

The following are Frequently Asked Questions and responses on the topics raised by the [CGA Amendment Working Group White Paper](#).

This file is likely to be updated from time-to-time as more questions come up.

This is Version 6, filename FAQ6.

Any and all questions are welcome. They are a great way to give the proposal clarity and make needed tweaks to it.

This is a complex problem. It is necessarily logical how it all fits together. It is more like a puzzle, built from accumulated legal work by many people over a long time.

What is a 'Use Amendment'?

It is a type of amendment allowing the use of the Forest Preserve for something, but not transferring the ownership of it as in a swap.

Past examples include the ski centers, Whiteface and Gore, which remain Forest Preserve but the use of the land for a ski center was granted by amendment. Similarly, some roads were built on the Forest Preserve pursuant to the provisions of a constitutional amendment which allowed for the construction of roads on Forest Preserve land within a defined corridor.

What we are proposing is a 'use amendment' to allow pipes and cables used for common utilities to be placed under and along roads which pass through the Forest Preserve. Currently this is a violation of Art 14 because their prior use amendments were only about crossing the Forest Preserve for highway purposes (e.g. prepared for travel by cars and trucks) not for other uses unrelated to highway travel (such as for utilities including uses like buried pipes and cables).

As is the case with the previous 'use amendments', the land would remain in the Forest Preserve.

What is a 'land bank'?

There are two land banks, both from the 1950s.

Land Bank 1 was set up to support maintenance of State Highways. It had 400 acres. 237 have been used in the Adirondack Park and 18 have been used in the

Catskills. 145 acres are left. No change is proposed. The most recent use was in 2010.

Land Bank 2 was set up to build the Northway. As construction proceeded acres were parceled out using land bank operations. There are 7 acres left. No change is proposed.

In these cases, DOT surveys then formally requests that a parcel of land be transferred out of the Forest Preserve to be used for highway purposes. If the DOT and DEC Commissioners approve a transfer, the land is subtracted from the land bank. The same process is proposed for new land bank.

Since inception, use of the DOT land bank has been requested 85 times; 6 proposals were withdrawn and 2 were revised. Since 1990, the DOT has used its land bank 7 times. Five uses were under 1 acre. The other two were 2.9 acres and 3.13 acres. A land bank is not for big projects, it is for small projects.

Why do we need both types of amendments?

The use amendment is about burying things like pipes and cables, often under pavement or near pavement so to measure them for a land bank seems odd. Twelve inches by 5 miles? 1 inch by 7.35 miles.

A use amendment seemed the right way to handle these uses.

On the other hand, road maintenance lends itself to a measured area model.

They are for different things; they complement each other.

Can the current DOT land bank be amended?

As a general point, early on, were advised against amending and amendment. I believe that such an action is unusual although it has happened in the past. You write a new amendment.

Take some time to look at the [NYS Constitution](#) and look at the language to see how amendments are written. It's pretty obvious and amending an amendment would make the language even more tortured.

What are the allowed uses of the proposed land bank?

- Environmental projects along town and county roads where projects such as storm water drainage, larger bridge and culvert replacements designed for fish and wildlife habitat connectivity and to handle larger water flows that come from increasing precipitation related to climate change, and water treatment facilities which would involve necessary expansion onto Forest Preserve lands
- Utility reconfigurations associated with a road project which are necessary for public health and safety or environmental purposes will be allowed for all State, County and Town roads
- Public health, safety and welfare projects not associated with roads, such as water wells and water distribution, airport safety, additions to cemeteries, transfer stations, fire and rescue buildings
- Projects that facilitate renewable energy sources, such as restarting *existing* small hydro dams and shared community solar
- Short aerial utility lines, of no more than 4 poles, where no buried option is possible

The new land bank will be available for all Forest Preserve lands including those in the Catskills and outside the boundaries of the Adirondack and Catskill parks, which are also subject to Article XIV Section 3.

These are all public benefit uses.

What are the limits on the scope and size of individual projects?

A common concern about a land bank is the possibility of runaway usage for inappropriate large projects. These limits are intended to prevent out-of-control projects.

- No single project can be larger than 10 acres.
- No one town can use more than 20 acres.
- No project can involve more than a ½ mile of road or
- No aerial utility project can be longer than 4 poles.

Projects larger than these metrics will require their own amendment.

All projects must obtain their normally needed approvals and permits.

Approved projects cannot be diverted to new, unapproved purposes.

Projects cannot be co-located, making a 1 mile road project out of two ½ mile projects, for example.

Usage of the land bank is only a last resort option.

We expect this land bank to last a half century or longer. Since we can't know what is coming, like new developments in Internet technology, project size limits are a good way of limit the scope of allowed public benefit uses.

Could an approved Land Bank project be re-directed to a different purpose? Could project size limits somehow be subverted by dividing a large project into small co-located units for approval? Could someone build a 200 foot radio tower using the Land Bank?

No. These are good examples of important rules to be included in the implementation legislation. All projects would be subject to the full array of permits and rules that exist now.

Can town and county roads replace culverts and bridges with larger structures to handle larger storms and/or improve wildlife connectivity?

The legal ROWs for roads crossing the Forest Preserve vary enormously. Some are as narrow as the pavement, others are 100 feet wide. DEC cannot permit any widening, straightening, or relocation of town and county roads which would involve expansion beyond the ROW onto the Forest Preserve. Moving a bridge to a more flood resistant location is not an option. Water diversion ditches outside the road ROW are not permitted. No tree cutting for light or vehicle passage is permitted.

When it comes to permitting a specific project today, it depends upon the ROW in each case and the footprint of the proposed project, although any relocation is clearly out of the question. The result will be a patchwork of yes/no permitting responses that will appear arbitrary and in many cases, leave no option except rebuilding exactly what was lost.

Towns cannot let a washed out bridge sit for 3 years awaiting an amendment process before a proper replacement can be built, so what we will get are repeated rebuilds. If we rebuild a culvert, it should be done in a manner that

incorporates wildlife migration and climate change without waiting for an amendment to pass.

Finally, we believe a long series of amendments, culvert #1, culvert #2, bridge #1, and so on, will likely strike voters as an odd way to use the constitution of the State.

Usage of the land bank is intended to be a last resort. The land bank is very small for this reason. If it is not needed for a particular project, it will not be used.

Could an amendment somehow include making the ROWs uniform?

Practically speaking, no. At best it would make the ROW uniform *but* only in the Forest Preserve. Road ROWs tend to be uniform across owners, right? So this would result in inconsistent ROWs for a road and that wouldn't be particularly useful.

We don't want this to be about taking wider ROWs from private land owners.

If emergency replacement is an issue, and we wanted to be able to improve infrastructure not simply replace, can this be addressed through a different emergency policy?

The wells and the Tupper power line were declared emergencies and built before the amendments went to voters. So, yes, in an emergency, you can do something, but you still have to back track and get an amendment. However, the result we got for the Tupper power line shows this really isn't good practice.

What would happen if voters rejected an after-the-fact amendment?

A long series of after-the-fact amendments would surely run into trouble on the point that things we call emergencies appear to be normal courses of action.

Would this mean straight roads all over?

No. The land bank proposes limiting the length of any road project to ½ mile. That restriction means it is really only for minor changes, not major widening or straightening of roads.

Would it change the legal status of any roads?

No, it would not change the legal status of any roads – that is for Highway Law to decide. Nor would our proposal change the specifics of any road ROWs which vary substantially across the region. In some cases, it really is just the pavement. This variability in ROWs is part of what makes a response to storm damage so unpredictable under current rules. In one spot, the ROW will be 100 feet wide and there is no problem. In another, the ROW is the pavement edge.

Existing roads fall into groups, for example, roads that pre-date the Forest Preserve, roads built by use amendment. We do not have the road inventory by type of legal origin. Again, our position is that Highway Law prevails.

Finally, we note the roads are actually Forest Preserve, without forest, and we do NOT propose to change that.

Why are DOT and DEC proposed as administrators of the land bank?

The key talent to handle this is in DEC. You could consider some replacement to DOT but you can't actually replace DEC – that would mean changing the statute that grants DEC the care custody and control of the Forest Preserve, a change we do NOT propose.

The new land bank proposes adopting the same methods and approach that has worked for the two existing land banks, both times managed by interactions between DOT and DEC. To come up with a new system is unnecessary and unwise. We did explore other ideas but none made a lot of sense compared simply using the existing process, which has been problem free for almost 60 years. Take note that most of the current uses of the DOT land bank are very small.

To add another layer of oversight could the APA give final approval, similar to the UMP process?

That's an interesting idea. How about this: If it is a road project, it goes through DOT. If it is not a road project, it goes through the APA?

Why is a 500 acre land bank proposed, instead of the 1200 acres implied by the history of the DOT land bank usage for maintaining State highways?

It is a fact that Town and County road mileage is four times State road miles, and they have more bridges and culverts than State roads.

However, we think 500 acres makes it acceptable to voters but still substantial, meant to last decades, maybe to the end of this Century and if the towns use the 500 responsibly, then more acres can be added.

The working group was not willing to use any mechanism to add acres, like reducing non-conforming use acreage, or net acreage used in a road project.....they want a solid 500 acre cap on it.

500 acres is more than the 400 acres NYS DOT Land Bank for State highways. Why is it so big?

Town and county roads in Forest Preserve total *four times the mileage* of State Highway. So, 500 acres is only a modest 25% increase instead of 400% which would make it equal to the DOT Land Bank using road miles as a measure.

Is 500 acres enough for all 103 towns to get 20 acres.

No. We do not anticipate every town has a need to use it. If it does prove small, that is decades away and a track record of responsible use will be important.

Why should we grandfather existing power lines? Can we force the burial of the existing aerial lines?

We do NOT propose burial of all the existing aerial utilities. We DO propose allowing new utilities to be buried in road ROWs.

Power lines on Forest Preserve are an example where everyone behaved differently until recently, 1996, when the NYS AG opined they are all illegal. So are any other utilities, buried, aerial or submerged. Today, even adding a line to an existing pole or conduit is legally problematic.

We use the term illegal to mean this: They can stay there until someone decides to make a court case out of it. Article 78 court cases can be filed by anyone and the Park has had its share. Well, the Park's basic utilities are hugely costly and, in the case of broadband, in our critical path. They can't be wisely built or properly maintained on a legal foundation of sand.

This part of the proposal would:

- Grandfather existing aerial, buried, or submerged lines, and allow their maintenance
- New cables (these days fiber) could be added to existing pole lines and conduits
- No new submerged cables would be permitted but existing lines could be replaced when needed
- Extensions on Forest Preserve would NOT be permitted unless they are buried in a public road ROW
- In the event that burial in a road ROW was impossible (e.g. rock), then the land bank could be used but only for 4 poles, not very far

So, for example, the Tupper Lake project, as built, would still need an amendment.

The proposal will not force burial of any of the existing wires and cables in the air. We do not believe such a proposal would pass.

This is needed to make the current broadband projects legal.

We think the current situation puts DEC in a very awkward position. Everyone wants broadband, but, technically all the utilities are illegal. This resembles classic abusive behavior: We kick DEC for do 'illegal things' while not helping come up with a manageable, legal, solution.

This is mostly a technical fix to the law to better fit the as-is situation, like Township 40. It shouldn't be especially controversial. Speaking of TWP 40, while that amendment meant various owners got clear title to their camp, the power to their place remains a violation of Art 14. We should fix this to give legal recognition to what exists, just as TWP 40 did.

What would an area look like after cables and pipes were buried?

There are plenty of good existing buried cabling to see, no need to wonder about it. Granted it is hard to notice, but here are some:

- Route 73 though Cascade Pass has substantial communications cabling under and alongside it.
- Also Rt 73 near Adk Lodge Road has both buried power and communications along the area known as the Plains of Abraham. Those lines are power to freeze the bob run, so they are fairly large I would think.
- Route 9N from Rt 73 to Elizabethtown has buried communications cables along most of the route.
- Rt 73 in Keene Valley, the area called Marcy Field, has extensive buried communications cabling.

I am sure there are many other sites, but they are hard to notice if you are not looking...that's the point. We want modern utilities, we just would prefer them to be buried.

Why doesn't the white paper highlight broadband as a current need with wide benefits?

We can make a bigger deal of it in the supporting argument for both the use amendment and the land bank. The Keene Broadband was completed in 2010 and the experience there is showing the economic benefits of broadband, teleworkers, additional school children, more frequent visits and longer stays by second homeowners, for example.

We do state simply: "it will be impossible to reach a portion of the population" without this amendment. That is the main point.

Why don't you make a big deal about bike paths?

Assuming a bike path is in an existing road ROW, there is no need for an amendment. It is seen as a highway use, legal under whatever law the road is legal. Article 14 is not an issue with respect to building a bike path in the road ROW. However, in cases where the ROW is the pavement, maybe this is a needed land bank use?

Generally speaking, bike paths outside a road ROW are a whole different topic, unrelated to road, and we are not trying to address this issue.

What need(s) will be met that can't be met with individual amendments?

Small needs will go un-met because they don't merit the labor of an amendment. So, for example, the poles in the road around Piseco Lake will remain in the pavement edge.

We think the numbers from the DOT land bank tell the story. The projects that have happened, that mostly no one noticed, would have required some 75 individual amendments, each costly and time consuming.

Even if we planned each one perfectly and got it all right, surely some legal scholars will object to use of the constitution for such large numbers of small things. Their claim will be that it damages the constitution by using it for trivial things. It would attract attention we don't want at a Constitutional Convention.

Why did you use the Adirondack Council amendment criteria in the White Paper for this proposal?

No other advocacy group has published criteria known to us. As others make criteria available we can write up something. The Council criteria are about land swaps, so they may be off a bit, but they are thoughtfully prepared.

Since no prior Land Bank or Use Amendment has included any addition to the Forest Preserve, why does this proposal include an addition?

Today the general goal in crafting an amendment should be balance. We are messing with 500 acres for public benefit projects, so we think 500 acres should be added to the Preserve. This is unprecedented. The prior land banks did not include any offsetting addition to the Forest Preserve.

Furthermore, recent amendments (the wells, the power line, now NYCO) all had their additions to the Forest Preserve in the future. We propose the 500 acre addition be completed *before the first use* of the land bank.

Why should the 500 acres be in one block? Why should the State pay for the land?

Proposing to buy it in one block is to make it simple. While in theory, you could ask a town to provide 1/3 of an acre it might use from the Land Bank, the overhead costs, time, and oversight for such an approach makes no sense. That said, it may be the 500 acres comes in several parcels.

We think NYS should pay for it because the problems arise from its ongoing expansion of the Forest Preserve. 500 acres is tiny compared to the current acquisitions.

The implementation legislation for this proposal is complex and needs to write down clear rules. What models are there to work with?

The existing land bank implementation legislation, along with existing use amendments for roads, provide a starting point. It appears they have served us well.

Why are green energy projects included in the Land Bank proposal?

Some of these projects will likely proceed without using the land bank. Others will need it. In either case, they have a long set of permitting issues to address.

For example, what if a community solar field (about 5 acres) could be better hidden on a less visible site, collocated with an existing power line, on Forest Preserve instead of a highly visible private or municipal land?

What if the *existing* Indian Lake Dam could be fitted for power with a few acres? Carbon emissions are the environmental crisis of our time. It is hard to understand why we should NOT do this with an acre of Forest Preserve.

Assuming such projects are economically and technically feasible, by what reasoning should we be passing up easy steps to reduce carbon emissions here in the Park, with a few acres from a land bank if a town choose to do so?

Many other rules apply to these kinds of projects and they take years. The Forest Preserve should not be yet another barrier to their success. The Forest Preserve represents a landmark in the environmental movement, it would be ironic it was used a barrier to small steps Adirondack communities can take do their part to address climate change.

Isn't this proposal just one more erosion of 'Forever Wild'?

No, we think it strengthens Article 14, the Forest Preserve, the Park and a host of environmental goals. A key to improved long term protection of the Forest Preserve is better handling its interfaces with today's roads, utilities, hamlets and villages. These issues get more complex as the Forest Preserve grows, surrounding additional roads and utility lines.

The combination of the use amendment and the land bank will enable environmental quality projects that many consider necessary. For example, storm water management, waste water treatment and new drinking water supplies are priorities in the Park. Habitat connectivity for fish and wildlife through changes in culverts should be improved, especially across roads traversing the Forest Preserve. These improvements are consistent with the intent with Article 14 and our landscape of mixed public and private ownership, wild lands and communities.

A second feature that will strengthen Article 14 is avoiding a long series of small amendments. A known criticism of Article 14 is the use of the amendment process for small things that do not merit such attention. Typically people cite the amendments for water wells, cemetery expansion and tree cutting for airport safety. If the DOT land bank did not exist, for example, the same projects would have needed 79 amendments. Tens of amendments, each one for a larger bridge or a habitat connectivity project risks turning off voters. The position of some people is that such tiny amendments trivialize the constitution by requiring regular small amendments in what should be a more stable document. By removing these types of issues from the amendment process, Article 14 will be strengthened, not weakened.

The energy portions of the proposal will reduce carbon emissions, probably the most important environmental issue of our age and a laudable use of a land bank.

The Adirondacks should be a model of rural greenhouse gas reduction. Surely Article 14 supporters would think greenhouse gas reduction is wise.

Rebuilding bridges and culverts designed to accommodate the reality of climate change is just common sense, avoiding the costs of repeatedly replacing the same bridges in subsequent storms, each time the costs absorbed by tax payers. We don't believe most people would think Article 14 ought to prevent intelligent rebuilding of bridges and culverts. These projects, done properly, bring the added benefit of habitat connectivity.

Since the 1996 when the AG opined about submerged cables, we have a real legal problem with existing wires and cables. We can do better and Article 14 will be strengthened by getting this right, instead of pretending this is not an issue.

Finally, this proposal doesn't involve any private business land swap like NYCO or the IP swap (Perkins Clearing). It is about water quality, wildlife and positive coexistence of viable communities in the Park with the Forest Preserve.

We believe the proposed amendment will be a significant positive step into the future for the whole Park, including the Forest Preserve. The communities and the Forest Preserve can strengthen a positive co-dependent future.

Post NYCO, and all the mess after it, isn't this a bad time to put another amendment to a vote?

Losing an election is painful. It really hurts. We understand that. But wallowing in NYCO won't get us anywhere. The Sustainable Life scenario describes the Park's general strategic direction. There will be bumps, for sure, like NYCO. But bumps shouldn't impede our more generally positive progress as a region, they're just bumps. The lawyers will work them out and they will take time.

But life goes on. The Park has its future narrative called the Sustainable Life. The proposed adjustments to Art 14 will improve the interface between the Forest Preserve and the roads, utilities and environmental projects needed for water quality and climate change. It is not the least bit destructive of Art 14, indeed it strengthens it. Think of it as the Forest Preserve being a good neighbor to the communities that care for it.

Our key precedents, our models, are the past use amendments and two land banks. Private land swap deals like NYCO, TWP 40 and, earlier, IP, are not relevant precedents or models for this proposal.

We do apologize for our timing, which could not be worse. 1000 apologies but a flow of events puts us here now.

Come to think of it, a large portion of the thinking here is to avoid future bumps. That would be a good thing, no?

What is the 1913 Burd Amendment and it's 1952 revision? Does it relate in any way to the proposal.

The Burd amendment was adopted by a more than 2 to 1 margin in 1913. It authorized not more than 3% of the Forest Preserve to be utilized for reservoir purposes for municipal water supply, the canals of the State, and to regulate the flow of streams. It was a use amendment.

Then in 1952, 59% of those voting voted in favor of an amendment which eliminated the authorization to use Forest Preserve lands for stream flow control reservoirs, while maintaining authorization to use 3% of the Forest Preserve for *reservoirs* for municipal drinking water and canals. This stands today, amounting to about 90,000 acres. It is now found at Article XIV, Section 2 of the Constitution.

So, Burd allows use of the Forest Preserve for water reservoirs, but not for wells. Today however, surface water is no longer a legal source for drinking water. The mandated switch to well water is what drove the Raquette Lake wells controversy. The Town had to get an amendment for just a few acres because Burd did not permit wells, only reservoirs.

Switching to wells for drinking water remains a problem for the future of a number of towns in the Park. Drinking water wells would be an acceptable use of the proposed land bank.

Please describe the backgrounds of the working group.

[Click here to see this article about the group](#), who we are, our goals, and so on.
This was posted on October 30, 2012.

Any sense of what has to happen next?

Our expectation now is that this proposal will be discussed during the summer season board meetings of various advocacy groups. We can meet with or present to any group. Then, by the fall, we will have a better sense of how doable this is, where the rough edges are, etc.

Next, the details have to be written in legal language. Another round of reviews will follow, along with public discussions for input from around the State. At that point, it will be ready to get into the queue for the Legislature where it needs to pass twice, with different legislatures. Then it will go to voters.

The name you chose is awkward “Community Utility Modernization Amendment”...can you come up with a better name?

It is a placeholder. Do you have an idea for a name?

We think the whole proposal is pretty mundane, even for Adirondack policy wonks. What could be a simple name for this proposal? We welcome any ideas.

Note that, what gets written on a ballot is up to some 3rd party.