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June 12, 2020

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**RE: Positions and Thoughts on Two Possible Draft Amendments to the NYS Constitution Article 14, Section 1 for Camp Gabriels and Mt. Van Hoevenberg**

Dear Sirs and Madam:

The 3-million-acre public Forest Preserve is one of the great achievements of the State of New York. The Forest Preserve today contains over 90% of the designated Wilderness areas in the eleven states of the northeastern United States. Since 1885, the Forest Preserve has been the beneficiary of a multi-generational and bipartisan commitment to protection of wildlands, including a vast array of unique ecosystems, and abundant outdoor recreational opportunities. The Forest Preserve is accessible free of charge and is open 24/7. The Forest Preserve is an economic cornerstone for scores of communities in the Adirondacks and Catskills.

The New York Constitution is a covenant between the governed and governing, between the People and the State. All legislators swear an oath to uphold the Constitution. Since 1894, the public Forest Preserve in the Adirondack and Catskill Parks has been protected in the NYS Constitution so that all major decisions about the welfare

Peter Bauer  
*Executive Director*

**Protect the Adirondacks**

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of the Forest Preserve must be made by the People and not by the Governor, state agencies, or the Legislature. Major decisions include removing lands from the Forest Preserve or significantly altering the use and condition of these lands. These are decisions that must be made by the People of the State of New York.

These are extraordinary times, unlike anything that any of us have lived through before, with the COVID-19 pandemic and the state shutdown. Despite these challenges, there are still important public policy issues in the Adirondack Park that would be best dealt with in 2020. Protect the Adirondacks has researched various options for two potential amendments to Article 14, Section 1 of the NYS Constitution, the famed Forever Wild provision. These proposed amendments would help to resolve intractable problems facing Adirondack Park communities and management of the public Forest Preserve. These possible amendments include Camp Gabriels and Mt. Van Hoevenberg.

Protect the Adirondacks is continuing to research options for Cathead Mountain that could involve a constitutional amendment and we will submit these shortly.

### The History of Amendments to the Forever Wild Clause of the Constitution

The State of New York has approved constitutional amendments to Article 14, Section 1 16 times since the 1938 Constitutional Convention, which produced New York's current Constitution. The is a rate of one amendment roughly every five years:

- November 4, 1941: Whiteface Mountain Ski Area
- November 4, 1947: State Ski Areas at Gore and Belleayre Mountains
- November 5, 1957: DOT State Highways Land Bank
- November 3, 1959: Adirondack Northway
- November 5, 1963: Saranac Lake Landfill
- November 2, 1965: Piseco Airport Runway Expansion-1
- November 6, 1979: Perkins Clearing Land Swap with International Paper Company (8,500 acres Forest Preserve for 8,500 acres of IP lands)
- November 8, 1983: Sagamore Institute Not-for-Profit -1 (saving Great Camp Sagamore)
- November 3, 1987: Sagamore Institute Not-for-Profit -2 (saving Great Camp Sagamore)
- November 5, 1991: Piseco Airport Runway Expansion-2
- November 7, 1995: Town of Keene Cemetery
- November 6, 2007: Raquette Lake Water Supply
- November 3, 2009: Route 56 Powerline
- November 5, 2013: Township 40
- November 5, 2013: NYCO
- November 7, 2017: Health & Safety Land Account

An Article 14 amendment is a necessary tool for managing the dynamic and unique Adirondack Park. Since 1938, the State of New York has built a major highway through the eastern Adirondacks, added

over 800,000 acres to the public Forest Preserve in the Adirondack Park, purchased over 750,000 acres of conservation easements, and instituted a unique regional land use plan for 92 towns and 9 villages within the Adirondack Park Blue Line through the Adirondack Park Agency Act. The Adirondack Park is an evolving and dynamic place, which at time requires minor changes to Article 14, Section 1, to meet local needs or resolve an Adirondack Park management or public welfare problem.

The bar is set high for any amendment to the NYS Constitution. An amendment requires passage in two successive legislatures, known commonly as First Passage and Second Passage, and then approval by a vote of the People of the State of New York. Despite the high bar for amending the State Constitution, Article 14, Section 1 amendments have been relatively commonplace in New York over the last 82 years.

Article 14 is the most frequently amended part of the Constitution due to the fact that in many towns in the Adirondack and Catskill Parks, Forest Preserve ownership is often very high, being over 50% in many communities and even higher in more than a dozen. At times this high level of public Forest Preserve ownership has created serious challenges for municipalities to provide basic services. This is why the 16 successful amendments to Article 14, Section 1 saw legislative action for First or Second Passage in 30 of the 41 Legislatures convened since 1939.

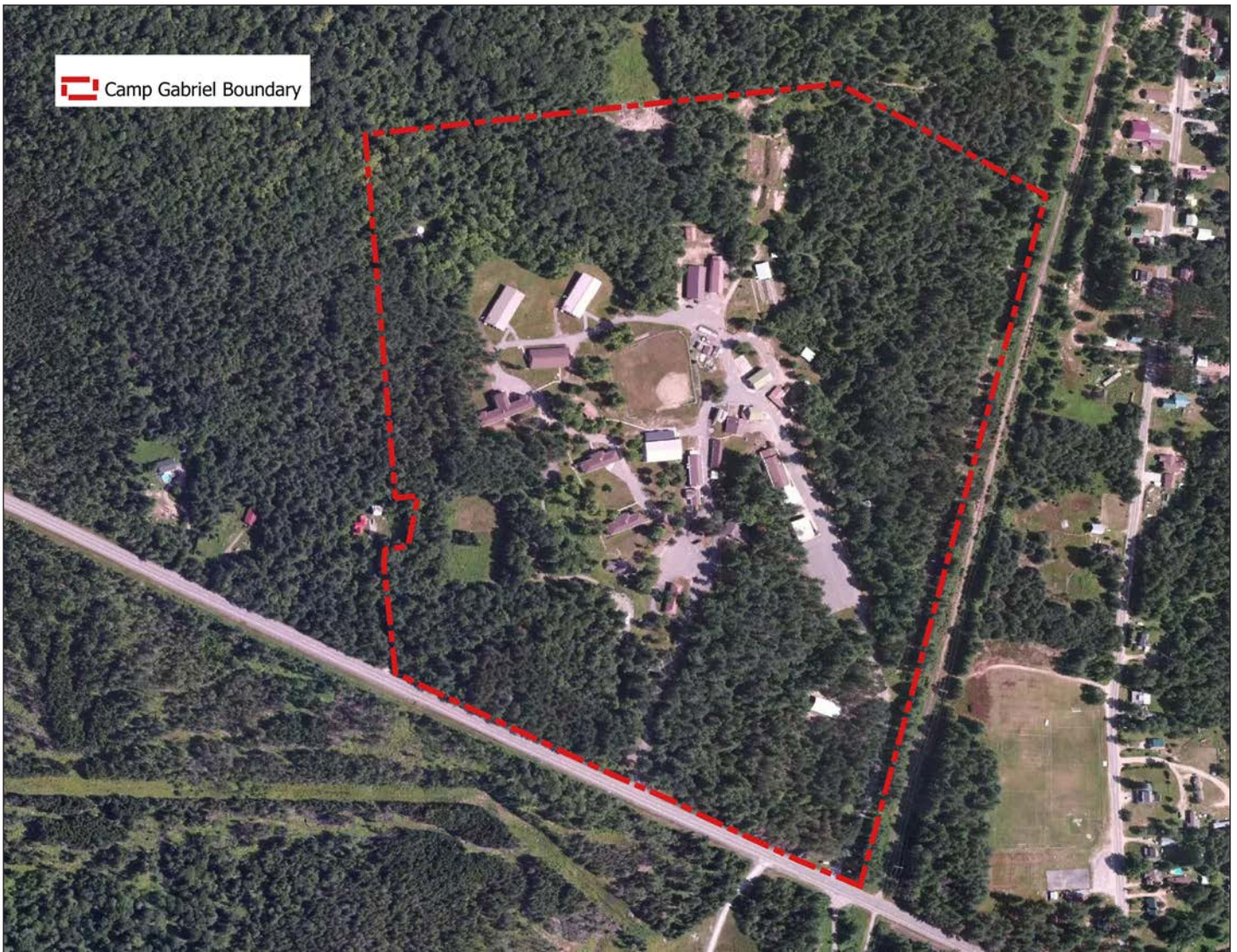
#### The Importance of First Passage in 2020 for an Article 14, Section 1 Amendment

The political calendar makes action on a proposed amendment to the State Constitution advantageous in 2020. If First Passage is approved by the Legislature in 2020, then Second Passage could be approved in 2021, followed by a vote by the People of the State of New York in November 2021. If First Passage is delayed until 2021, then Second Passage and a vote of the People will not be available until 2023 at the earliest. This would significantly delay the resolution of major problems facing the Forest Preserve and Adirondack communities.

#### Camp Gabriels

Protect the Adirondacks has reviewed the options for the future of the Camp Gabriels complex, a former state prison in the Town of Brighton in Franklin County in the northern Adirondack Park. The land that the prison complex was built upon is Forest Preserve, protected under NYS Constitution Article 14, Section 1. The prison complex was part of a state purchase in 1982 of over 224 acres. This facility has been dormant since 2009 when the State closed the prison camp.

Several efforts have been made to transfer the former state prison from state ownership. Initially, the Office of General Services (OGS) sought to sell the former prison through a public auction and two different auctions were held. Protect the Adirondacks, and other organizations, raised questions about the constitutionality of such a sale because we believe that all state-owned lands inside the Adirondack Park Blue Line are Forest Preserve. Justifiable concerns by potential buyers about acquiring clear title prevented the sale of the property through a state auction. The only way that Forest Preserve can be removed from

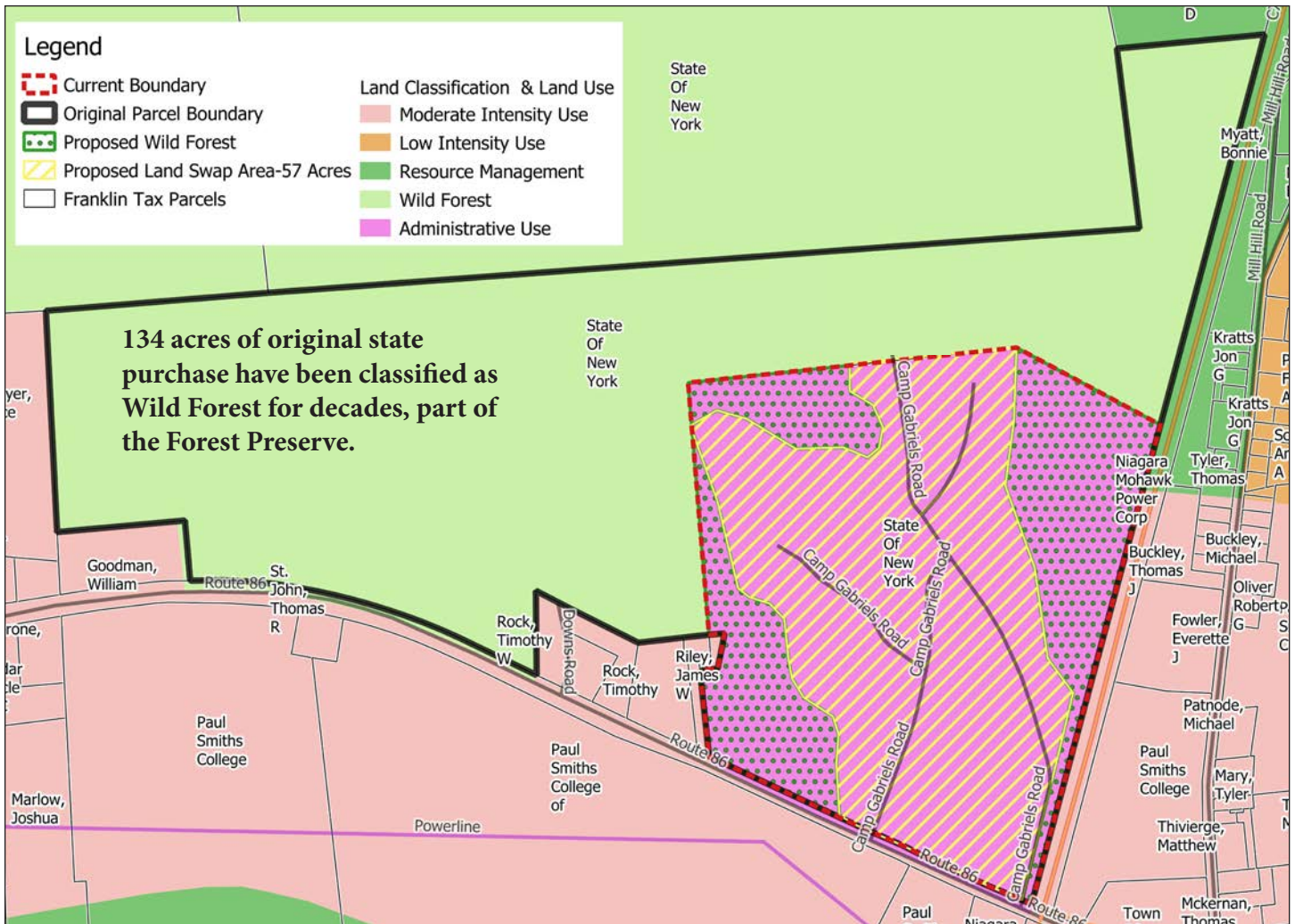


*The picture shows the Camp Gabriels complex. The red boundary shows an area of 92+/- acres.*

public ownership, even if it's land beneath a former state prison, is through an amendment to Article 14, Section 1. The need for an amendment in order to transfer the former Camp Gabriels complex is now fully recognized by all parties.

Various legislation proposing to amend Article 14, Section 1 for Camp Gabriels has been introduced in recent legislative sessions but failed to move through both chambers. The main weakness of these proposals was that they failed to comply with historic precedent for Article 14 amendments in two key ways. First, an Article 14, Section 1 amendment should be a remedy of last resort that resolves a clear problem and provides a clear public benefit. Second, an Article 14, Section 1 amendment should be consistent with past amendments, written as either a land swap or a use amendment.

**The Problem and Public Benefit Tests:** The problem with Camp Gabriels that is forcing an amendment is that the former prison campus/buildings need to be removed from the Forest Preserve in order to protect and uphold the integrity of the Forever Wild provision. Given the level of development on this tract it is simply not feasible to remove all the buildings and infrastructure and remediate the site and return it



*The map shows the original purchase of the Camp Gabriels lands, which totaled 224 acres. Over 132 acres of the original 244-acre original state purchase were classified as Wild Forest and made part of the Forest Preserve decades ago. 57 acres+/- of the 92 acres could be removed with the Camp Gabriels buildings with the remaining 35 acres+/- should remain as state lands and be classified as Wild Forest, consistent with the surrounding state lands.*

a natural state. Such a project would run into the millions of dollars, and perhaps tens of millions, and it's unlikely that the State of New York would ever commit to a remediation project at this scale. Letting the site decay also raises serious long-term environmental issues.

The developed lands of the Camp Gabriels complex are not valuable public land. This tract borders a major road on its south side and a major utility corridor on its east side. There are private residences to the west. Over 132 acres of the original 224-acre+/- parcel purchased by the state in 1982 has been classified as Wild Forest and is set to remain in the Forest Preserve. Unlike the developed areas, these Wild Forest areas contain high value public lands, including access to extensive shoreline on Jones Pond. (See map attached that shows the original purchase above.)

Across the Adirondack Park there are many state facilities, such as Department of Transportation maintenance complexes, stations for the State Police, and office complexes for the Department of Environmental

Conservation and Adirondack Park Agency (APA). There are also three state prison complexes and one extensive mental health facility. These lands are all classified as “State Administrative” under the Adirondack Park Agency Act and Adirondack Park State Land Master Plan. According to the latest data from the APA there are 2,028 acres of State Administrative lands among the 2,595,802 acres of Forest Preserve in the Adirondack Park.

Camp Gabriels will not be the last state facility in the Adirondacks that is shuttered. Protect the Adirondacks believes it’s important to set the precedent that these lands are Forest Preserve and may only be removed from the Forest Preserve through an amendment to Article 14, Section 1, when they are no longer deemed necessary for state use. We believe that when possible, these lands should be restored to a natural state and reclassified as Wild Forest or another such classification. When this would be cost prohibitive, or when the former facilities could serve a new public benefit purpose, these lands and all associated buildings and development, should be removed from the Forest Preserve, in exchange for newly purchased wildlands to compensate for the loss.

Protect the Adirondacks believes that there is no option other than an amendment to Article 14 to resolve this situation and remove the Camp Gabriels complex from the Forest Preserve. We believe the facts around Camp Gabriels satisfy the “Problem” test.

Beyond upholding the Forever Wild values of Article 14, Section 1, by removing these buildings from the public Forest Preserve, and beyond affirming the principle that all State lands in the Adirondack Park are Forest Preserve, the main benefit to the public from removing the Camp Gabriels complex from the Forest Preserve is that there is strong local interest and support for potentially utilizing the complex to pursue a series of local public benefit projects. These include:

- Camp Gabriels has an excellent water system and well. The Town of Brighton has a number of road-salt contaminated residences along state roads in that area who rely on bottled water for drinking. The Town would like to create a water district that could service these impaired residences.
- There is interest regionally in using the site to create a volunteer fire company training facility. There is no such facility within the Adirondack Park.
- There is interest by the State Police in using the facility as a training center (with no outdoor shooting range).
- Local community development NGOs, working with Franklin County, look to use the property for possible business incubator space, start-up space, and maker space.
- Local community development NGOs, working with Franklin County, look to use the property for possible affordable housing.
- Local community development NGOs, working with Franklin County, look to use the property for possible workforce housing.
- Other NGOs, working with Franklin County, look to use the property for possible summer intern housing.  
The complex could provide attractive off-campus housing for Paul Smith’s College students.
- Other NGOs, working with Franklin County, look to use the property for possible NGO office space.

The above list is not a complete list of the local aspirations for the site. There are other ideas in the greater

Tri-Lakes community (Tupper Lake, Saranac Lake, Lake Placid) for this complex. Protect the Adirondacks believes that the Camp Gabriels complex, if successfully removed from the Forest Preserve and transferred to Franklin County, will meet the “public benefit” test, if suitable replacement land is simultaneously added to the Forest Preserve. While there is no one overriding imperative that is driving the future use of the property, we’re confident that in county ownership, working in partnership with local community organizations, a viable plan can be organized for this property where a variety of public benefits can be pursued.

It’s also important to note that the State of New York has not been successful at facilitating re-use of former state prisons across the state. We think that transferring the Camp Gabriels facility to an interested local partner is one viable option. Protect the Adirondacks believes that it is reasonable for the Legislature to require a plan for the future use of the Camp Gabriels property by Franklin County at the time of Legislative approval after approval by NYS residents in a statewide vote. Positive action with First Passage in 2020 will greatly assist local efforts to seek grants for the property to begin planning.

Protect the Adirondacks has assessed this issue and finds that the only viable option to resolve this problem is through an amendment to Article 14, Section 1.

**Consistency with Past Article 14, Section 1 Amendments Test:** In 2014, to assist OGS in its plans to sell Camp Gabriels at a public auction, the Adirondack Park Agency reclassified (MA-2014-1) 92+/- acres of the Camp Gabriels complex as “Moderate Intensity Use,” a classification for private lands. This action was of dubious legality, since Protect the Adirondacks and others argued that lands of state facilities within the Adirondack Park are Forest Preserve. Unless and until the land is removed from the Forest Preserve by a constitutional amendment, it is premature to apply a private land classification to this land.

An assessment of the Camp Gabriels tract by Protect the Adirondacks finds that the full 92 acres currently classified as Moderate Intensity should not be part of a constitutional amendment, but that there could be a viable amendment that removes 57 acres+/- containing the prison complex of 40 buildings, parking lots, roads, baseball field, water system, major electrical generator system, etc., and all associated lands. The other 35 acres+/- should remain in the Forest Preserve and be classified as Wild Forest. (See a conceptual map on page 8.)

Protect the Adirondacks believes that an Article 14, Section 1, amendment for Camp Gabriels should be organized as a “land swap” amendment where the Forest Preserve, and the People of the State of New York, are compensated through the acquisition of other lands in the Adirondack Park for the Forest Preserve. We propose that the State of New York commit to purchase at least 300 acres of land for the Forest Preserve within the Adirondack Park as a condition of the removal of Camp Gabriels from the Forest Preserve. By organizing an amendment for Camp Gabriels as a “land swap” amendment, this proposal would conform with past practices.

**Proposed Article 14, Section 1, Amendment Conceptual Language for Camp Gabriels:** Given all of our concerns detailed in the foregoing, Protect the Adirondacks would be prepared to support an amendment of Article 14, Section 1, to resolve the Camp Gabriels issue, organized similarly to the following:





Notwithstanding the foregoing provisions, and subject to legislative approval prior to actual transfer of title, the state may convey to Franklin County 57 acres, and all buildings and associated infrastructure, of the former Camp Gabriels state prison in the Town of Brighton, Franklin County, for the benefit of local communities. As a condition of the transfer of Camp Gabriels, the state shall acquire three hundred acres of land for incorporation into the forest preserve, on condition that the legislature shall approve such lands to be added to the forest preserve.

Protect the Adirondacks believes that all draft amendments to Article 14, Section 1, should be accompanied by enabling legislation that codifies how an amendment will be managed and operationalized. Enabling legislation for a Camp Gabriels amendment should require legislative approval of a plan for the future use of the property by Franklin County prior to transfer; legislative approval of the metes and bounds of the 57 acres to be removed from the Forest Preserve around Camp Gabriels and for the new lands of at least 300 acres to be added to the Forest Preserve in the Adirondack Park.

### Mt. Van Hoevenberg Winter Olympic Sports Complex

Protect the Adirondacks has long believed that an amendment to Article 14, Section 1 is needed for the Mt. Van Hoevenberg Winter Olympic Sports Complex currently managed by the Olympic Regional Development Authority (ORDA). At Mt. Van Hoevenberg, ORDA currently manages 1,220 acres +/- of Forest Preserve classified as Intensive Use by the APA. Abutting these lands are 600 acres of lands owned by the Town of North Elba. This complex houses the Olympic bobsled and luge track, cross-country skiing and biathlon trails, and associated facilities.

The “split” ownership of the Winter Sports complex is partly the result of two famous Article 14, Section 1, legal decisions in 1930, one by the Appellate Division, Third Department, and the other by the New York Court of Appeals, that struck down plans by the State of New York to build a bobsled track on Forest Preserve lands at this location. This lawsuit, *Association for the Protection of the Adirondacks v MacDonald*, (the Association was a precursor organization of Protect the Adirondacks) forced the state to build the bobsled track for the 1932 Winter Olympic Games on lands owned by the Town of North Elba. Since then, the State of New York has placed much of the buildings and other facilities on Town lands, but in the intervening eight decades the State has also undertaken a number of questionable actions on the Forest Preserve at Mt. Van Hoevenberg that clearly violate Article 14, Section 1. For instance, there are buildings that straddle the Town-State boundary. There are paved roads that are connected on Town-State lands. There are parking lots that straddle the Town-State boundary. There has been tree cutting on the Forest Preserve in excess of constitutional limits, as established in the *Association v. MacDonald* decisions. Many of these violations pre-date the formation of ORDA in the mid-1980s, but others have occurred during ORDA’s stewardship.

Protect the Adirondacks has long stated our belief that state management of Mt. Van Hoevenberg has at times violated the State Constitution. These are particularly glaring given that these violations exist within the literal and actual shadow of the historic *Association v. MacDonald* decision, the first major Article 14, Section 1, legal decision and defining case law. We have raised these issues during Unit Management Plan (UMP) review and hearings, among other forums. Our concerns forced adjustments to



*Parts of the Mt. Van Hoevenberg Winter Sports Complex under renovation. Construction activities are happening on both the Town of North Elba and Forest Preserve lands classified as Intensive Use and managed by the Olympic Regional Development Authority.*

ORDA's plans at various points in the past, but other violations occurred nevertheless. Today, ORDA is implementing an unprecedented surge of construction funded by hundreds of millions of dollars in state money to renovate nearly the entire Mt. Van Hoevenberg complex. Much of this work is being undertaken so that the facility can meet international winter sports competition requirements for trail standards for major events, the first of which is the World University Games in 2023. We believe that a number of actions in this massive renovation and expansion violate Article 14, Section 1. We believe that the best remedy is an amendment to Article 14, Section 1.

As stated above there is a two-pronged test for evaluating the need for an Article 14 amendment. First, the amendment should be a remedy of last resort that resolves a clear problem and provides a clear public benefit. Second, the amendment should be consistent with past amendments, written as either a land swap or use amendment.

**The Problem and Public Benefit Tests:** It's important to note that in addition to the Mt. Van Hoevenberg Winter Sports complex, ORDA also manages three alpine downhill ski areas owned by the State of New York – Gore Mountain and Whiteface Mountain in the Adirondack Park and Belleayre Mountain in the Catskill Park. Each of these ski areas is built on Forest Preserve and is governed by an Article 14, Sec-

tion 1 amendment that sets parameters while also enabling management activities and upgrades to keep these facilities consistent with changes in the sport of alpine downhill skiing. Whiteface Mountain was approved in 1941. Gore Mountain and Belleyaire Mountain were approved in 1947. Both of these amendments were written to allow for the construction, annual operation, and growth of these facilities.

At all three of these ski areas the state is allowed to build and operate facilities that would otherwise be prohibited on the Forest Preserve, subject to specific limits in the constitutional amendments that authorized them. Since taking over management of these facilities, ORDA has been able to successfully operate them within the bounds set by these amendments. However, the nonconforming state facilities at Mt. Van Hoevenberg are not expressly authorized, nor are they subject to constitutional limits, like the other three facilities.

Protect the Adirondacks believes that now is the time for an amendment for the Mt. Van Hoevenberg complex similar to those in effect for Whiteface Mountain, Gore Mountain, and Belleyaire Mountain. Such an amendment would create clear lines for future administration, while providing a measure of flexibility for future growth. The current expansion of the Mt. Van Hoevenberg complex, and vast amount of state spending there, demands that action be taken now to bring this facility into compliance with the Forever Wild clause. At this point in time, the only way to accomplish this is to pass an amendment.

If an amendment is not pursued, we're left with two choices: 1) accept continued blatant violations of the Forever Wild provision by the State of New York; or 2) go to court and sue the state. Neither option is appealing. Acceptance of blatant violations of our State Constitution by the State of New York is an intolerable situation for all New Yorkers and for the people's land – the Forest Preserve.

Protect the Adirondacks has been involved in a constitutional lawsuit alleging violations of Article 14, Section 1, since 2013. No other organization has shown that it has the appetite to stand up for Forever Wild and challenge the Cuomo Administration to defend Forever Wild. We are currently defending a 4-1 decision in our favor from the Appellate Division, Third Department, at the New York Court of Appeals, that found the state violated the constitution by cutting massive numbers of trees to build a network of new Class II Community Connector Snowmobile Trails in the Adirondack Forest Preserve. This lawsuit has consumed years of work. The state could probably also find a better use for the resources that it has wasted defending its mismanagement of the Forest Preserve. We believe that a lawsuit regarding Mt. Van Hoevenberg should be avoided by an amendment that brings the facility into compliance and sets firm boundaries for future management.

Protect the Adirondacks has assessed this issue and finds that the only viable option to resolve this problem is through an amendment to Article 14, Section 1.

**Consistency with Past Article 14, Section 1 Amendments Test:** Clearly, an amendment for Mt. Van Hoevenberg would be a de facto “after the fact” amendment. These have happened in the past (Raquette Lake Water Supply in 2007, Route 56 in 2009) and should be avoided whenever possible. Nevertheless, we believe such an amendment is necessary here. Given the historic failure of the State of New York to comply with the Forever Wild provision of the State Constitution at Mt. Van Hoevenberg, Protect the Adirondacks believes that the Forest Preserve and people of the State of New York should be adequately compensated for ORDA's development of Forest Preserve lands by the purchase of additional lands for the Forest Preserve.

Protect the Adirondacks believes that a new amendment for Mt. Van Hoevenberg should be drafted similar to the “use” amendments passed for Whiteface Mountain, Gore Mountain, and Belleayre Mountain. Here are those amendments:

**November 4, 1941: Whiteface Mountain Ski Area**

nor from 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,

**November 4, 1947: State Ski Areas Gore, Belleayre**

nor from 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 two miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Belleayre Mountain in Ulster and Delaware counties and not more than forty miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than eight miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Gore and Pete Gay mountains in Warren county.

Those two amendments were “use” amendments that allowed for the creation of those alpine ski areas while placing limitations on their size and scope. “Appurtenances” are all things associated with an alpine ski area – parking lot, ticket booth, ski lift, gondola, lodge, restaurant, etc., but don’t include non-skiing facilities such as hotels and golf courses. The “appurtenances” language also allowed for changes to the sport of downhill skiing over the decades, for things like expanding water lines and snowmaking, which are now a necessity, but were not 40 years ago.

Protect the Adirondacks supports an amendment for Mt. Van Hoevenberg that is similar to the amendments above, with the exception that we strongly urge that the Forest Preserve be compensated in a significant manner due to the state’s recklessness and decades of lack of fidelity to the Forever Wild provision of the State Constitution.

**Proposed Article 14, Section 1, Amendment Conceptual Language for Mt. Van Hoevenberg:** Given all of our concerns detailed in the foregoing pages, Protect the Adirondacks would be prepared to support an amendment to Article 14, Section 1, to resolve the Mt. Van Hoevenberg issue, organized similar to the following:

Notwithstanding the foregoing provisions, the construction, maintenance and management to international standards of not more than 322.26 acres of Nordic ski trails and appurtenances thereto is authorized on forest preserve lands at the Mt. Van Hoevenberg Winter Olympic Sports Complex on condition that the Forest Preserve is compensated with at least 1,500 acres of lands of equal or greater value.

Two things here are important to note. First, ORDA has communicated to state officials and environmen-



Protect the Adirondacks believes that all draft amendments to Article 14, Section 1, should be accompanied by enabling legislation that codifies how an amendment will be managed and operationalized. Enabling legislation for a Mt. Van Hoevenberg amendment should require legislative approval for the new lands of at least 1,500 acres to be added to the Forest Preserve in the Adirondack Park. The enabling legislation should include statements that all activities on the lands are subject to the Adirondack Park State Land Master Plan. We urge that this legislation include a statement that if the facility goes dormant in the future, there should be a clause that the trails will be allowed to revegetate. Last, the enabling legislation should recognize that 220+/- acres of the current 1,200+ acres of Intensive Use lands used by ORDA at Mt. Van Hoevenberg should be reclassified as part of the High Peaks Wilderness.

### Going Forward

Protect the Adirondacks stands ready to work with legislative leaders to help craft these amendments.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to share our thoughts.

Sincerely,



Peter Bauer,  
Executive Director

CC:

J. Mallalieu, NYS Assembly  
S. Liss, NYS Assembly  
M. Milot, NYS Assembly  
S. Smith, NYS Senate  
C. Amato, NYS Senate  
A. Dougherty, NY Senate  
M. DeRosa, Executive  
K. Gibson, Executive  
M. Philips, Executive  
B. Rice, Executive  
B. Seggos, NYSDEC  
J. Drabicki, NYSDEC  
R. Davies, NYSDEC  
K. Hamm, NYSDEC

B. Jones, Assembly  
D. Stec, Assembly  
D. Dabiew, Franklin County  
P. Shrope, Town of Brighton  
M. Pratt, ORDA