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May 16, 2017

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PO Box 99
Ray Brook, NY 12977

Mike Pratt, Director
NYS ORDA
2634 Main Street
Lake Placid, NY 12946

Peter Bauer
Executive Director

Re: Whiteface Mountain Zip Line

Dear Sirs/Madam,

Protect the Adirondacks has concerns regarding state funding for a possible "zip line" at the Whiteface Mountain Ski Center, which is managed by the Olympic Region Development Authority (ORDA). Whiteface Mountain is Forest Preserve land, protected under Article XIV, Section 1, of the NYS Constitution. It was constructed and operates to this day under a constitutional amendment that authorized construction of ski trails "and appurtenances thereto", for the

Protect the Adirondacks

PO Box 769, Lake George, NY 12845 518.685.3088

www.protectadks.org info@protectadks.org

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purpose of creating a downhill ski area, which otherwise would have been prohibited by Article XIV. The amendment did not authorize any other type of nonconforming construction.

The recently approved state budget includes funding for a “zip line” to be constructed and operated at Whiteface Mountain. However, a zip line is not authorized under the constitutional amendment that allowed the Whiteface Mountain Ski Center to be constructed

Article XIV, Section 1, the forever wild provision, of the NYS Constitution is a covenant between the governed and their government for the management of the Forest Preserve. Major decisions for the Forest Preserve are not to be made by state government leaders or state agencies, but are to be directly made by the people of the State of New York. It is our belief that when the people of the State of New York approved the amendment for the Whiteface Mountain Ski Center in 1941, they did so to approve a downhill ski area and not a summertime amusement park.

Article XIV, Section 1 states “The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.”

Article XIV, Section 1 was amended by the people of the State of New York in 1941 to include “constructing and maintaining not more than twenty-five miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than five miles of such trails shall be in excess of one hundred twenty feet wide, on the north, east and northwest slopes of Whiteface Mountain in Essex county.”

“Appurtenances” has consistently been taken to mean only the infrastructure that supports downhill skiing. The phrase “together with appurtenances thereto” is used not only for Whiteface Mountain, but also for similar amendments for the Gore Mountain and Belleayre Mountain ski areas that were similarly approved. The infrastructure to support downhill skiing has been taken to include ski lifts (from T bars to chair lifts to gondolas), snowmaking systems of pumps, sprayers, and water pipes, base lodges, maintenance buildings, ski racing association buildings, and parking lots.

Merriam Webster’s Collegiate Dictionary, 10th ed., says an appurtenance is (a) “an incidental right (as a right-of-way) attached to a principal property right and passing in possession with it,” (b) “a subordinate part or adjunct,” and (c) “accessory objects.”

A zip line can hardly be considered a subordinate part or accessory object of a downhill ski area. Using it does not require skis, nor is it part of the sport of skiing. Protect the Adirondacks does not believe that a zip line at Whiteface Mountain is covered under the 1941 constitutional amendment. As with the proposed bobsleigh run that was found to be unconstitutional in Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y.2d

234 (1930), a zip line would violate Article XIV, Section 1. The only way that a zip line could be constructed at Whiteface Mountain would be through a new amendment to Article XIV, Section 1.

Before it undertakes any expense for planning or engineering for a zip line on Whiteface Mountain, the Olympic Development Management Authority should request a formal opinion from the Attorney General of the State of New York.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Bauer".

Peter Bauer
Executive Director

CC: V. Lannon
R. Shah
J. Brown
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K. Lynch
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R. Davies
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