

# SETTLEMENT CONCEPTS AND STRATEGIES FROM THE TRUSTEE PERSPECTIVE



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# TRUSTEE SETTLEMENT GOALS AT CONTAMINATED SITES

- Remediate ( "Polluter Pays" )
- Restore the Resource (NRD)
  - Primary or Compensatory Restoration
  - Compensate for Loss of Use
- Make the Public Whole / Reimburse
  - Increased Costs of Public Services
  - Lost Tax Revenues and Economic Impacts
  - Property Damages
- Disgorgement, Penalties and Punitive Damages?



## **NRD TRUSTEES ARE PUBLIC ENTITIES**

- Public Entity motivations are very different
  - Not motivated by profits
  - Motivated by costs and economic benefits
  - Risks and rewards can be very different
- Avoid uncertainty and the unknown
  - Corporate entities want finality
  - Governments want reopeners
- Public Entity is looking at longer time horizons
- Public risk, benefit and perception



# TRUSTEE ADVANTAGES

- The Law and Causes of Action
- Usually the Facts / Moral High-Ground
  - Focus on the laudable goals of NRD
  - Not about money or the budget
- Joint & Several Liability (when it exists)
- Arbitrary & Capricious Standard of Review (for settlements)
  - Isolate and shift risk to the non-settling parties
  - Make it advantageous to settle



## TRUSTEE DISADVANTAGES

- Bureaucracy, process and rules
- Linear thinking (among joint-trustees)
- Substantial lack of resources
  - Assessment Costs
  - Human Resources (hard and soft costs)
- The Science of NRD
- Public perceptions and expectations
  - Difficult to act in the public environment
  - Setting of expectations internally and externally



## PRP ADVANTAGES

- PRPs have all the money
- PRPs have access to more human resources
- NRD Assessment Costs create the tension
- The trap of “Cooperative Assessments”
- The Science is Difficult (at best)
  - Evolving and often Disputed
  - Usually not litigation ready
- Regional Politics
- Time Horizons



## PRP DISADVANTAGES

- Group-think
  - Fear of being isolated/alone
  - Unwieldy to manage PRP groups
- Infighting, backstabbing and finger-pointing
- Precedential concerns
- Inability to understand the public motivations
- Internal political pressures
- Cost-benefit analysis (and the belief that the trustees don't understand it)



# OTHER FACTORS IN ENVIRONMENTAL/NRD

## CASES

- Polarizing views (e.g., climate change)
  - Politics, Policy, Science and math!
- Competing interests and calculus of corporations, NGOs and governments
- What is an unacceptable environmental risk/injury?
  - “Yeah, then prove it....”
- What is in the best interest of the public?
- Who should be allowed to represent those interests?
  - Competition (or lack of coordination) among trustees
  - Differing goals and allocation of resources
- Outside Counsel Issues



# STRATEGIES FOR MOTIVATING A SETTLEMENT

- Costs will drive all parties to the table
- Leverage is usually key
- Most PRPs are profit motivated
  - Don't freely give their money away
  - Trying to eliminate risk
- Trustees must bring all claims
  - Seek all damages available
  - Run up the risk to an unacceptable level (but manage your client's expectations)
  - Play poker but .... Get ready for a trial!



# GETTING THE DEAL DONE

- Be the facilitator
- Build relationships and trust
- It's not war and the other side is not (necessarily) your enemy; just different motivations
- Diffuse the nastiness and focus on the resource and the public benefits
- Look for the win-win scenarios
  - PRPs can give less, while
  - Trustees can get more
- Realign the interests to be common interests



# THE SOLUTIONS ARE IN THE RESOURCES

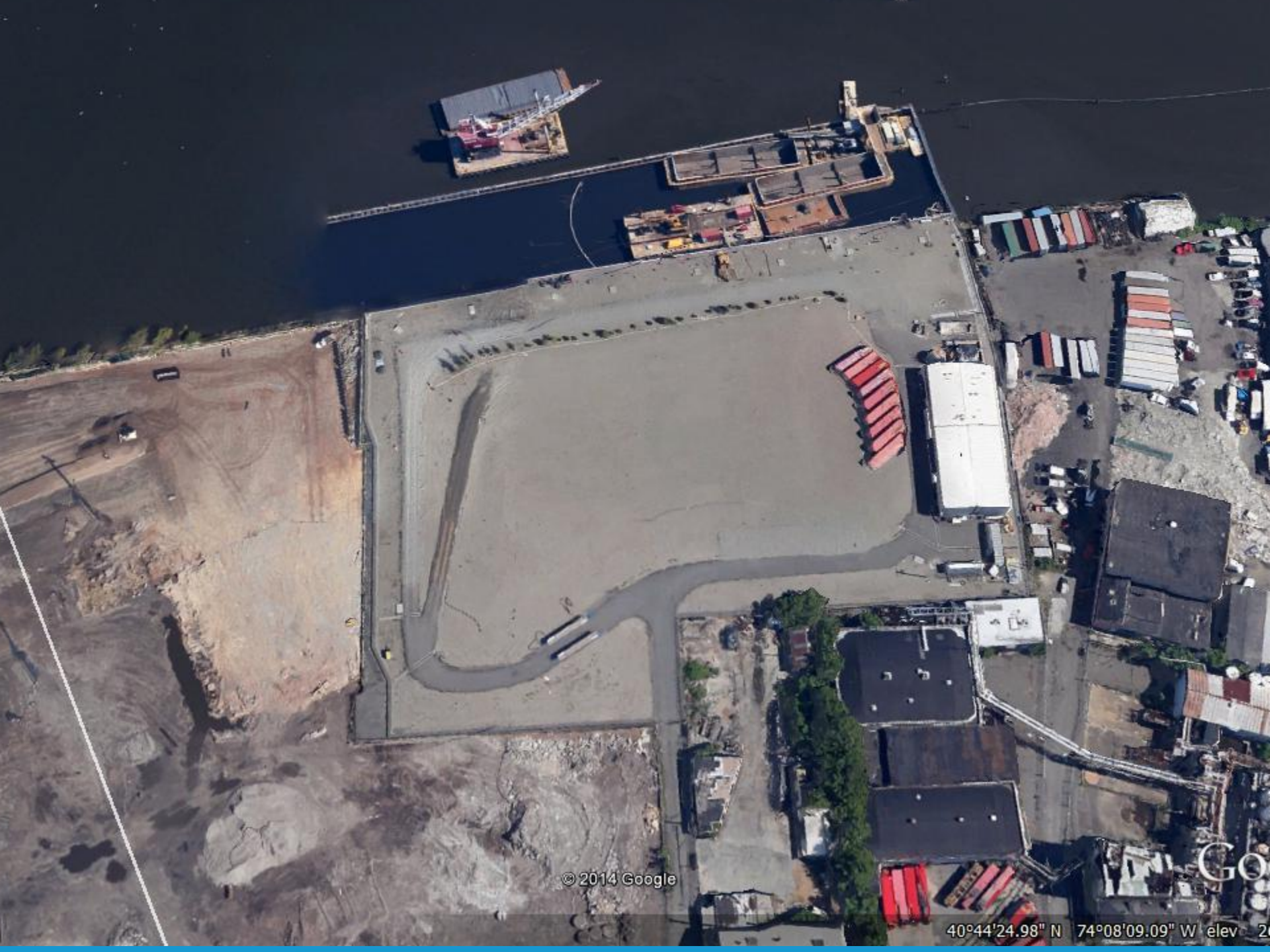
- Look for projects or investments that yield greater returns
- Early Ecological Restoration
  - Cuts the Injury Chain
  - Ecological Restoration and Services Recovery
- Investment in Human Use Projects
  - Direct and Indirect Economic Activity
  - Multipliers in the Economy
  - Induced Economic Activity and Regional Economic Revitalization
- Interest & Discount Rates



# ADVANTAGES TO RESPONSIBLE PARTIES

- Early resolution cuts off service losses and the compounding rate of growth (mitigates damages).
- Moreover, early restoration projects have more value to PRPs because of the time value of money:
  - create additional rates of return either in terms of DSAYs for ecological projects ;or
  - in terms of direct and indirect economic activity and induced effects in the economy.
- Avoids huge transactional costs
- Allows for partial (or total) resolution with imperfect information and a compounding ROR





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40°44'24.98" N 74°08'09.09" W elev 2

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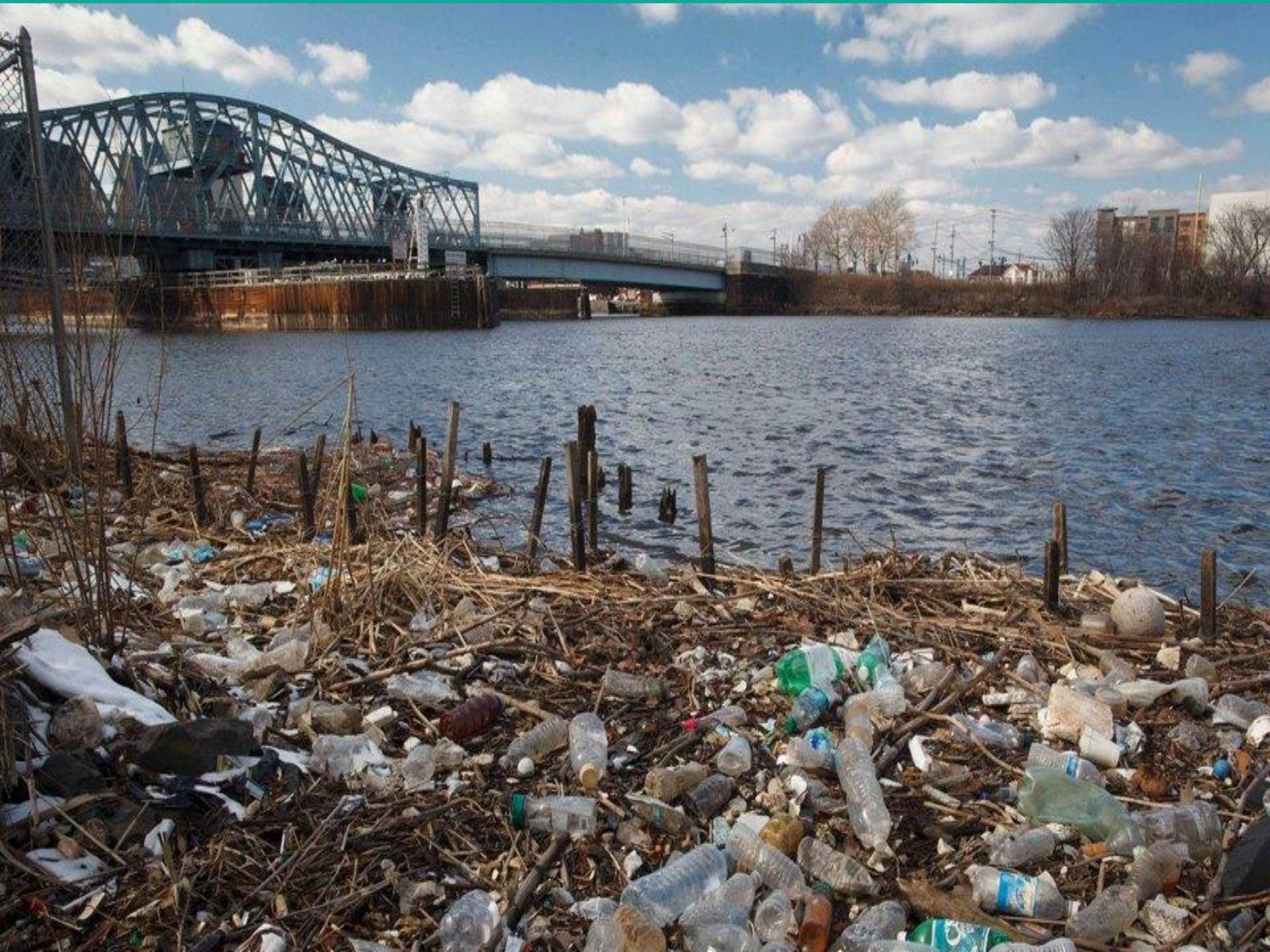
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GS-VDUW









# Passaic Riverfront Park



## Legend



- Passaic Riverfront Park**
- Priority Land Acquisition Area
- Future Passaic Riverfront
- Existing Open & Public Space

# Passaic Riverfront Park

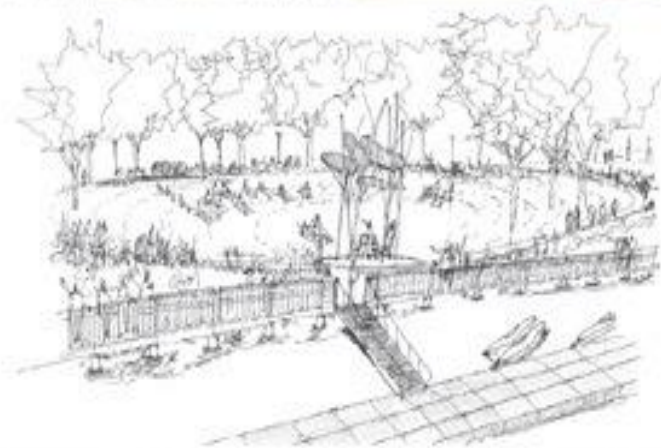
## Priority Acquisition Properties

- 1) Palmer Industries Inc. (3.57 Acres)  
Block 2442, Lot 3  
3.57 Acres
- 2) ORFAC Property Management (2.32 Acres)  
Block 2442, Lot 2  
2.32 Acres
- 3) RAR Development (5.53 Acres)  
Block 2473, Lots 1 & 2  
Block 2025, Lot 20  
Block 2473.01, Lot 4

### Legend

-  Tax Parcels
-  Existing Open Space





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!

NORTH  
WARD  
WALKS  
TO THE WATER

CENTRAL  
WARD  
WALKS  
TO THE WATER

UNION  
EST

WATER FOR AMERICA  
ON 10





# 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

# RIVERFRONT YOGA

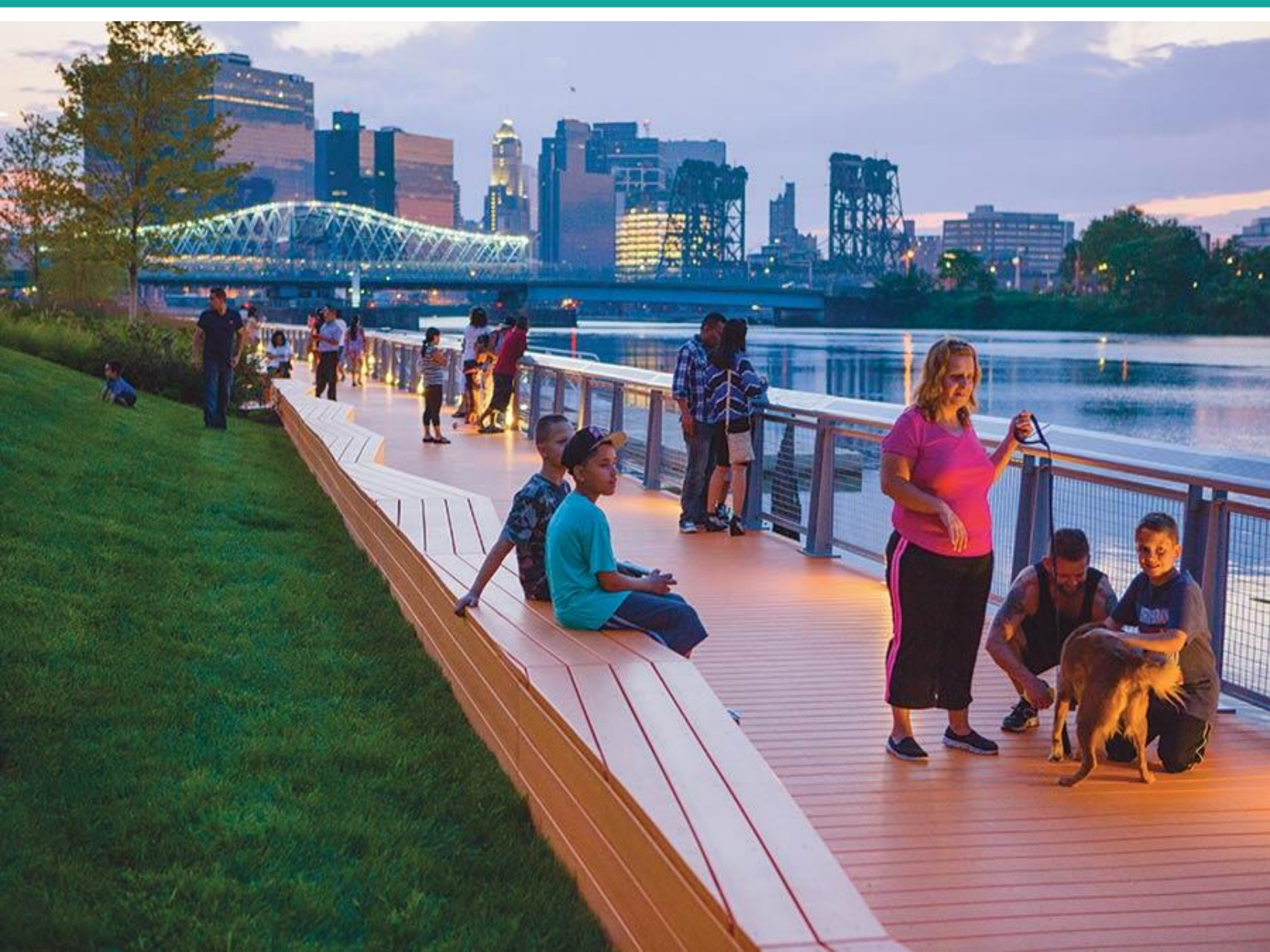
A photograph of three people practicing yoga in a grassy park meadow. On the left, a man with a white beard and a white turban sits in a meditative pose on a blue mat. In the center, a woman in a red long-sleeved shirt and black pants sits on a blue mat. On the right, a woman in a black and white patterned tank top and black pants sits on a pink mat. The background features a line of trees, several tall stadium-style light poles, and a clear blue sky with light clouds. The scene is brightly lit, suggesting late afternoon or early evening.

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











NEWARK  
RIVERFRONT  
REVIVAL



# 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.







