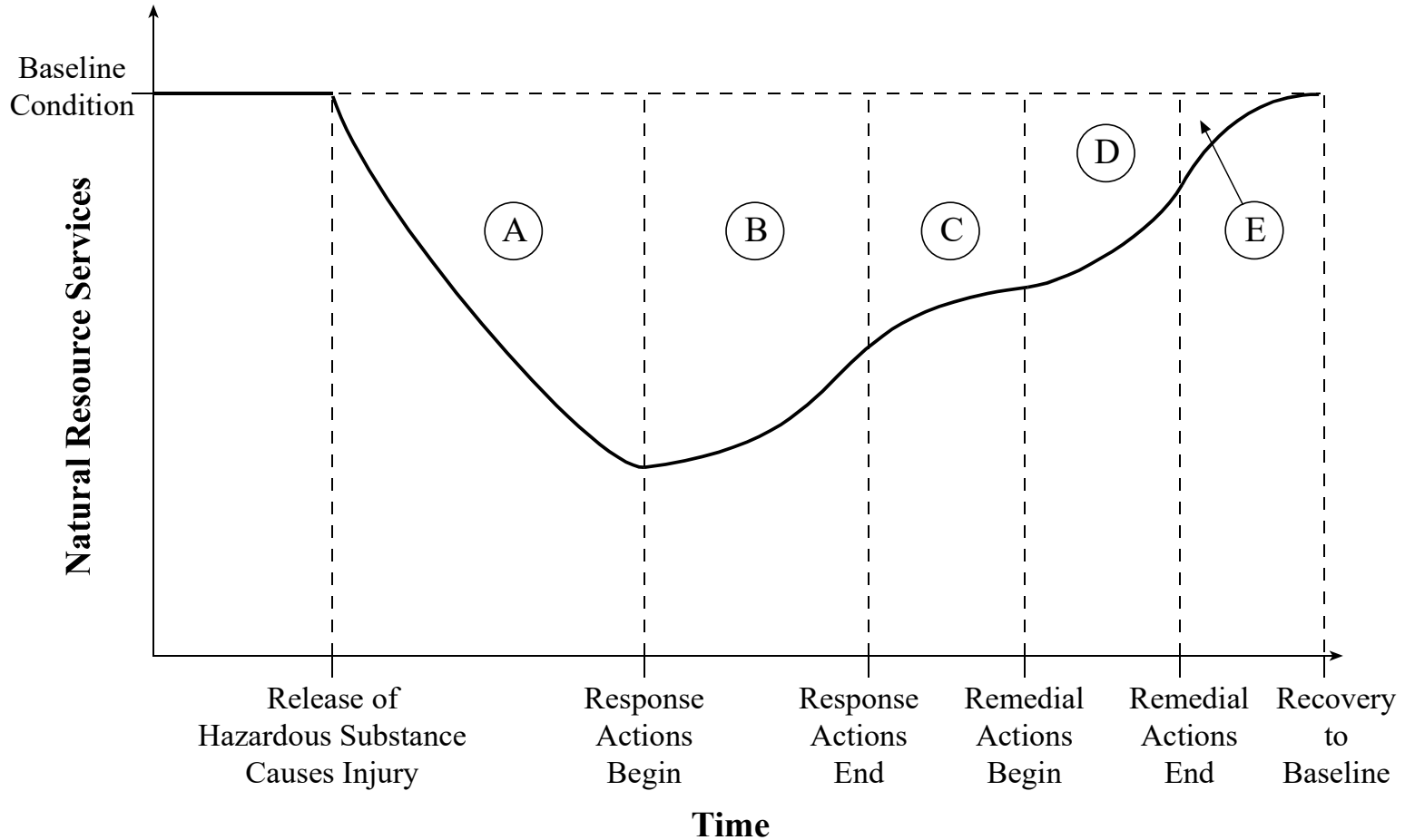
Authorities to seek Natural Resource Damages

- Common law foundations for states to seek recovery for injuries to the public trust/natural resources
 - Public Nuisance
 - Trespass
 - Negligence
- Federal Statutory Constructs (CERCLA, CWA, OPA)
 - Trustees are federal, state and tribal trustees
 - Joint trusteeship and resource interests
- State Statutory Equivalents for Natural Resource Damages

Natural Resource Damages

- Restore or replace the injured resource
 - Primary Restoration
 - Compensatory Restoration
- Return to “Baseline”
- Interim losses and loss of human uses
 - Claims for Public’s Interest
 - vs. Claims for State’s Interest
- Difficulties in Monetizing Injuries

Return to Baseline



Additional Damages under OPA

- Response Costs & Natural Resources Damages
AND
- Property Damages
 - *Injury to or economic loss resulting from destruction of real property*
- Lost Governmental Revenues
 - *Net loss of taxes or governmental income “due to” the injury to real property, personal property or natural resources.*
- Increased Costs of Public Services
- Lost Profits and Earning Capacity
 - *Damages equal to the loss of profits or impairment of earning capacity due to the injury to property or natural resources*

An Example of Early Restoration Benefits: Newark's Riverfront Park Project



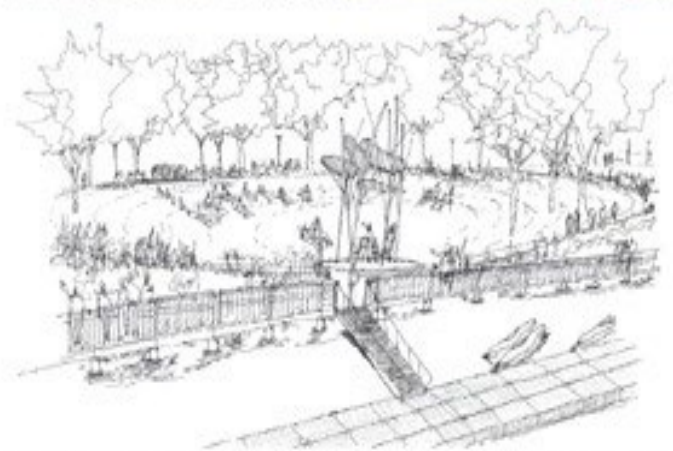
Results of the State's Litigation

- Settlement with 300 Third-Party Defendants
- Settlement with Repsol/YPF/Maxus Parties
- Settlement with Occidental Chemical Corporation
- Together, the three settlements resulted in:
 - **\$355.4 Million** in Past Costs & Damages
 - **\$67.5 Million** in NRD Restoration Projects
 - **\$400 Million** in protection against State FFS Costs
 - Protection and reopeners for other future State costs
 - **\$1.7 Billion** remediation going forward under EPA direction
- **Hundreds of Millions** in anticipated Economic Activity as a result of NRD Projects









PICNIC LAWN, PERFORMANCE PAVILION, BOARDWALK, AND FLOATING BOAT DOCK



OVERLOOK AND OSPREY ROOK

Newark 2014 returns to its river!



Download the full 2014 Newark
Riverfront Event Calendar!



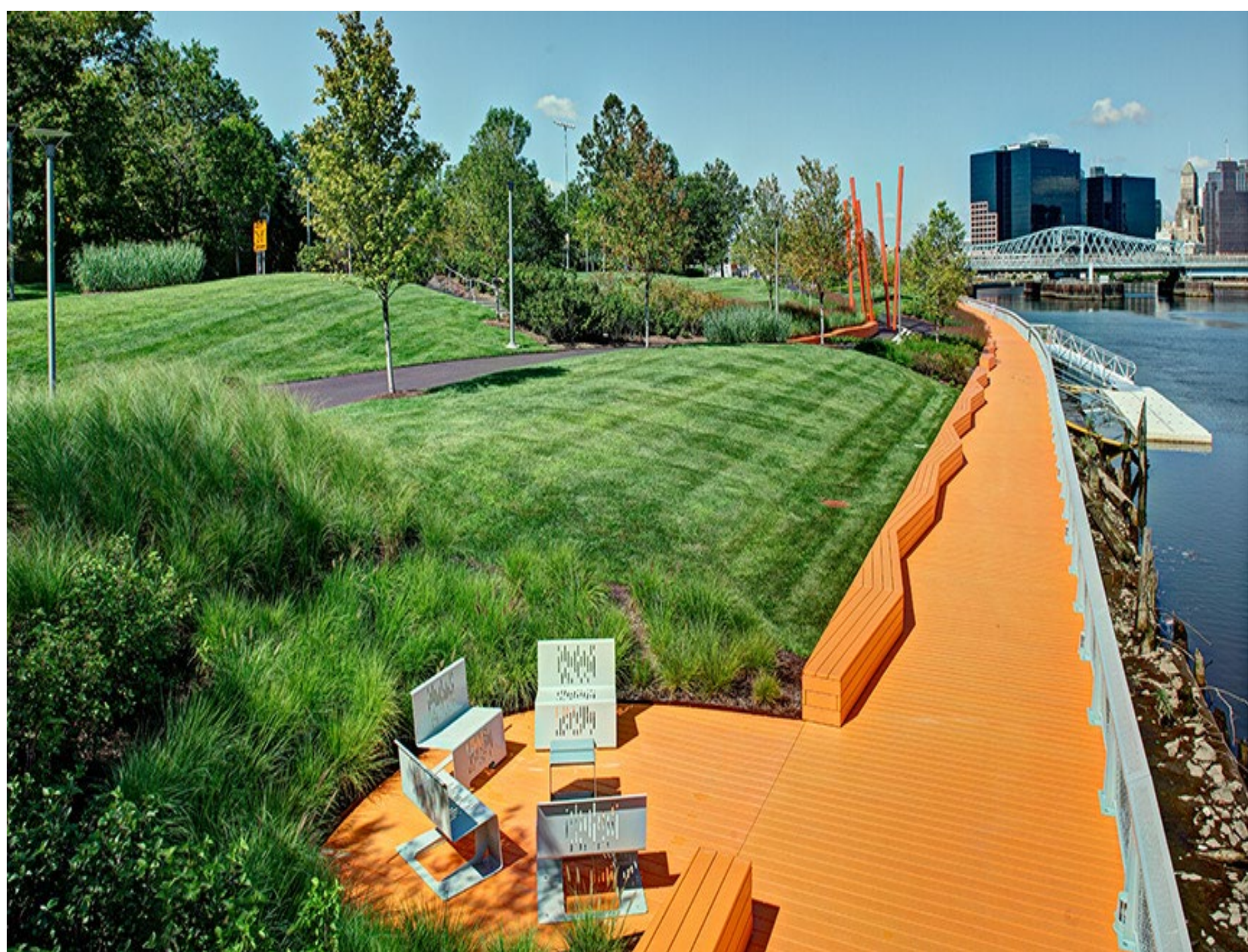
CENTRAL
WARD
WALKS
TO THE WATER

NORTH
WARD
WALKS
TO THE WATER

Grupos de Bembés







RIVERFRONT YOGA

MONDAYS 6-7PM AT THE
RIVERFRONT PARK MEADOW WITH
NEWARK YOGA MOVEMENT!

NEWARK PADDLE DAYS 2015

KAYAK ON THE PASSAIC RIVER

SUN, JULY 19TH @ 10AM

SAT, AUG. 8TH @ 10AM

FREE RESERVATIONS CONTACT: (201) 341-8311 OR
NEWARKBOATTOURS@GMAIL.COM

18+

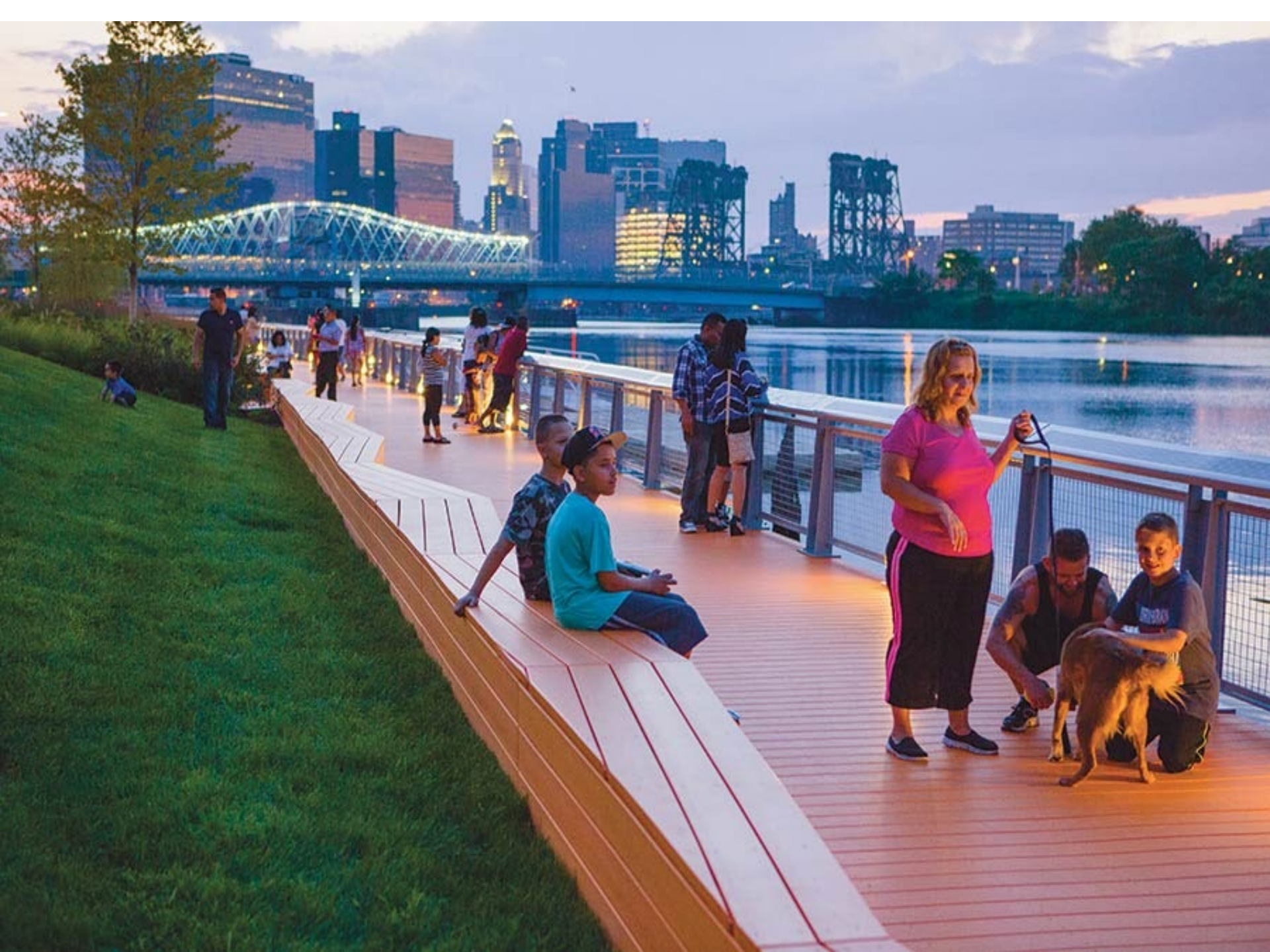


NEWARK
RIVERFRONT
REVIVAL



NEWARK
RIVERFRONT
REVIVAL





2015: Newark Riverfront Park is Honored with the EPA Smart Growth Award

- Award given annually for creative, sustainable initiatives that better protect the health and environment of our communities while strengthening local economies.
- The 2015 award is presented to projects in three categories: Plazas, Parks, and Public Places; Corridor or Neighborhood Revitalization; and Built Projects.
- Riverfront Park was honored in the **Category: Plazas, Parks, and Public Places**

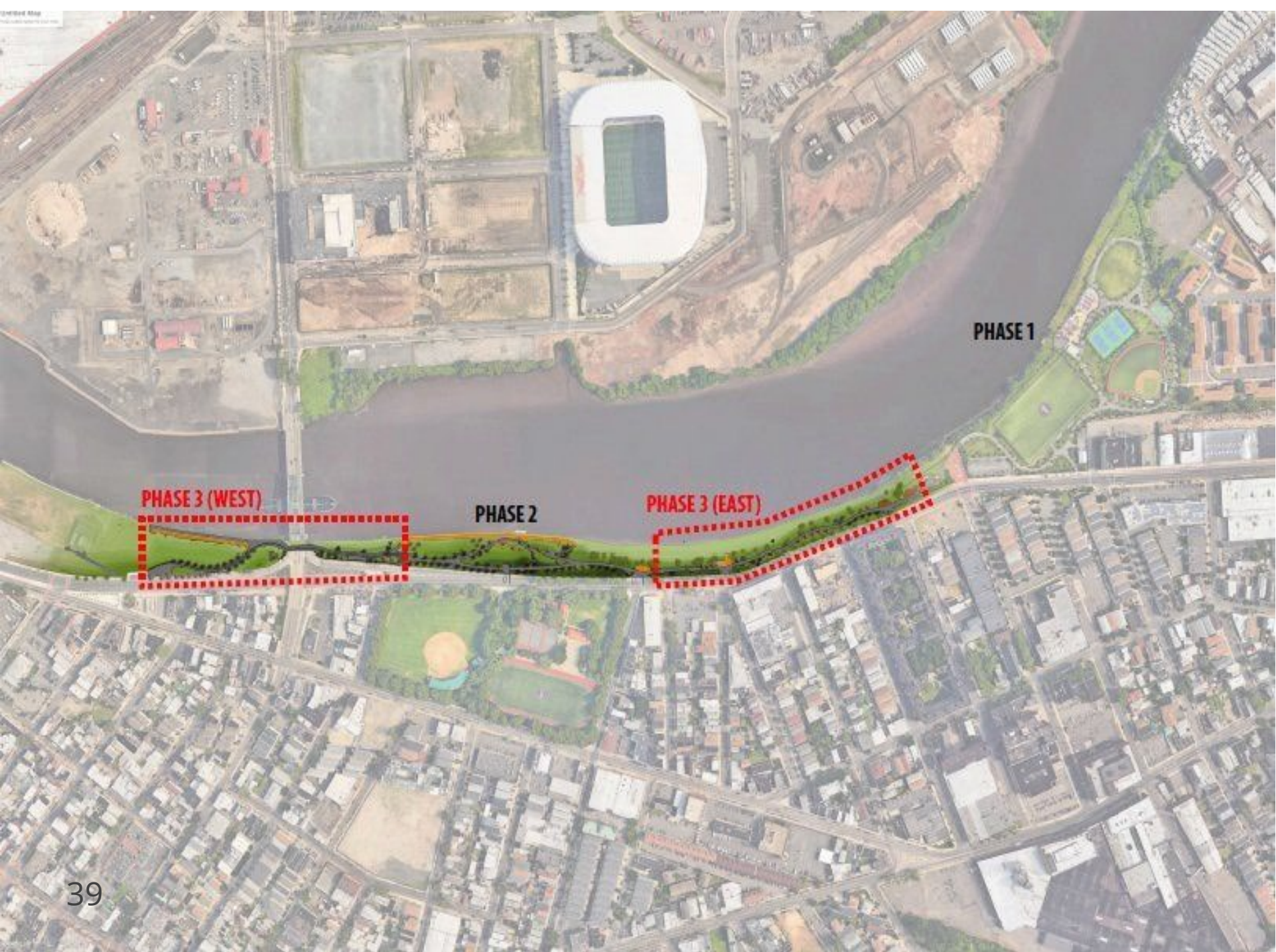
2015 EPA Award for Riverfront Park

“Riverfront Park fulfills a decades-long movement to reclaim the Passaic riverfront for the people of Newark, N.J. Situated on the cleaned-up site of a former metal smelting plant, the park provides Newark’s ***only public access to the river and outdoor recreational space*** for a neighborhood where the amount of green space dedicated for use as parks is far below the national average. The 19-acre park is the result of a public engagement process that included more than 6,000 people. It is expected to attract new economic development, particularly to downtown Newark, and will eventually be part of a string of riverfront parks and trails that will stretch for five miles.”

Work Begins On \$8M Newark Waterfront Park Project Near Passaic River (October 11, 2016 Expansion)

Newark's Riverfront Park will have a boardwalk, walkway system, a fitness zone, an overlook with seating and a bikeway, officials say.









Riverfront KARAOKE NIGHTS

THUR JULY 27 6-9PM
DJ EDDIE OF ELITE SOUNDS

THUR AUG 31 6-9PM
HIP-HOP EDITION W/RHYMEANTICS

@THE ORANGE STICKS
RIVERSIDE OF 726 RAYMOND BLVD.



VICTORIA FOUNDATION
FRIENDS OF RIVERFON PARK

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PAISLEY PARK: PRINCE PARTY

SUNDAY, AUGUST 6TH 4-8PM
AT THE ORANGE STICKS
RIVERSIDE OF 726 RAYMOND BLVD.

DJ MAX-JEROME + DJ DARRIN DEE

PERFORMANCE BY
CHARISA THE VIOLIN DIVA

SHOW YOUR LOVE BY DRESSING PRINCE STYLE!
DRESS IN PURPLE OR DRESS LIKE PRINCE
PRIZE GIVEN TO THE BEST PRINCE COSTUME



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