



Board of Directors

March 18, 2016

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Hon. Andrew Cuomo
Governor, State of New York

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Executive Chamber
State Capitol
Albany, NY 12224

James Long
Secretary

RE: Draft proposed Utilities/Municipal Land Bank Article XIV Constitutional Amendment

David Quinn
Treasurer

Dear Governor Cuomo,

Nancy Bernstein
John Caffry
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Marilyn DuBois
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Peter Hornbeck
Mark Lawton
Charles Morrison
Peter O'Shea
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Protect the Adirondacks has reviewed drafts of the proposed new Article XIV constitutional amendment developed by the Department of Environmental Conservation (DEC). The draft amendment would add a new Section 6 to Article XIV of the State Constitution that allows a variety of new activities, including locating utility lines along State, county, and town highways that traverse the Forest Preserve, establishing bike paths on alongside State, county, and town highways that traverse the Forest Preserve, legalizing and making permanent currently illegal utility corridors in the Forest Preserve, and authorizing a 750-acre "land bank" to remove lands from the Forest Preserve for any number of municipal activities.

For many reasons described below, Protect the Adirondacks opposes this proposed constitutional amendment in its current form.

Peter Bauer
Executive Director

General Comments on Proposed Article XIV Constitutional Amendment

Protect the Adirondacks has numerous serious concerns with the proposed constitutional amendment and the means for implementing it. We also have significant concerns regarding the Executive's improper and overt lobbying and advocacy activities on this amendment and on recent constitutional amendments.

DEC Violates State Constitution in Advocating and Lobbying for Constitutional Amendments. The courts have held, consistently, clearly, and emphatically, that a State agency violates Article VII, the "Private Purposes Clause" of the State Constitution, when it spends public money to advocate for an amendment to the constitution. DEC did exactly that in supporting and assisting passage of the 2013 "NYCO amendment"

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to Article XIV. DEC should be a neutral actor in the development of Article XIV constitutional amendments, providing only technical information and advice. Unfortunately, DEC has assumed the role of chief advocate and lobbyist for constitutional amendments, contrary to State law and ethical standards. DEC should cease to advocate and lobby for Article XIV amendments.

Protect the Adirondacks urges that this process be returned to its rightful place in the Legislature where Senate and Assembly leaders develop and negotiate constitutional amendments. The Constitution makes clear that the Legislature, elected by the voters of the State, not appointed Executive Branch agency heads and staff, is to determine the necessity for an amendment of the covenant between the government and the governed. PROTECT will continue to urge legislative leaders to assert their legislative prerogatives over this process and reclaim their rightful authority and leadership for development of Article XIV amendments.

No New Forest Preserve Amendments should be Considered by the Legislature until all Previous Amendments are completed. Currently, there are at least two, and perhaps three, prior Article XIV constitutional amendments that have not been finalized though voters approved them several years ago. These include the Township 40 amendment, NYCO amendment, and Raquette Lake water supply amendment. Protect the Adirondacks does not see the wisdom of passing numerous amendments when DEC does not have the personnel to complete those already passed.

Oneida County Excluded. Why is Oneida County excluded from the list of 12 Forest Preserve counties in the proposed amendment/enabling legislation? Oneida County is one of the 12 Adirondack Forest Preserve counties.

Four Amendments Should not be Wrapped into One Amendment. The proposed amendment marks a sharp departure from past amendments. Historically, the Legislature and the general public have scrutinized individual projects in amendments, but this new proposed amendment could authorize a multitude of projects. This marks a major change in the construct of constitutional amendments, which radically erodes the “forever wild” protection of the Forest Preserve. The framers of the State Constitution held the importance of Article XIV so high that they required that any changes, regardless of how small, should be determined by the Legislature and then voted on by the people of the State of New York. The wide scope of this proposed amendment violates the important protection that the framers put in place that each project should be addressed in a separate amendment as well as long established precedent that each amendment is tightly focused.

The authors of this proposed amendment have tried to wrap at least four separate amendments into one:

1. Authorization of public utility lines for co-location or burial within the width of a State, county, or town highway that traverse the Forest Preserve.
2. Authorization to legalize any illegal utility line rights-of-way that currently traverse the Forest Preserve. The enabling legislation sets forth a process for which the utility will purchase a “consent to occupy” agreement with the state, thus legitimizing this illegal trespass.

3. Authorization for bike paths to be created within the width of a state, county, or town highway that traverse the Forest Preserve. The enabling legislation sets forth a process for which a project sponsor seeking to utilize State, county, or highway corridors for bikeways must follow.
4. Authorization to create an Adirondack Regional Land Bank of 500 acres and Catskill Regional Land Bank of 250 acres for “expansion of existing public facilities onto the Forest Preserve.” These land banks would be used for a variety of public infrastructure uses as well as local highway maintenance.

Protect the Adirondacks does not support combining four amendments into one proposal. This is too broad and will potentially approve scores of new uses of Forest Preserve lands, each of which merit close and separate scrutiny by the Legislature and voters. There is no precedent in any of the previous Article XIV amendments to package multiple changes to the Forest Preserve into one amendment. At a minimum the State should pursue three separate amendments: 1) Utility corridor compliance amendment; 2) Highway utility and bike path amendment; and 3) Municipal land bank amendment. Protect the Adirondacks will oppose a multi-faceted, omnibus amendment. Of equal importance is that each of these amendments is currently weak as none have a compelling justification that has been made public. Each has flaws in its conception and is poorly organized.

Each Amendment Must have its Own Separate Enabling Legislation. It’s important that each amendment has its own accompanying enabling legislation that details the process for how these amendments will be implemented. The Legislature and voters must know the details of how these amendments will be administered before they vote. This enabling legislation must be developed and passed at the same time as first passage.

Utility Corridor Compliance Amendment Issues

Protect the Adirondacks sees the importance of rectifying longstanding violations by various utilities illegally crossing the Forest Preserve. We agree that cleaning these up is appropriate. We believe that this should be done as one amendment, yet much more information is needed to fully evaluate the scope of this problem and then assess the proper remedy.

Inventory and Assessment Needed. As noted above, the amendment would legalize, long-standing trespass on and continuing illegal occupation of the Forest Preserve by utilities. The public certainly cannot vote intelligently to allow this without complete details as to what would be excused, pardoned, ignored, and covered by amendment. It should not be asked to do so. A detailed list of existing utility violations on the Forest Preserve in the Adirondacks and Catskills, with maps, must be provided to the public to provide a basis for beginning an intelligent discussion.

Consent to Occupy Agreements. Protect the Adirondacks is troubled by this concept and has many questions. Will these lands be removed from the Forest Preserve? Will these corridors be regulated by the State? Are these easements on the Forest Preserve or some kind of deed covenants that put these lands in some category less than Forest Preserve? Or are they like a Temporary, Renewable, Revocable Permit? Obviously, these and other issues need definition and clarification.

Land Bank Amendment Issues

Protect the Adirondacks sees the merits in the concept of a municipal land bank amendment but finds the current proposal deeply flawed. We believe that this concept should be organized as a stand-alone amendment and not packaged with other proposals.

Each Land Bank Project Must Require Separate Legislative Approval. The current draft proposal requires that once a land bank for Forest Preserve lands is established in the Adirondack or Catskill Park, a review process for eligible projects will be organized and conducted unilaterally and solely by the DEC. Protect the Adirondacks supports a DEC review, with public hearings, as a first step, but believes that once a project has passed muster with the DEC it must then be subject Legislative approval. Potential land bank lands are public Forest Preserve, after all, and merit a 2-step administrative and legislative review process.

Prior to Introduction of a Land Bank Amendment, an Inventory of Potential Municipal Infrastructure Projects Should be Required. The presumed problem of the Forest Preserve interfering with delivery of municipal services for public health, safety, and welfare has not been documented. No assessment has been made public that describes and documents potential essential land bank sites in the Adirondack Park, nor has a discussion of potential alternatives to the use of Forest Preserve lands been conducted. This inventory and assessment should explain the presumed impediments created by the Forest Preserve that currently prevent the delivery or construction of essential municipal services.

A list of viable pending municipal land bank projects must be provided to the public before going any further with this amendment.

A Reversion Clause should be Required. A reversion clause must be included in any legislation concerning lands to be removed from the Forest Preserve that if such land subsequently is no longer needed for the intended purposes of the legislation, they must be returned to the Forest Preserve. Further, lands that were formerly in the Forest Preserve should not be transferable from municipal to private ownership or utilized for purposes not authorized or approved by the amendment and an administrative and legislative review.

Eligibility of Projects. Only projects that are immediately adjacent to or adjoining Forest Preserve lands should be eligible for municipal projects.

Formal Rules and Regulations Needed. The enabling legislation should require that DEC adopt rules and regulations within 18 months of the passage of the proposed land bank amendment, if that proposal proceeds at all. No projects should be undertaken until these regulations are completed.

Limitation of Forest Preserve Lands Eligible to be Included in the Land Bank Option: Any constitutional amendment authorizing an exchange of Forest Preserve lands must exclude the use of such lands classified as Wilderness or Primitive, Class A wetlands, lands within Wild or Scenic River Corridors, mature or old growth forests. In the case of land exchanges, the land offered in return for a parcel of Forest Preserve must be precisely and explicitly identified, must

be independently determined to be of higher ecological and fair-market value than the land to be transferred out of the Forest Preserve, and must enhance the character of the Unit Management Area from which the Forest Preserve land is being removed.

Highway Utility and Bike Path Amendment Issues

Protect the Adirondacks sees the merit of a highway utility amendment that would allow the expansion of various utilities along State and local highway corridors. We believe that the amendment and enabling legislation should provide a clear directive that these utilities be buried, unless the bedrock or topography precludes. As already stated, we believe that this should be done as one amendment and that much more information is needed to fully evaluate the problem and assess the proper remedy. A full list of known and possible utilities that need State or local highway corridors should be assembled and made public.

Conclusion

Protect the Adirondacks cannot support the proposed land bank/utility corridor/highway corridor Article XIV amendment in its current form. There are numerous problems with combining four major Forest Preserve policy changes into one amendment. We are concerned about the broad scope, implementation process, legislative review, and justification and assessment of need for this amendment.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to share our concerns on this important matter.

Sincerely,



Peter Bauer
Executive Director

cc: Alphonso David, Executive Chamber
Jim Malatras, Executive Chamber
Matt Millea, Executive Chamber
Brenda Torres, Executive Chamber
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