



Board of Directors

August 26, 2016

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Chair

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1115 State Route 86

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Vice-Chairs

RE: 2016 Draft Amendment to the Mt. Van Hoevenberg Intensive Use Area UMP

James McMartin Long
Secretary

Dear Kris,

David Quinn
Treasurer

Please accept these comments from Protect the Adirondacks regarding the amendment to the Mt. Van Hoevenberg Intensive Use Area Unit Management Plan (UMP) to expand the cross-country ski racing trail system. This is an important UMP amendment that has the potential of setting a long-term negative precedent for the "forever wild" Forest Preserve. Protect the Adirondack opposes this amendment and believes that the State of New York cannot undertake this effort without an amendment to Article 14, Section 1.

Nancy Bernstein
John Caffry
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Roger Gray
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Philip Terrie

Inadequate Count of Trees: The UMP amendment states that 367 trees will be cut to build this trail. The UMP provides a table of trees that are 4" diameter at breast heart (DBH). This evaluation of trees across the 1.7 acres (57'x1300'=74,100 sq feet/43,560 [1 sq acre]=1.7 acres of impact area fails to include the many hundreds or thousands of trees that are less than 4" DBH. If there are 367 trees 4" DBH and greater, it's highly likely that there are 2-3 times that number of small diameter trees. The Department of Environmental Conservation (DEC) and Olympic Regional Development Authority (ORDA) need to conduct a full evaluation of the total number of trees that will be cut. Under Article 14, Section 1, all trees matter and must be counted.

Peter Bauer
Executive Director

UMP Amendment Violates Article XIV: Case law interpreting

Article 14, Section 1, the forever wild provision of the State Constitution, counts all trees, "large and small," in a proposed management action. The present level of total tree counting is currently unknown. The DEC and ORDA cannot move ahead without a public legal analysis of the number of trees to be cut.

The total impacted area is 1.7 acres, which will be effectively clearcut. This is greater than the 1 acre that was involved in the 2007 Raquette Lake Water Supply Constitutional Amendment. The appropriate resolution to the long-term viability of the Mt. Van Hoevenberg facility is a Constitutional Amendment, similar to those for the ski areas at Gore Mountain, Whiteface Mountain and Belleayre.

UMP Amendment Violates "MacDonald" Case: The 1930 "MacDonald" decision (Association for the Protection of the Adirondacks v MacDonald, 1930), which prohibited construction of a originally proposed bobsleigh track near Mt. Van Hoevenberg which would have cleared 4.5 acres and destroyed 2600 "large and small" trees, set the legal precedent for tree cutting on the Forest Preserve. It's ironic to say the least, that the DEC and ORDA would attempt to violate Article XIV, Section 1 on lands in the very shadow of the landmark MacDonald decision. To comply with MacDonald, all trees should be counted and the total number of trees to be destroyed per acre should be calculated.

The other major court case dealing with tree cutting and Article XIV is the "Balsam Lake" case, which has been interpreted to mean that the state can remove one tree every 33.4 feet along a trail, which converts to 158 trees in a mile. Under this precedent, ORDA would be limited to 51 trees over a 1,700 foot trail length. Clearly, the actions in the proposed UMP do not comply with the forever wild provision of the State Constitution.

Need for Constitutional Amendment: The expansion of the Mt Van Hoevenberg facilities should be undertaken through a Constitutional Amendment. ORDA should undertake a long-term master plan that looks at future needs, builds in an acreage surplus, and undertakes a Constitutional Amendment to build the new facilities it needs to remain competitive for international Olympic-caliber events. This, unfortunately, cannot be done administratively. The State of New York, and local governments, should be proactive and develop a Constitutional Amendment to insure the long-term viability of the Mt. Van Hoevenberg facility. Such an amendment would be favorably received by the public across New York for the purpose of maintaining an Olympic caliber facility at Mt Van Hoevenberg.

Current plans are illegal and will be challenged in court.

UMP Amendment Inconsistent with 1999 UMP: The 1999 Mt Van Hoevenberg UMP recognized the realities of Article XIV in ways that the current UMP amendment does not:

On page iii the UMP states that "the State Constitution Article XIV issues related to the project need to be resolved..." The 1999 UMP also listed "management actions" that required changes to Article XIV and those that did not. The newly proposed UMP Amendment should state the same.

ORDA-DEC MOU: The ORDA-DEC MOU was set to expire in 2012. Has this MOU been updated, reviewed and newly approved? No UMP Amendment should be approved until the MOU is updated. Development of a new MOU should be a public process.

State Should Seek to Buy an Easement on Private Lands: The only other remedy, other than a Constitutional Amendment, is for the state to provide funds to the Town of North Elba to buy neighboring private lands, which would be subject to a conservation easement, where the level of tree cutting for a 57-foot-wide trail network would be permissible.

On behalf of the Board of Director of Protect the Adirondacks, please accept our comments on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer
Executive Director