

# 421A DEVELOPER'S TAX BREAK

expiring June 2015

The 421a developer's tax break is well understood to be an inefficient giveaway for the real estate industry. The 421a is a real estate tax exemption that was originally put in place in 1971 to encourage new residential construction in the city at a time when the city economy and real estate market were stagnant.

While this may have been a legitimate concern in the 1970s, the City's housing market today is a far cry from what it was 40 years ago. The primary challenge we face today is not whether the market will, on its own, incentivize development; it will. Instead, we are faced with the dilemma of how to prevent the market from only building housing that fails to meet the needs of low-, moderate-, and middle-income people and the neighborhoods in which they live. Today's challenge is to ensure that the future of our neighborhoods is vibrant, inclusive, and equitable.

Thousands of affordable, rent regulated apartments are being lost each year through loopholes in the rent laws, leading to displacement and gentrification of low- and mixed-income neighborhoods. If we continue to lose our existing affordable housing even as we create more, through tools like 421a, our city's affordability crisis will only deepen. We must prioritize New Yorkers' needs over the narrow interests of real estate developers and protect our rent regulated housing stock.

While the 421a Developer's Tax Break has been modified throughout the years, these changes have proven inadequate. The current version of 421a forfeits billions of dollars in public money for minimal public benefit in return. The current program is a windfall for real estate developers, with little return for communities. We cannot continue to subsidize luxury real estate that is unaffordable to average New Yorkers.

The current 421a Developer's Tax Break is a bad deal for New York City neighborhoods, financially, and socially in the following three key areas:

- Meeting the Real Affordability Needs of New Yorkers.
- Creating Mixed Income Communities across the City.
- Maximizing Financial Investments for the best public benefit.

In this report ANHD examines the 421a Developer's Tax Break including an exclusive community-by-community analysis of all the properties that received a 421a Tax Break in Fiscal Year 2013. ANHD's analysis concludes that the 421a program as it currently exists is an inefficient and ineffective program that results in more than \$1.1 Billion in foregone tax revenue to benefit luxury housing real-estate developers and very little in return for NYC tax payers with less than 9 percent of units being affordable.

January 2015

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## WHAT IS 421A?

The 421a property tax exemption is available to real-estate developers of new multi-family residential housing. 421a was originally put in place in 1971, when policymakers were concerned that an extremely weak housing market would not provide enough of a profit incentive for private market developers to build new housing in the city. Policymaker's concerns were fueled, in part, by the city's economic problems and the declining population as many residents moved to the suburbs. 421a operates on the basic premise of incentivizing new market-rate residential construction in order to stimulate the production of housing.

While 421a Developer's Tax Break has been slightly revised over the years, the program is a holdover from an earlier era when the private sector, arguably, needed a boost to finance the building of new residential apartments. In the 1980's the City and the State passed revisions to the 421a Developer's Tax Break. City and State officials adjusted 421a recognizing that the housing market was rebounding in Manhattan and that granting a 100% tax break for 20 years for luxury development was a giveaway. City state and officials designated a "Geographic Exclusion Area" (GEA) in Manhattan, roughly between 14th and 96th Streets inside of which, developers were required to build affordable housing in order to qualify for the 421a tax break.

The creation of the GEA was built upon and expanded two more times between the 1980s and today. The program was also revised to eliminate the off-site certificate program which allowed market-rate developers to purchase certificates from 100% affordable housing buildings in order to get their tax break. However, the certificate program concentrated affordable housing in low-income outer borough neighborhoods and failed to create the mixed-income neighborhoods that communities want and need. While 421a has been slightly revised over the years, it still operates on that same basic premise of incentivizing new market-rate housing production.

Today, nearly all new residential construction is eligible for the 421a Developer's Tax Break. Projects with 5 or more housing units can qualify for the 421 Developer's Tax Break "As of Right," meaning at the options and discretion of the real estate developer. Those developers that meet the 421a programs qualifications and rules, as defined by the City and State, can not be denied receiving 421a. Currently the 421a Developer's Tax Break has two different sets of requirements.

For those buildings that fall inside the Geographic Exclusion Area, developers that use 421a must make 20% of the units affordable to 60% of Area Median Income (AMI), or approximately \$1,260 in monthly rent for a 2-bedroom apartment. That's below market-rate in some areas, but it's still unaffordable for most New Yorkers. While 60% AMI at \$1,260 in monthly rent may sound affordable, it is at or above market-rate rents in some areas and rents of \$1,260 rents are unaffordable to nearly half of the City's households.

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Outside of the “Geographic Exclusion Area,” developers are eligible to use 421a without setting aside any affordable units at all. In these outer borough neighborhoods, there are tremendous numbers of new multi-family market-rate residential housing that pay no property taxes for 20 years with no affordable housing requirements.

In both cases, inside and outside the “Geographic Exclusion Area,” the tax break applies to the entire building (the market-rate and affordable units), and lasts 25 years.

The 421a Developer’s Tax Break is also often used in conjunction with other subsidy programs, particularly the Inclusionary Housing Program and the Low Income Housing Tax Credits (LIHTC). However this allows developers get to ‘double dip’ by counting the same affordable units under both programs, rather than layering on additional affordable apartments for each new subsidy they take. In some cases the affordable units are made less affordable, at 120% AMI instead of 60% AMI when 421a is combined with substantial government assistance.

## ANALYSIS OF 421A BUILDINGS

ANHD examined all publically available data on the 421a Developer’s Tax Break. This included examining the total number of 421a Tax Breaks in the City over the past 13 years. The overall number of City 421a Tax exemptions has skyrocketed in the just the last decade.

**In 2004 the number of 421a exemptions citywide was just 19,119 but by 2014 that number had more tripled to 71,950 exemptions in 2014.**

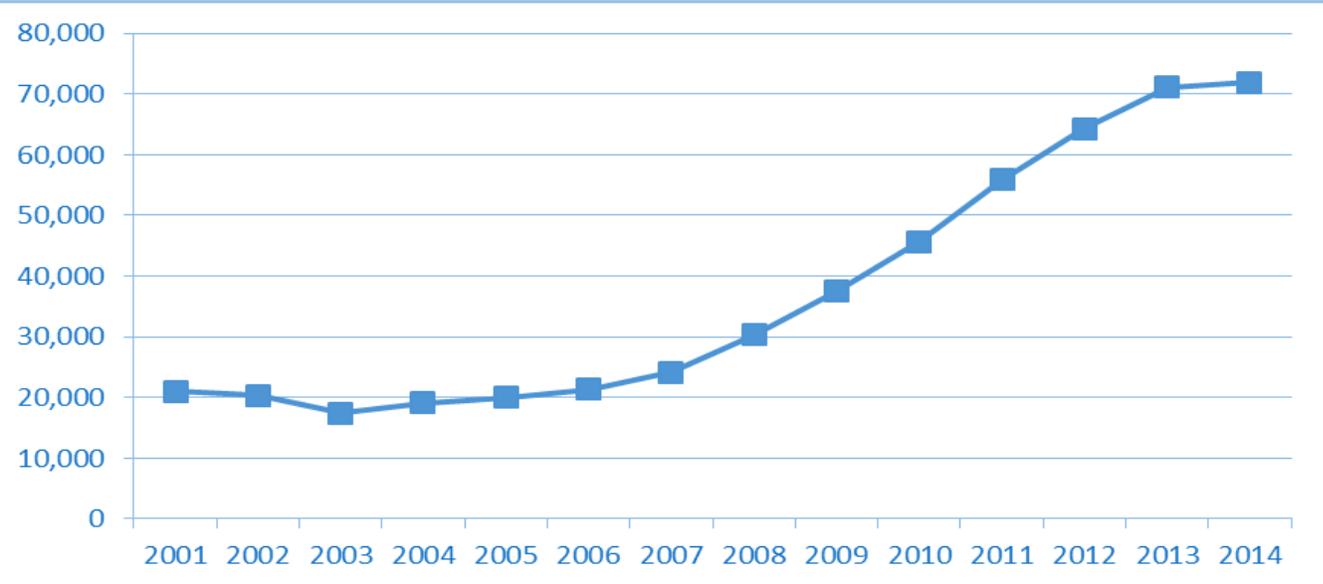
The increase in 421a exemptions varies by borough, with Staten Island and Brooklyn seeing the most sizeable jumps in the numbers of 421a exemptions.

**The 421a Developer’s Tax break cost the City \$1.1 Billion in forgone tax revenue in FY13/14 alone.**

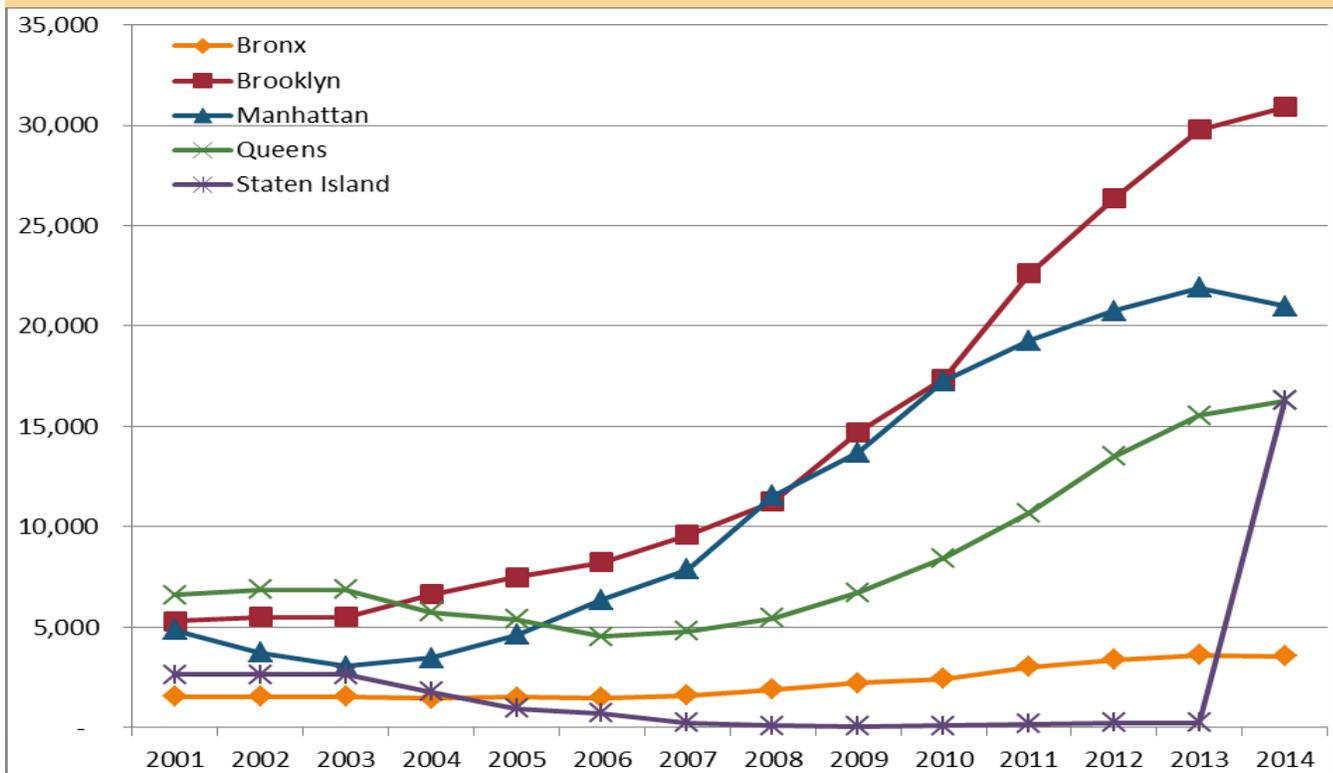
That is \$1.1 billion that would otherwise go to public services like schools, infrastructure, hospitals –and affordable housing. Over the past 5 years the city has lost nearly \$5 Billion in tax revenue to 421a Tax breaks.

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Total Number of 421a Tax Exemptions Citywide, 2001–2014



Total Number of 421a Tax Exemptions by Borough, 2001–2014



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The City's Department of Finance Data lists **153,121 residential units receiving a 421 Tax break in FY13/14.**

The number of residential units receiving 421a varies widely across boroughs, with Manhattan containing 40 percent of all 421a residential units and State Island having only 1 percent of 421a units. However, the DOF 421a dataset fails to indicate if a residential unit is an affordable housing unit or even whether the property receiving was required to create affordable housing in order to qualify for the tax exemption. There is no public database which tracks buildings or units that receive 421a. Neither the City nor the State have a citywide 421a base database that includes the location of all 421a properties, if they required affordable housing, the number of affordable units created, and when the affordability terms expire. Housing advocates and city officials request for data on 421a affordable units in their community or district have generally received and estimated or assumed number of 421a affordable units from city agencies.

	421a Residential Units	Percent of Citywide 421a
Bronx	16,901	11.0%
Brooklyn	44,953	29.4%
Manhattan	60,107	39.3%
Queens	29,435	19.2%
Staten Island	1,006	0.7%
<b>TOTAL</b>	<b>152,402</b>	<b>100.0%</b>

However, this analysis leaves Housing advocates, City officials and local communities with inadequate and limited information about the role of the 421a Developer's Tax Break in their neighborhoods. In order to understand more about the 421a Tax Break ANHD completed a unique in depth analysis of all 421a tax exempt properties as of Final Roll Fiscal Year 2013/2014. ANHD then merged this dataset to the New York Department of City Planning (DCP) Primary Land Use Tax Lot Output (PLUTO) database which provides extensive land-use, geographic, and tax information on every tax lot in the City.

We then spatially mapped shapefiles of the three 421a Geographic Exclusion Areas (GEAs) – the original one, developed shortly after the program's inception, the one in use before the 2008 421-a legislation reforming the GEA, and the one in use from after the legislation (which also the current GEA). Each one of these GEA maps allowed us to determine where affordable housing was required at a given point in time in the lifecycle of the 421a program. Each 421 tax lot was then spatially analyzed and determined to either be inside the one or multiple of the GEA boundaries or outside the GEA. If a tax lot was located outside of the GEA it was determined to have no affordable housing units. If a tax lot fell inside the GEA we then utilized the Year Built data to determine if the given property was built prior to any affordability requirements based on its geographic location.<sup>[1]</sup>

<sup>[1]</sup> Buildings were assumed to have a 3-year construction window, the maximum period a building may receive a construction exemption under the 421a rules.

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Tax lots falling inside the GEA and built after the GEA affordability requirements went into effect were assumed to have set aside 20 percent of their total units as affordable housing. Condos that appear in the data as individual separate tax lots were aggregated by address into a data record of a single building with multiple units. The result is ANHD's analysis of the location of all Fiscal Year 2013 421a Developers Tax Break properties, and our estimation of the number and location of the affordable housing units created under 421a.

ANHD's analysis is currently the only attempt at determining the number of affordable housing units created through the 421a Developer's Tax Break and mapping them spatially across the city.

The following 10 pages of maps capture the outcome of this analysis. All blue squares are land lots that received a 421a Tax Break, but fall outside the GEA and therefore are assumed to have no affordable housing. All red squares are land lots that received a 421a Tax Break, fall inside the GEA and based on their year built are assumed to have set aside 20 percent of their residential units as affordable housing.

ANHD estimates that **only 12,748 of those 153,000 421a tax break units are affordable housing units.**

This indicates that of the residential units that received a 421a tax exemption in 2013 **only 8.6 percent of 421a units were affordable.**

In the vast majority of the city, developers collecting and communities are paying for 421a Tax Breaks to developers without providing any public benefit in return. The 421a Developer's Tax Break forfeits billions of dollars in public money for minimal public benefit in return.



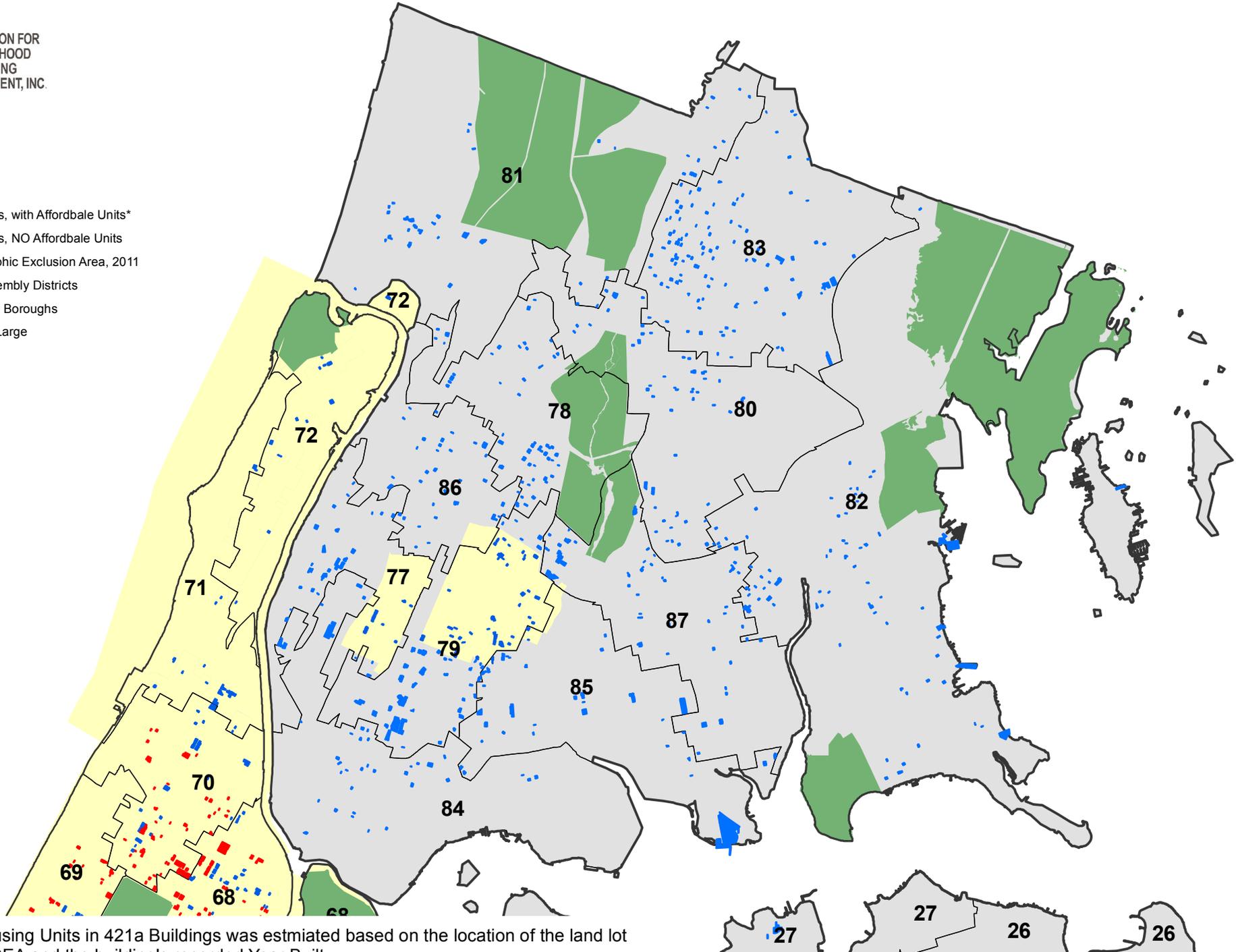
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# 421a Developers Tax Break Buildings, FY2013

## Assembly Districts

### Legend

-  421a Buildings, with Affordable Units\*
-  421a Buildings, NO Affordable Units
-  421a Geographic Exclusion Area, 2011
-  NY State Assembly Districts
-  New York City Boroughs
-  NYC Parks - Large



\*Affordable Housing Units in 421a Buildings was estimated based on the location of the land lot relative to the GEA and the building's recorded Year Built.

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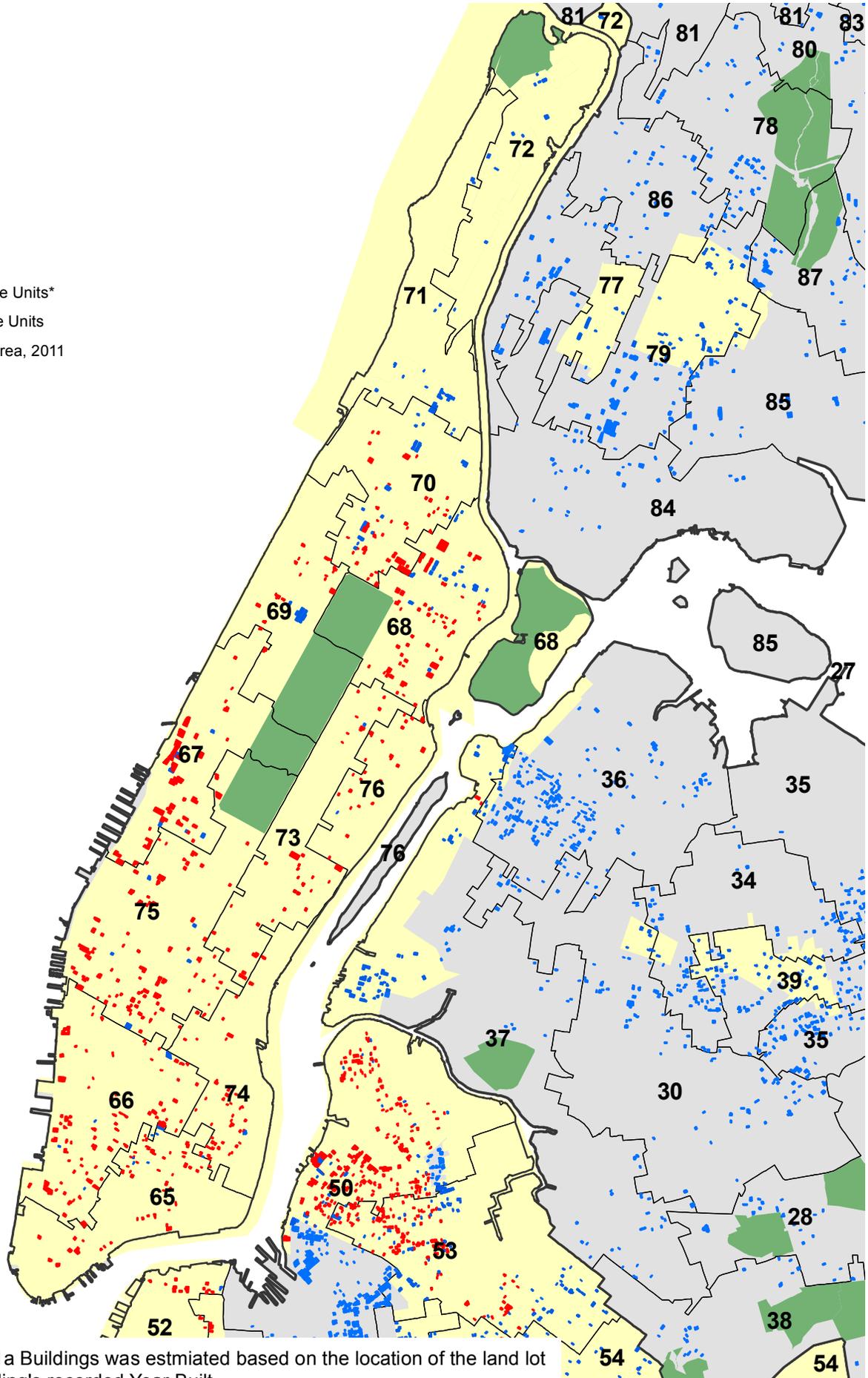
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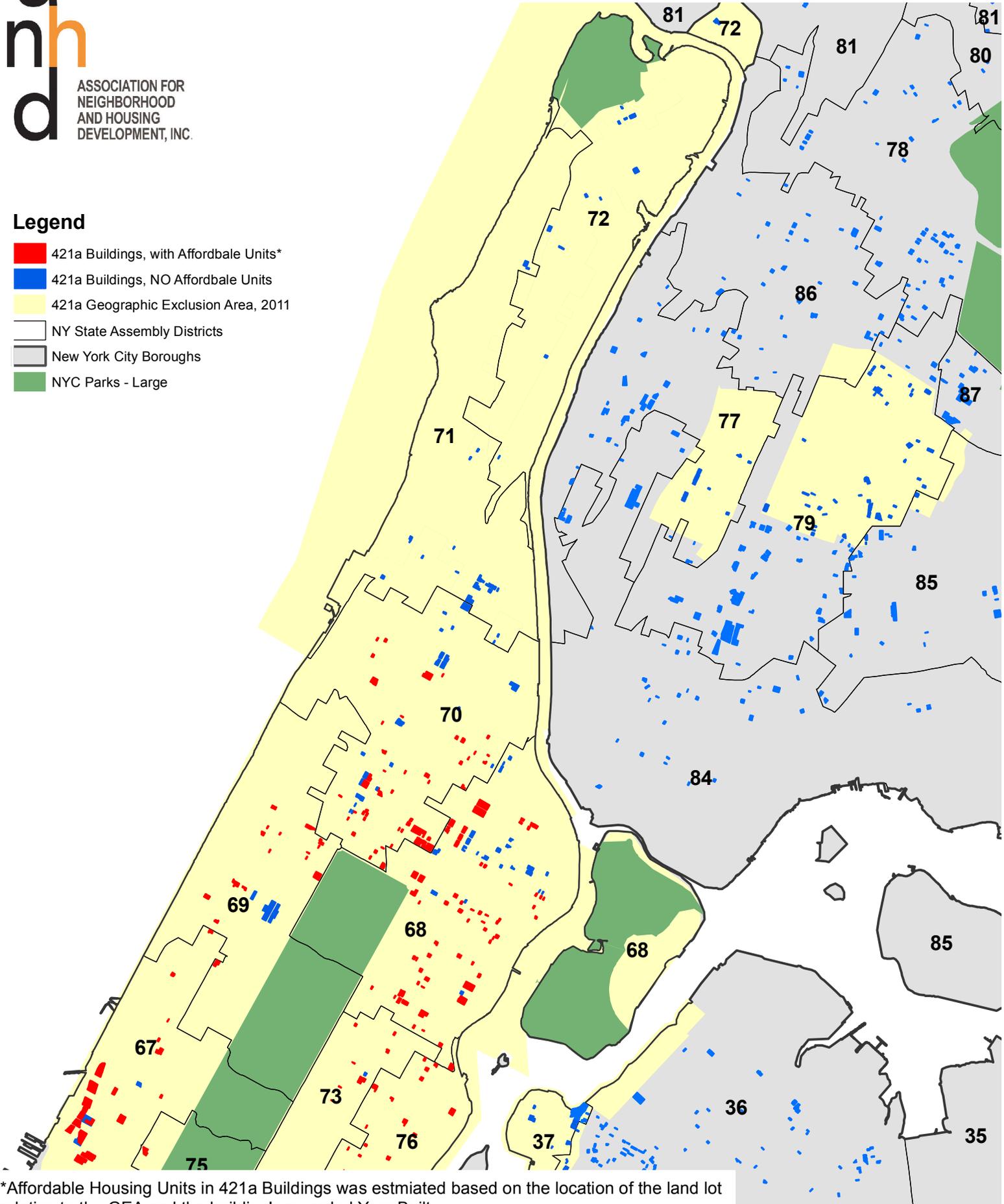
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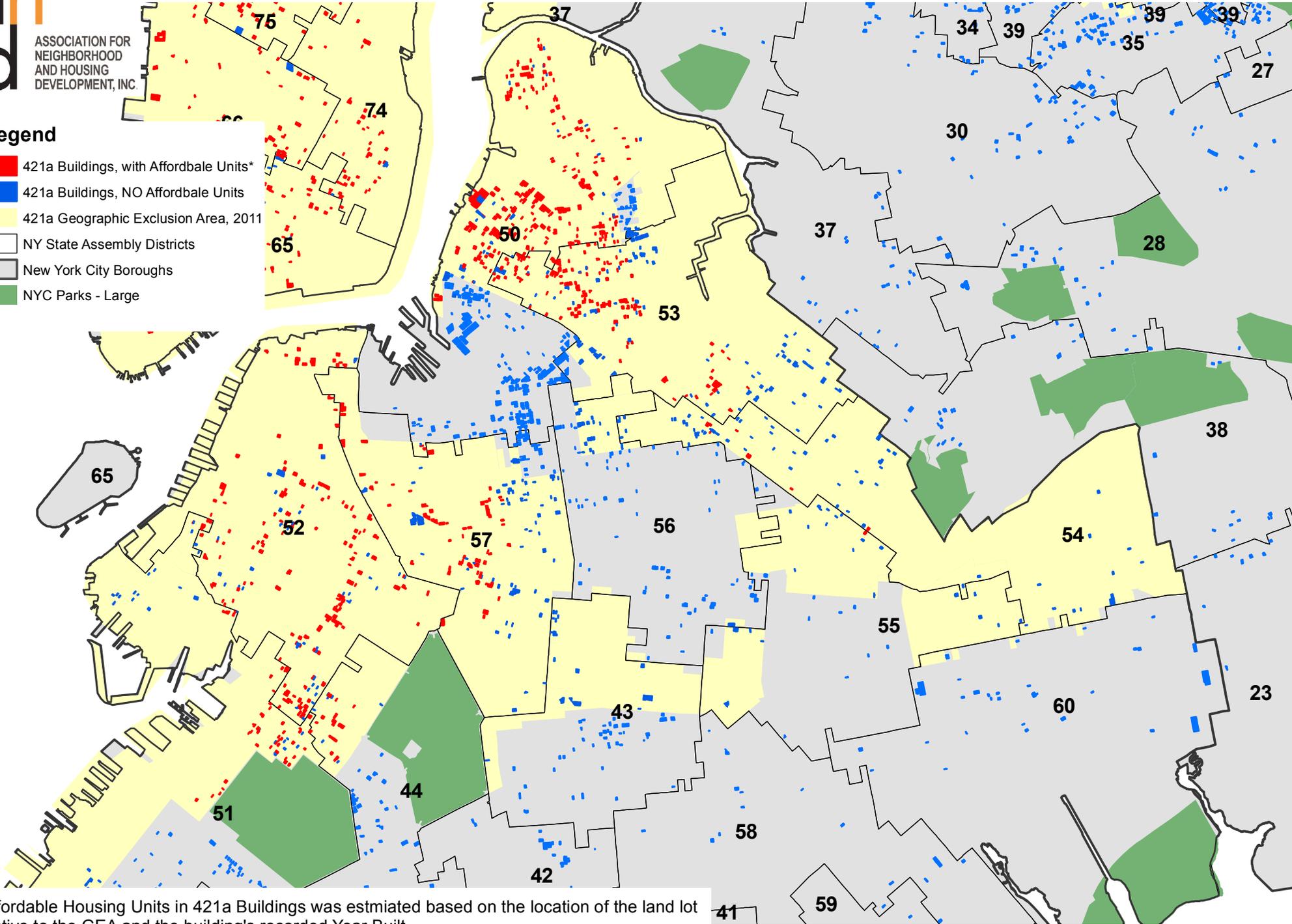
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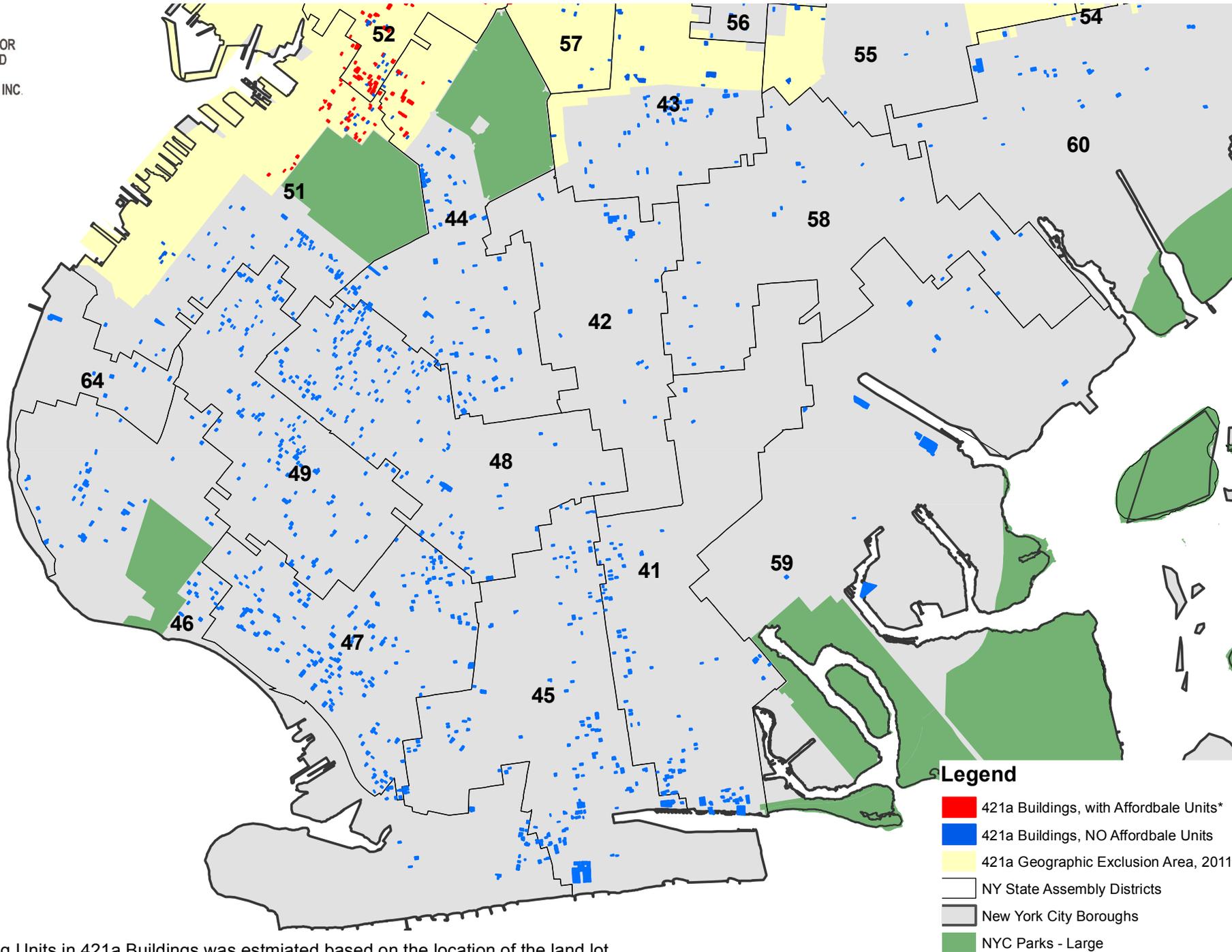
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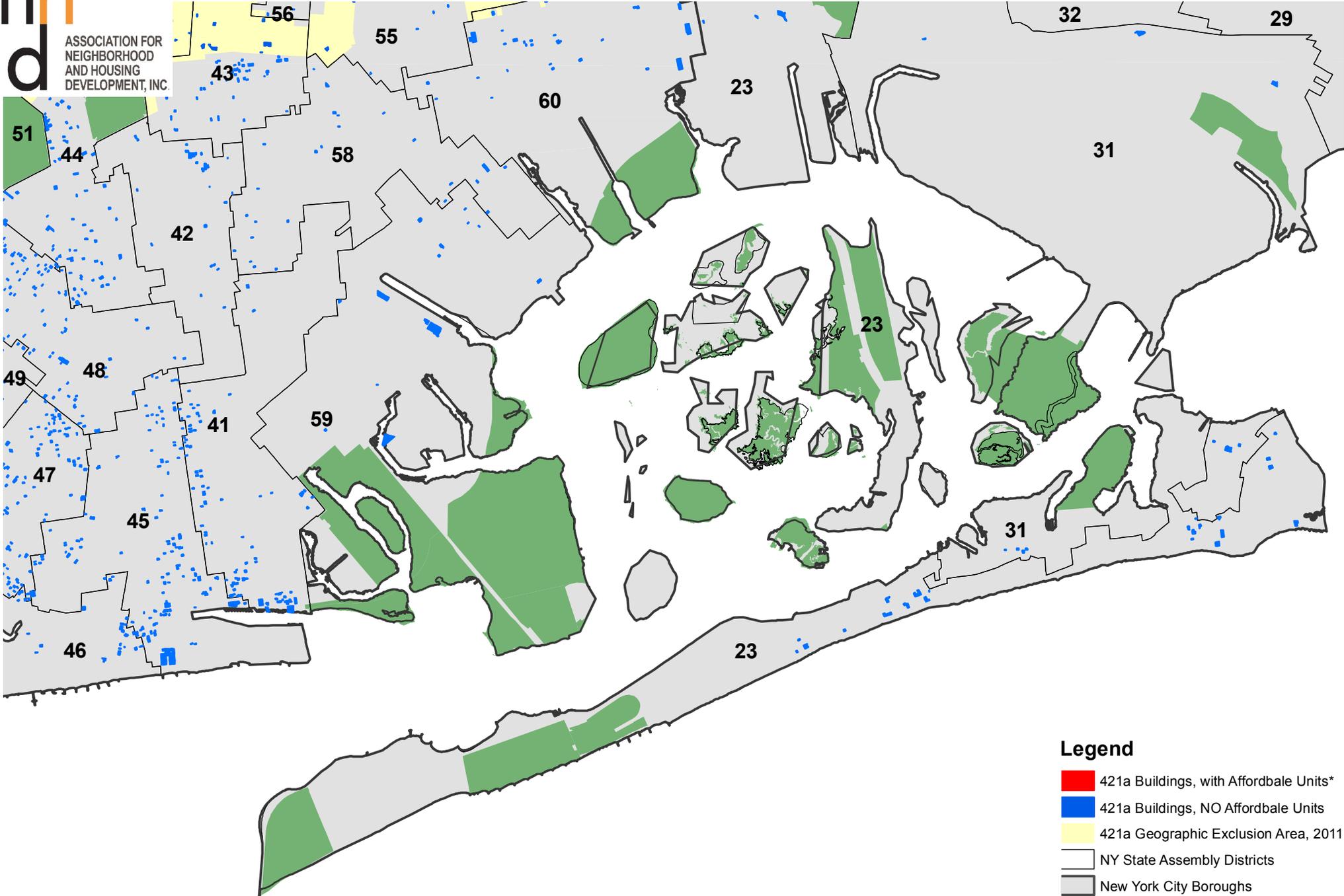
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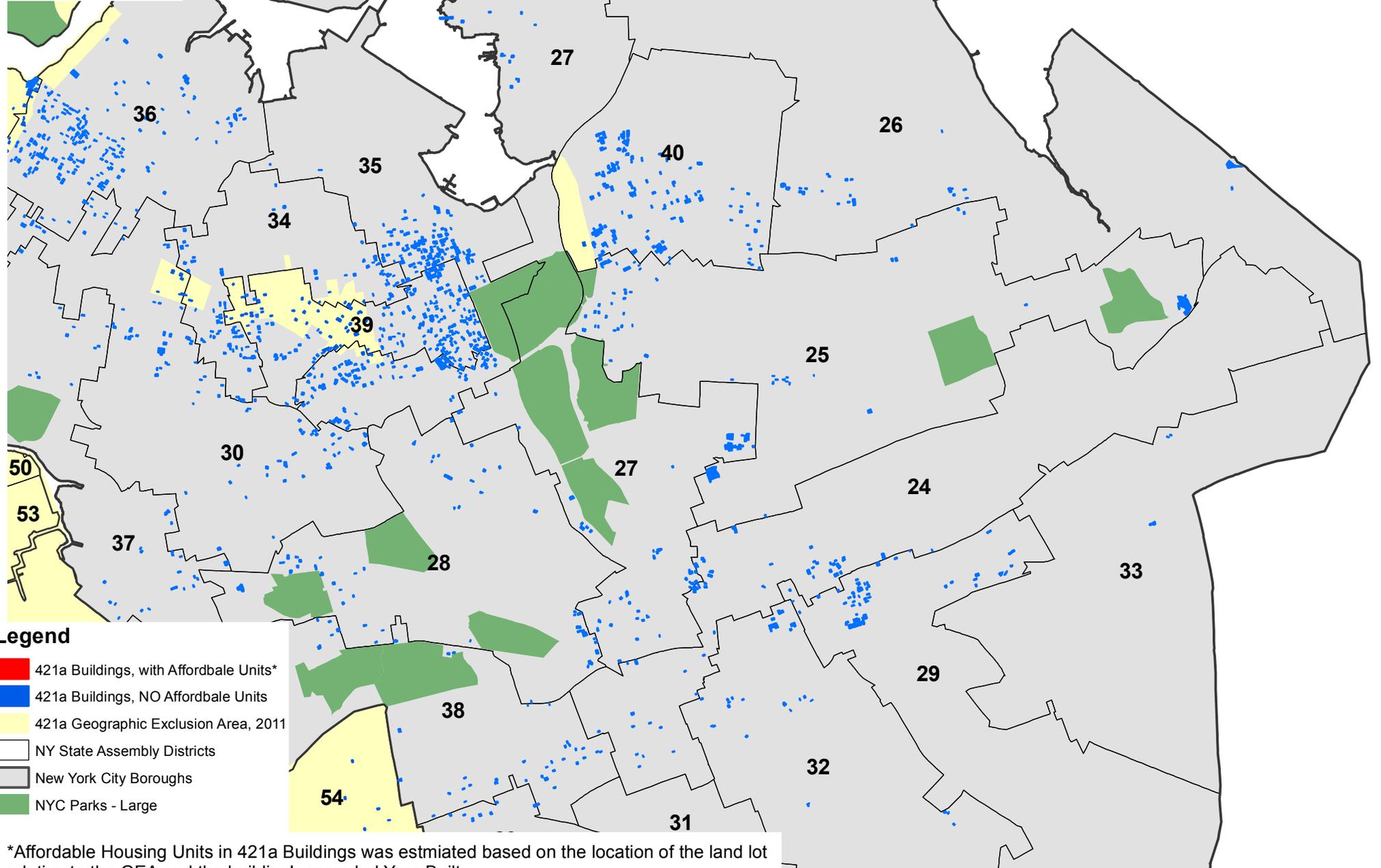
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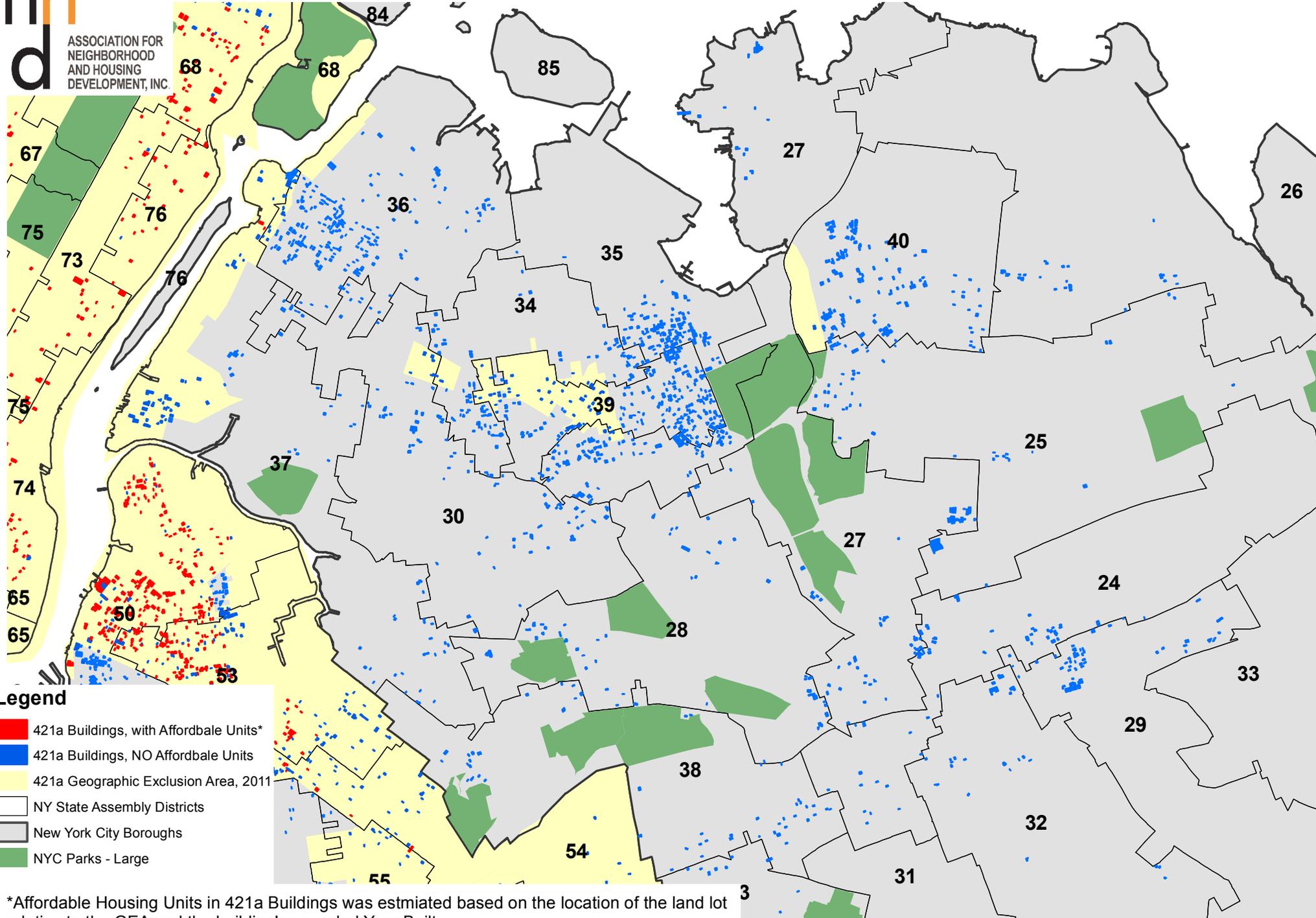
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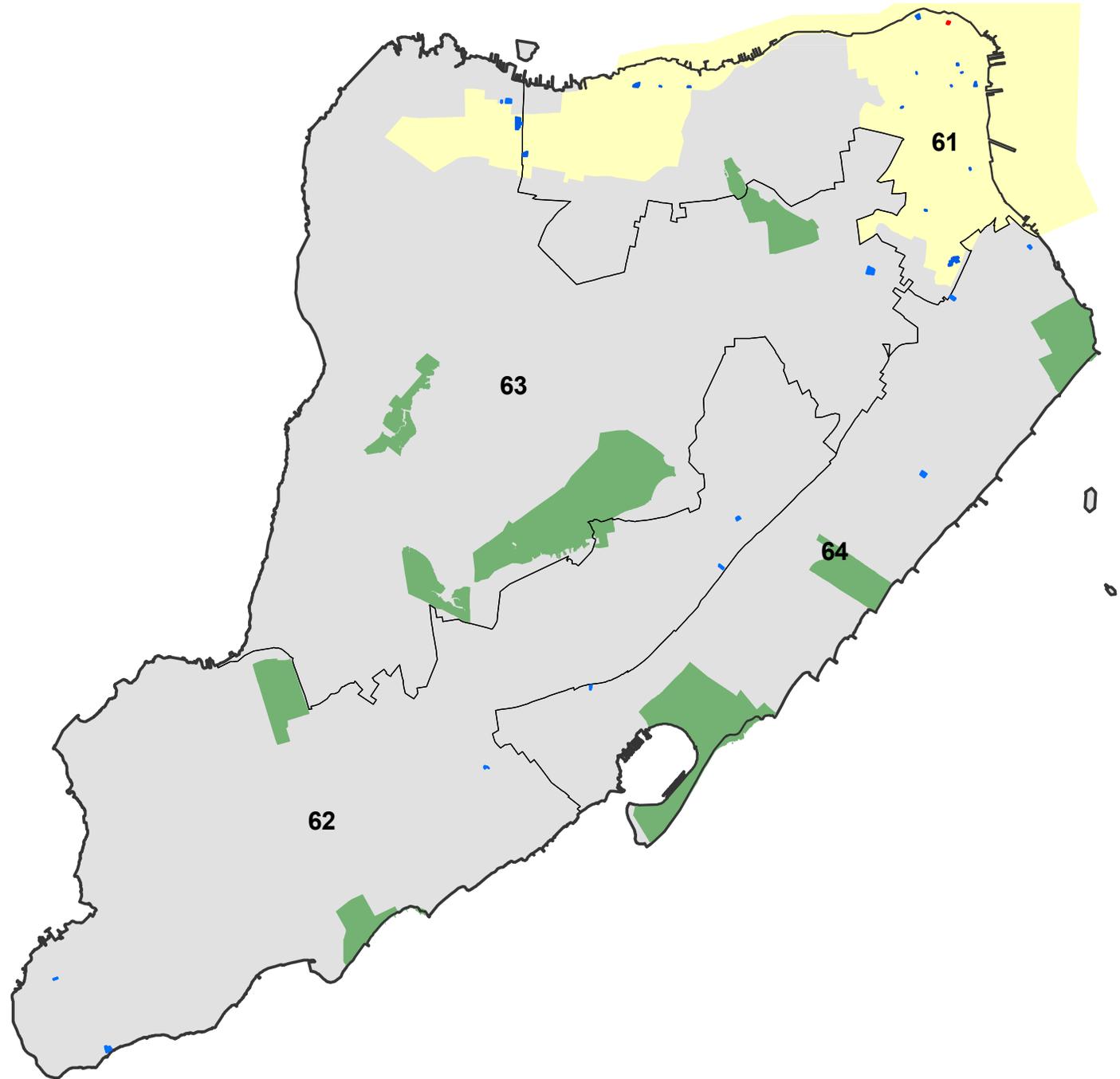
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## CHALLENGES OF 421A

The current program is a windfall for developers, in a strong housing market, with little return for communities. This must end. We cannot afford to subsidize luxury real estate development that is unaffordable to average New Yorkers. Below ANHD outlines just some of the many Key problems with 421a and why it constitutes a bad deal for New Yorkers.

### ..... CHALLENGE: LEVEL OF AFFORDABILITY

The limited areas of the City are within the 421a Geographic Exclusion Area: Manhattan, and small parts of Brooklyn, the Bronx, Queens and Staten Island, that do require affordable housing still fails to meet the real affordability need of local residents. Inside the GEA 421a developments are required to must make 20% of their residential units affordable to residents earning 60% of the Area Median Income (AMI), or \$50,340 for a family of four. However even these affordable units are priced substantially above the rent levels affordable to New York City's actual median household income, 1/3 of New York households make less than \$33,560 per year. Furthermore when 421a is combined with "substantial government resources" the AMI levels can be doubled going from 60% AMI up to 120% AMI, making the units even more unaffordable for average New Yorkers.

### ..... CHALLENGE: LOCATION OF UNITS

The current Geographic Exclusion Area (GEA) is grossly misaligned with the actual reality of the City. One only needs to look at Central Brooklyn and Western Queens – substantial parts of which were left out of the current GEA – for examples of neighborhoods where previously 'cool' real-estate markets are now booming with new residential developments. Regrettably, in these areas we are currently giving away enormous 421a tax breaks for all-luxury developments and increasing area rental prices, with no affordable housing required. In many parts of the city, developers get the 421a Developer's Tax Break without building any affordable units at all. Furthermore certain 421a may have facilitated the concentration of affordable units in low-income neighborhoods by allowing offsite units or a certificate program for developers. We can't not allow 421a to create exclusionary pockets communities as a trade of tax breaks.

The real estate industry advocates for tax breaks on the premise that it makes market-rate development more financially feasible. But rather than make these new residential developments financially feasible, these NYC tax-payer funded 421a tax exemptions are just increasing profits for real estate developers. Conventional market-rate housing development should benefit the public by paying property taxes to cover the additional infrastructure, police, schools, parks, health and other city services costs that need to be covered when there is new development. If a market can support the type of high-rent luxury housing that often uses 421a Developer's Tax Break, it can also support either its fair share of property taxes or affordable housing that serves community needs.

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## ..... CHALLENGE: SHORT-TERM AFFORDABILITY

What affordable units that are being created under the 421a Developer's Tax Break are not permanently affordable. The current 421a program does not preserve the public benefit. It creates short-term affordable housing alongside permanent gentrification as neighborhoods are faced with expiring affordable units that further instability. This puts tenants at risk of displacement and communities at risk of losing what little affordable housing is created under 421a. Neighborhoods, like the Upper West Side, will see much of their 1990s and early 2000s 421a affordable units expire in coming years, leaving both residents and communities at risk of instability from expiring affordability.

## ..... CHALLENGE: DOUBLE-DIPPING OF SUBSIDIES

The 421a Developer's Tax Break is doubly inefficient and expensive to the taxpayer because it is generally used in combination with other affordable housing incentive programs. In particular, it is often paired with the City's voluntary Inclusionary Housing Program (IHP) which allows developers to build more units than the current zoning would allow in exchange for making some of those units affordable. Developers get to "double-dip" by counting the same 20% set aside of affordable units twice under each program, rather than layering on additional affordable apartments for each new subsidy source, leaving the City, tax payers, and the community with half the public benefits.

Furthermore, 421a is also paired with direct subsidy sources such as Low income Housing Tax Credits, bonds, etc, which leads to similar double- and even triple-dipping. 421a when used in conjunction with other housing programs means that communities wind up getting less while developers get more.

## ..... CHALLENGE: UNFAIR & UNEQUAL TREATMENT OF TENANTS

The current 421a program undermines mixed-income communities. 421a allows the unfair and unequal treatment of affordable tenants through limiting access to building amenities, creating 'poor-doors,' and physically differentiating between affordable units and market-rate units. Developers who do not want to treat all tenants in their developments equally with dignity and respect should simply opt-out and be required pay their taxes. We cannot afford to grant tax breaks to development projects that further reinforce a tale of two cities.

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## ..... CHALLENGE: TRACKING AND ENFORMENT OF 421A

421a units aren't tracked by any city or state agency. There is no enforcement to ensure that tenants in affordable 421a units are being given the leases and rents to which they're entitled. There is also no enforcement to ensure that landlords are renewing leases to income qualifying tenants, adhering to fair marketing guidelines, and limiting rents to the capped affordability restrictions. Initial reviews of developments currently receiving a 421a tax exemption have found cases where tenants were provided incorrect leases that did not accurately reflect the units' affordability regulations.

With 421a set to expire in June 2015, the City and the State cannot allow such a flawed and outdated program to continue. It's long past time to re-evaluate the 421a-Developer Tax Break. With big decisions by our government officials on 421a and Rent Regulation, we are at critical moment. It is time for some bold steps to put the public benefit of affordable housing before the private profit interests of real estate developers.