

Introduction. In November of 2017, NYS voters approved amendments to Section 1 and added a new Section 6 of Article XIV of the Constitution. The Section 1 amendment revises the Constitution to establish a 250-acre land “account” or bank for Forest Preserve land that can be used for certain types of public health and safety projects, and in Section 6, allowing for the co-location and burial of utility lines in road corridors crossing Forest Preserve lands, and allowing bike trails in such corridors.

This document summarizes and describes the amendments and their implementation by the Department of Environmental Conservation (DEC). Implementation of the amendment can begin now because sufficient details for implementation are contained in the amendments and implementing legislation (Title 21 of Article 9 of the Environmental Conservation Law or ECL). Over the long term, DEC plans to develop regulations and/or formal guidance to administer the program.

I - THE FOREST PRESERVE HEALTH AND SAFETY LAND ACCOUNT (AMENDED ARTICLE XIV, SECTION 1 OF THE CONSTITUTION AND ECL §9-2101)

Five types of projects qualify for the use of land from the Account:

1. Projects addressing bridge hazards to improve public safety on town and county highways;
2. Projects eliminating the hazards of dangerous curves and grades on county and town highways to improve public safety;
3. The relocation, reconstruction and maintenance of county and town highways, including associated culverts, to address public safety, provided that any single relocated portion may not exceed one mile in length;
4. Water wells and necessary appurtenances when such wells are necessary to meet drinking water quality standards and are located within 530 feet of state, county or town highways; and
5. Stabilization devices for existing utility poles adjacent to, or no more than the minimum distance from, the width of highway necessary to comply with standard safety practices. Stabilization devices for existing utility poles must normally be located within the width of such highways, but may be located in proximity to such width when no viable alternative exists and when necessary to ensure public health and safety. “Width of the highway” is defined as “three rods or the deeded, recorded municipal or state right of way or easement in existence as of January 1, 2015.”

Entities that qualify to use land from the land bank:

Towns, counties and villages located in the Adirondack counties of: Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, and in the Catskill Counties of: Delaware, Greene, Sullivan and Ulster, all qualify to apply for land from the land bank.

When can applications be submitted?

Although applications can now be submitted to DEC, no land account acreage may be used until the State has acquired, with legislative approval, at least 250 acres of land for inclusion in the Forest Preserve as an offset for the land “account” or bank. DEC is currently identifying and appraising potential acquisitions to satisfy the 250-acre acquisition requirement, and will seek legislative approval of these acquisitions as soon as feasible. Once the legislature approves the parcels and DEC completes acquisition, then DEC can process land bank applications.

What must be contained in an application?

1. An adopted resolution from the governing body of the project sponsor supporting the project, authorizing the sponsor to submit the application and including:
 - A commitment that the project sponsor will pay to the State fair market value of the State land which would be used if the application is approved;
 - Attestation that the project is necessary to address public health or safety and no viable alternative exist; and
 - Attestation the Forest Preserve lands will be used only for eligible purposes and the property acquired shall not be sold, leased, exchanged, donated or otherwise disposed of or used for any purpose other than the eligible purpose for which it was approved, without the express authority of the legislature.
2. A detailed description of the proposal.
3. A real estate appraisal assigned to DEC using DEC standards and reviewed and approved by DEC.
4. A boundary survey to DEC standards of the Forest Preserve property to be acquired by the project sponsor.
5. A detailed narrative describing the project;
6. Any state, federal or local government permits and authorizations necessary for the project to move forward (for instance: 401 Water Quality Certification permits; wetlands permits; Wild, Scenic and Recreational Rivers permits; SPDES permits) and including any State Department of Transportation (DOT) approvals. Project sponsors should work with DEC's Regional Permit Administrators to determine what, if any, permits might be necessary.
7. An analysis showing there is no viable alternative to the use of State land.
8. An analysis showing the project will minimize adverse environmental impacts.
9. An analysis showing the project will not adversely impact viewsheds or lands with historical, ecological, environmental or recreational value, based on a resource inventory and assessment.
10. Compliance with the State Environmental Quality Review Act and associated regulations.
11. Other information which DEC determines to be relevant to the proposed project.

What happens after an application is submitted?

If the application is incomplete, DEC will request additional information from the project sponsor.

DEC will consult with DOT to ensure that any necessary DOT authorization has been provided.

When the application is complete, DEC will solicit public comment by publication in the State Register, Environmental Notice Bulletin and a local newspaper. The project sponsor will hold a public hearing on the proposal and provide for newspaper notices. Public comment, if any, will be considered by DEC when making a final determination on the application.

Note: The legislature must approve land account projects.

Project Approval Guidelines

When approving an application, DEC must make the following findings:

1. The project meets eligible project criteria;
2. The project is necessary for public health and safety;
3. There is no viable alternative to the use of State land;
4. The project will minimize adverse environmental impacts;

5. The project will not adversely impact viewsheds or lands with historical, ecological, environmental or recreational value, based on a resource inventory and assessment;
6. The money to be paid by the project sponsor for the land is equal to or greater than the fair market value of the State land to be used; and
7. The project minimizes the amount of State land to be used.

Conveyance of land to the Project Sponsor

After legislative approval, fee title to the land will be conveyed to the Project Sponsor after the deed has been approved by the Attorney General as to form, manner of execution and recordability.

The deed will include clauses specifying that (1) the land may not be leased, exchanged, donated or otherwise disposed of, or used for any other purpose, without the approval of the legislature; and (2) the lands will revert to the State for inclusion in the Forest Preserve when no longer needed for the specified project.

If the land reverts back to the state, DEC shall prescribe terms and conditions for the removal of any improvements and restoration of the land to a natural, vegetative state.

II. HIGHWAY RIGHTS OF WAY/PUBLIC UTILITY IMPROVEMENTS/BIKE TRAILS (ARTICLE XIV, SECTION 6 OF THE CONSTITUTION AND ECL §9-2103)

Two types of projects qualify to be located in highway rights of way crossing Forest Preserve:

1. The burial or co-location of a public utility line, including any necessary conduit used to protect such lines. Co-location means placing new public utility lines on already existing poles. New above-ground public utility poles are not allowed.
2. Construction and maintenance of bicycle paths.

Where can eligible projects be sited?

All public utility lines and bicycle paths must be within the width of a town, county or state highway crossing state land under DEC's jurisdiction in Forest Preserve counties (e.g., Forest Preserve, WMAs, reforestation areas/state forests, etc.).

When can applications be submitted?

Applications can be submitted now. DEC can process applications as soon as they are received.

What entities may be project sponsors?

- a. Towns, counties and villages located in the Adirondack counties of: Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, and in the Catskill counties of: Delaware, Greene, Sullivan and Ulster can be a project sponsors for all types of highway right of way projects (bicycle paths; water lines; and electric, telephone and broadband lines).
- b. Additional eligible project sponsors:
 - The Department of Transportation can be a sponsor for bicycle paths;
 - A public water supplier can be a sponsor for water lines; and,
 - A public utility company can be a sponsor for electric, telephone or broadband lines.

Applications must include:

1. An adopted resolution from the governing body of the project sponsor supporting the project, or, for applications by public utilities, an adopted resolution supporting the project by the governing body of the municipality or municipalities with jurisdiction over those portions of the highway over which the project will

cross The resolution must include attestations that the width of the highway will be used only for eligible purposes and that the project will minimize the removal of trees and vegetation and restore the area to pre-project condition to the maximum extent feasible.

2. A detailed narrative describing the proposal.
3. A showing that the removal of trees or vegetation will be minimized.
4. A showing that the siting of such facilities will be consistent with standards and requirements set forth in law, and a commitment that the project will not proceed until all permits or authorizations required by law have been acquired.
5. Any State, federal or local government permits and authorizations necessary for the project to move forward (for instance: 401 Water Quality Certification permits; Wetlands permits; Wild, Scenic and Recreational Rivers permits; SPDES permits), including any Department of Transportation (DOT) approvals. Project sponsors should work with the Department's Regional Permit Administrators to determine what, if any, permits might be necessary.
6. Compliance with the State Environmental Quality Review Act and associated regulations.
7. Other information which the DEC determines to be relevant to the proposed project.

What happens after an application is submitted?

If the application is incomplete, DEC will request additional information from the project sponsor.

DEC will consult with DOT to ensure that any necessary DOT authorization has been provided.

When the application is complete, DEC will solicit public comment by publication in the State Register, Environmental Notice Bulletin and a local newspaper. The project sponsor will hold a public hearing on the proposal and provide for newspaper notices. Public comment, if any, will be considered by DEC when making a final determination on the application.

Project Approval Guidelines

To approve an application, DEC must make the following findings:

1. The project meets eligible project criteria;
2. The project will minimize adverse environmental impacts to the maximum extent practicable;
3. The project will not adversely impact viewsheds or lands with environmental ecological or recreational value, based on a resource inventory and assessment.
4. Once approved, DEC will issue the project sponsor a consent to occupy the land, authorizing the development and location of the project in the road right of way.
5. DEC will then issue the project sponsor a consent to occupy, authorizing the sponsor to develop and locate the project in the right of way on Forest Preserve land.

Definitions:

- "Public utility line" is defined to include only electric, telephone, broadband, and water and sewer lines as defined in law.
- "County highway" is defined in Highway Law section 3(4).
- "Public utility company" is defined in Public Service Law section 2, except that for broadband projects it includes persons subject to Public Service Law article eleven.
- "Public water supplier" is defined as a county or town water improvement district, village, New York City, public benefit corporation or public authority established pursuant to state law and empowered to construct and operate a municipal water management facility, as defined in section twelve hundred eighty-one of the public authorities' law.
- "State highway" is defined in subdivisions 1, 2 and 3 of section 3 of the Highway Law.

- “Town highway” is defined in subdivision 5 of section 3 of the highway law, in existence as of January 1, 2015, with the added requirements that the highway must be listed on the local highway inventory maintained by the DOT and must annually be plowed and regularly maintained.
- “Width of the highway” is defined as three rods or the deeded, recorded municipal or state right of way or easement in existence as of January first, two thousand fifteen.

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