§ 9-2103. Highway right of way public utility improvements.

1. Definitions. For purposes of this section:

a."county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

b. "eligible project" shall mean burial or co-location of a public utility line or construction and maintenance of bicycle paths by a project sponsor within the width of a highway of a town highway, county highway or state highway that traverses state forest preserve land.

c. "project sponsor" shall mean a village, town, a county, located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington or, for:

(i) bicycle paths, the department of transportation,

(ii) for water lines, a public water supplier; or

(iii) for electric, telephone or broadband lines, a public utility company.

d. "public utility company" shall have the same meaning as such term is defined in section two of the public service law; provided, however, that for broadband projects a person subject to article eleven of the public service law shall be included.

e. "public utility line" shall mean only electric, telephone, broadband, water or sewer lines, including any necessary conduit used to protect such lines. Public utility line shall not include the construction of any new intrastate natural gas or oil pipelines that have not received all necessary state and local permits and authorizations as of June first, two thousand sixteen.

f. "public water supplier" shall mean 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.

g. "state highway" shall mean a state highway as defined in subdivisions one, two and three of section three of the highway law.

h. "state lands" shall mean lands owned by the state in forest preserve counties that are under the jurisdiction of the department.

i. "town highway" shall mean a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

j. "water supply projects" shall mean drinking water wells.

k. "width of the highway" shall mean three rods or the deeded, recorded municipal or state right of way or easement in existence as of January first, two thousand fifteen.

2. Pursuant to approval by the department and the department of transportation and following a public hearing on each eligible project at which the public shall be given an opportunity to be heard, a public utility line may be co-located within or buried beneath the width of the highway of any state highway, county highway, or town highway.

3. A project sponsor for an eligible project within the width of the highway shall submit an application for a permit to the department that at minimum shall include:

a. a resolution from the governing body of the project sponsor, or in the case of a public utility seeking to utilize the width of highway of a town highway, the governing body of the town, or the width of highway of a county, the county governing board, that includes:

(i) approval of the project;

(ii) attestation that such width of highway lands will only be used for eligible purposes;

(iii) attestation that the project will minimize the removal of trees and vegetation and restore the area to pre-project condition to the maximum extent practicable.

b. specific metes and bounds, including total proposed acreage of the width of highway land sought;

c. a narrative about the project, including a justification;

d. any necessary permits and authorizations; and,

e. an accurate survey.

4. Immediately upon determining that an application is complete, the department shall cause a notice of application, which shall also include the time period for public comments, to be published in the next available state register and environmental notice bulletin as well as in a newspaper having general circulation in the area in which the eligible project is proposed to be located. Newspaper publications shall be provided by the project sponsor.

5. The department shall hold a public hearing on each eligible project at which the public shall be given an opportunity to be heard.

6. The department, following consultation with the department of transportation to determine that any required authorization has been provided, shall only approve an application for an eligible project permit following a determination that:

a. the eligible project meets the eligible project criteria;

b. the eligible project minimizes adverse environmental impact to the maximum extent practicable; and

c. the eligible project will not adversely impact lands with environmental, ecological or recreational value, as determined by the department based on a resource inventory and assessment.

7. After a hearing and opportunity to be heard, if the commissioner determines that a project sponsor is utilizing land for a purpose other than as authorized by the department, the commissioner may require removal of any improvements to the land and restoration of the land to a natural, vegetative state.

8. The department is authorized to promulgate such rules and regulations as may be necessary to implement and administer the provisions of this article.