

Adirondack Council
Adirondack Mountain Club
Adirondack Wild: *Friends of the Forest Preserve*
Catskill Heritage Alliance
Catskill Mountainkeeper
Citizens Campaign for the Environment
Environmental Advocates of New York
Natural Resources Defense Council
New York League of Conservation Voters
New York-New Jersey Trail Conference
Protect the Adirondacks!
Sierra Club Atlantic Chapter

June 4, 2015

Basil B. Seggos, Deputy Secretary for the Environment
Executive Chamber
NYS Capitol
Albany, NY 12224

Joe Martens, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: Initial Reactions to Proposed “Forever Wild” Article XIV Amendments

Dear Deputy Secretary Seggos and Commissioner Martens;

We thank you for the opportunity to provide initial reactions and comments on the May 2015 draft amendments and proposed enabling legislation. We appreciate that these are being drafted concurrently.

We support New York’s Adirondack and Catskill Parks, the more than one-hundred year-old “Forever Wild clause” Article XIV, Section 1 of the State Constitution, and the continued protection of the state’s Forest Preserve and clean water. Many of us have supported amendments in the past, such as Township-40, that benefit the Forest Preserve, help address legitimate public needs, and support local communities.

We are united in our opposition to rushed legislative passage of this proposal in the limited time the Legislature is scheduled to be in Albany in June 2015. There are multiple issues with the first draft proposal, some of which are detailed below. Given the sensitive and complex nature of any constitutional revision, there needs to be adequate time for full and proper deliberations before the Legislature is asked to vote on any amendment. The fact is that the earliest any amendment could be on the ballot would be 2017 regardless of whether the first of two required separately elected legislative approvals occurs this year or next.

In summary, the current proposal fails to meet any part of the basic and previously articulated test that amendments to the constitutional protection of Forest Preserve lands and waters should be

limited, specific, and narrow in scope, and only considered when there is a demonstrated public need and a clear net benefit to the Forest Preserve. Article XIV was enacted in order to constrain governmental activity on the Forest Preserve, not facilitate it. The proposed amendment marks a sharp departure from past amendments where the Legislature and the public scrutinized and approved (or rejected) individual project proposals.

The proposed road, utility, and community land bank constitutional amendment and accompanying enabling legislation being promoted appears to attempt to authorize:

1. Public utilities in the maintained width of public highways in the Forest Preserve;
2. Bike paths in the maintained width of public highways in the Forest Preserve;
3. Use of 750 Forest Preserve acres (500 in the Adirondacks and 250 in the Catskills) for environmental infrastructure, public utilities, expansion of existing public facilities and bridge and road improvements, and;
4. Retroactive approval of unconstitutional public utilities located on state lands.

A preliminary list of issues includes:

1. Amendment architecture: The effect of combining multiple amendment proposals into one creates major problems for the architecture and administration of the amendment, and enabling legislation. The proposal needs focus (and a better name and ballot language).
2. Scope of potential projects being authorized: The proposal is not limited, specific or narrow in scope with regard to what the Legislature and Executive are being authorized to approve. Limits belong in a proposed amendment and not just in enabling legislation. For example:
 - a. Defining eligible projects: The proposed amendment fails to adequately and narrowly define the limited and specific projects, types of activities or categories of projects that would be authorized in road and travel corridor rights-of-way and for land bank use. The amendment is not limited, for example, to “the replacement of bridges and culverts, including improved drainage and enhanced wildlife movement,” or “for the purpose of eliminating the hazards of dangerous curves and grades” (as the 1957 DOT land bank amendment does), or “for the installation of utility, power, communications, water and sewer lines” in defined rights of way and travel corridors.
 - b. Defining road(s), travel corridors or where utility installations could occur: The amendment fails to adequately and narrowly define and limit roads or highways to only include state and local government road and travel corridors established in law, to only include roads with a legitimate right-of-way established by historic and continued public use as of January 1, 2015, and to only include the width of the road or travel corridor legally maintained by state or local government as of January 1, 2015. The proposed amendment fails to exclude roads or highways the DEC could close because they pass over or through lands wholly owned and occupied by the state under Highway Law 212. See matter of *Kelly v Jorling, 164 AD2d 181 [1990], lv denied 77 NY2d 807 [1991]*
 - c. Defining where community projects could or would be located: The amendment does not accomplish this. The enabling legislation only attempts to do this generally.
 - d. Providing a rationale for and setting acreage and mileage limits: The proposal sets a 750 acre limit but offers no good rationale for why that limit is suggested. Nor does the amendment set a limit regarding the miles of roads, and maximum length and acreage of any particular projects.
3. Demonstration of public need: Amendments should address a well-documented and demonstrated public need. Numerous questions have yet to be answered and available data does not yet provide an adequate foundation for legislative action. Without such data and justification, voters across the state will not ultimately support amending Article XIV. And as drafted the proposal appears to provide for both private corporate or public benefits, and in some places appears to require no payment (for example by a utility for a power line).

4. Clear net benefit to the Forest Preserve: The case has not been made for how the proposal is a “clear net benefit to the Forest Preserve.” For example, the proposed enabling legislation fails to require purchase of more acres of greater value in the Adirondack or Catskill Park in advance of any alienation.
5. Consideration of alternatives: The proposal fails to provide for a rigorous, well-documented transparent (public) and independent test or process to ensure that there is no feasible alternative to use of Forest Preserve. Some previously identified examples of projects that some thought couldn’t proceed without an amendment either have been or are now being advanced without an amendment.
6. Retroactive approval of unconstitutional utilities: Blanket universal retroactive approval of existing unconstitutional utilities on the Forest Preserve is unprecedented and inappropriate. More information is needed on how much Forest Preserve is involved, and where.
7. Bike paths: Preliminary legal analysis suggests that an amendment is not necessary to establish a bike path within the currently maintained width of a legal travel corridor.
8. Authorized use of Forest Preserve versus land swaps: Greater clarity is needed with regard to what is proposed and what would be authorized in the proposed amendment, and why.
9. Science based decision making: It is not clear how good science will be developed and employed in a transparent and public process for determining which Forest Preserve lands might and which might not be impacted by this proposed amendment and enabling legislation.

We have requested, but are still awaiting additional information that might better document and demonstrate the public need and the extent and location of potential projects, for utilities and for local communities. Our individual and collective analysis of these proposals continues, and we may individually or collectively augment these comments later. We recognize the need for a separate process to develop a solution to the complex and significant legal problem of existing utilities on Forest Preserve Lands. We urge the state to call for a joint meeting of all stakeholders to share additional information and discuss issues and concerns. We further request a similar discussion among members of the DEC Forest Preserve Advisory Committee and the public.

Some of the issues in last year’s Common Ground Alliance Land Bank and Community Use Amendments white paper are important to Adirondack communities and have merit and deserve resolution. However, we firmly oppose attempting to authorize the virtually unlimited purposes and projects that might be advanced under the current proposal.

Last, we urge the Department of Environmental Conservation to use its fact finding capacity and technical expertise in a neutral and impartial manner in assisting the development of draft Article XIV Constitutional Amendments for consideration by the Legislature.

Thank you for past efforts to support the Adirondack and Catskill Parks, the Forest Preserve and vibrant communities. We appreciate this opportunity to provide initial comments and reactions on the draft amendment and enabling legislation package.

Sincerely,

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