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September 5, 2025

Robert Daley
New York State Department of Environmental Conservation (DEC)
Division of Lands and Forests
1115 NYS Route 86
P.O. Box 296
Ray Brook, NY 12977-0296

RE: Downhill Mountain Bike Trail Construction at Whiteface Mountain Ski
Center Intensive Use Area

Dear Mr. Daley:

Protect the Adirondacks has reviewed the draft Work Plan for the Union Cycliste Internationale Downhill World Cup Course Layout at the Whiteface Mountain Intensive Use Area, managed by the Olympic Regional Development Authority (ORDA), that was noticed in the August 20, 2025 Environmental Notice Bulletin. The draft Work Plan for work to be undertaken by ORDA is misleading and lacks information to review whether the proposal complies with Article 14 of the State Constitution and the State Land Master Plan. The Work Plan is misleading because it states that "[n]o new trail construction is proposed", yet the Work Plan also states that a new "trail will be constructed using sustainable methods". Work Plan at 1-2. It also states that there will be "construction of technical features" and the removal of natural terrain. Work Plan at 1. This construction work will be done using "[e]xcavators, earth rollers, loaders, tracked dump truck, trailers" and a mulcher. Work Plan at 2. The Work Plan lacks any information about where and to what extent such construction activities will take place on the course.

Our concerns, based upon the review of the information available in the draft Work Plan, are below.

Failure to Comply with Article 14: While no tree cutting is proposed, the construction of a mountain bike racecourse with manmade "technical features" and the removal of natural terrain has the potential to violate the Constitution. The Whiteface Mountain Ski Center is on Forest Preserve land, which is protected under Article 14, Section 1 of the NYS Constitution. The Ski Center

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was constructed, and operates to this day, under a 1941 constitutional amendment that authorized construction of ski trails and “appurtenances thereto”, for the purpose of creating a downhill ski area, which otherwise would have been prohibited by Article 14. The 1941 Whiteface amendment did not authorize any other type of construction.

Article 14, 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 14, Section 1 was amended by the People of the State of New York in 1941 to authorize “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.” In 1987, the People approved a second amendment that limits the total amount of trails at Whiteface that are more than 120 feet wide, but less than 200 feet wide, to less than 5 miles.

When the People approved the amendment for the Whiteface Mountain Ski Center in 1941, and approved the 1987 amendment, they did so to approve a downhill alpine ski area and not a summertime mountain bike racecourse.

Use of the word “appurtenances” in the 1941 Whiteface Mountain amendment 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 the Gore Mountain and Belleayre Mountain ski areas that were similarly approved through constitutional amendments. 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, reservoirs, and parking lots. Merriam Webster’s Collegiate Dictionary, 10th ed., says an appurtenance is “... (b) “a subordinate part or adjunct,” and “(c) accessory objects.”

As discussed above, the 1941 Article 14 amendment authorized “appurtenances” to support “ski trails” at Whiteface Mountain. Facilities, infrastructure, and improvements for summertime non-alpine ski related activities, such as mountain bike riding, are not “appurtenances” that support alpine skiing. A mountain bike trail can hardly be considered to be a subordinate part or accessory object of a downhill ski area. Riding a bike does not require skis, nor is it part of the sport of skiing. The proposed major downhill mountain biking racecourse at Whiteface Mountain is not covered under the 1941 constitutional amendment under the “appurtenances” umbrella.

Accordingly, the proposed mountain bike racecourse must comply with Article 14. Generally, hiking trails and mountain bike trails are allowable uses on the Forest Preserve, in designated areas, if they do not unconstitutionally alter the Forest Preserve. However, the proposed disturbance of the natural terrain and the construction of manmade features for the new racecourse raises serious constitutional concerns.

It is unclear from the draft Work Plan the amount and severity of the disturbance of the natural terrain and construction of manmade features that are proposed for the racecourse. In Protect the Adirondacks! Inc. v. Department of Environmental Conservation and Adirondack Park Agency, the question involved the construction of snowmobile trails that required the cutting and removal of thousands of trees and the “grading and leveling, and the removal of rocks and other natural components from the Forest Preserve to create snowmobile paths that are nine to 12 feet in

width”. 37 NY3d 73, 77 (2021). The Court of Appeals found that the snowmobile trails were unconstitutional due to the amount of tree cutting and clearing required and because they “require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers”. *Id.* at 83.

In addition to the no-greater-interference-than-is-necessary-to-accommodate hikers rule, the Court added, while quoting from the 1930 MacDonald decision, “defendants and the dissent contend that the project’s impacts are justified because it enhances access to the Preserve and provides a variety of recreational opportunities. That analysis proceeds from a fundamental misunderstanding. The constitution provides for access and enjoyment of the Forest Preserve as a wild forest: ‘very considerable use may be made by campers and others without in any way interfering with this purpose of preserving them as wild forest lands.’” Here, the Court articulated a wild-forest-lands rule that forbids any activity that significantly alters the natural state of the Forest Preserve. The proposed snowmobile trails changed the Forest Preserve in many ways, which is why they were found to be illegal, from the wide flat trail tread, removal of rocks and roots, extensive benchcuts that introduced human geometric forms to the forest, grass-covered corridors, among many other design features. The Court concluded that the proposed extra wide snowmobile trails are the type of change to the Forest Preserve that require a constitutional amendment to allow their construction.

Here, the proposed mountain bike racecourse’s modifications to the natural terrain (e.g., grading, leveling, hardening, removal of rocks and other natural features), the construction of manmade terrain (e.g., jumps, berms, turns, roller features, and wall ride features¹), and the construction of erosion controls measures that alter the wild forest nature of the Forest Preserve must be reviewed and analyzed. The proposed trail width for the racecourse, up to eight feet for the “wide-open high-speed sections” is also a constitutional issue that requires analysis. Work Plan at 2.

The proposed construction of the racecourse, its modifications to the natural terrain, its width, and its inclusion of artificial features like jumps, berms and turns that are not part of a standard hiking trail, need to be reviewed for compliance with Article 14, guided by the analysis set forth in the Protect decision. ORDA and DEC must then change and scale back any potentially unconstitutional elements of the proposed racecourse to bring them into compliance with Article 14, to ensure that the damage to the Forest Preserve is not any greater than would be caused by a hiking trail.

Failure to Comply with Master Plan and CP-78:

The CP-78/Forest Preserve Work Plan Policy (CP-78) establishes the procedures for assessing the impacts of construction activities on the Forest Preserve and ensures that those activities are within the parameters set by Article 14 and by the Adirondack Park State Land Master Plan (Master Plan). The draft Work Plan as written does not analyze or answer any of the Article 14 questions mandated in CP-78 (at 3-4) for review. As shown above, there are significant Article 14 issues that should be considered before any work is undertaken.

Moreover, the proposed racecourse does not meet the Basic Guidelines set forth in the Master Plan (at 41-42) for an Intensive Use Area. The Intensive Use classification requires that all management

¹ The draft Work Plan mentions jumps, but fails to mention the other features such as berms, roller features and wall ride features that are included in the description of the construction project in the Environmental Notice Bulletin.

actions “blend with the Adirondack environment,” “have the minimum adverse impact possible on surrounding state lands,” and must “minimize extensive topographic alterations.” The draft Work Plan does not explain how the proposed racecourse complies with these Master Plan requirements. ORDA must therefore revise the Work Plan to address these issues.

Additionally, the Master Plan (at 42) and CP-78 (at 5) require that the construction of new improvements must be undertaken in conformance with an adopted Unit Management Plan (UMP). An improvement is defined in the Master Plan (at 18) as “any change in or addition to land, which materially affects the existing use, condition or appearance of the land or any vegetation thereon, including but not limited to . . . bicycle trails.” The construction of the proposed mountain bike racecourse would be a new improvement that has not been approved in an adopted UMP.

The 2018 UMP states (Section II – 31) that “ORDA has committed to conducting an evaluation and assessment of current mountain biking use on Whiteface to develop goals and objectives for future mountain biking at this facility”. Nothing in the 2018 UMP authorized the construction of a new downhill mountain biking racecourse.

The proposed racecourse is also not identified in the 2021 UMP for Whiteface. The 2021 UMP states (Section 3 – 4) that “All proposed mountain biking trails are located below elevation 2800’”. Over 2800’ feet of elevation is potential Bicknell’s Thrush habitat. Bicknell’s Thrush is a state-listed bird species of special concern, which utilizes Whiteface Mountain as summer breeding habitat. The beginning of the proposed racecourse starts on the mountain above 2800’ and travels on ski trails/glades, not on existing mountain bike trails. Therefore, this proposed racecourse and the construction of associated features, and the removal of natural terrain, has not been approved in a UMP. Further, the adverse impacts of the racecourse’s summertime use on Bicknell Thrush have not been analyzed or mitigated in this Work Plan or in the State Environmental Quality Review Act review conducted for the 2021 UMP.

Failure to Comply with Trail Guidance:

The 2021 UMP states that new mountain biking trails will not be constructed until the new Trail Design Guidance document under development with the Trail Stewardship Working Group is completed. The Trail Design Guidance document has not yet been completed, so the new mountain biking racecourse should not be constructed.

Additionally, the draft Work Plan states that the tread for the mountain bike racecourse will be between 24 inches and eight feet wide. This is at variance with the published 2018 NYS DEC Management Guidelines for Siting, Construction and Maintenance of Singletrack Bicycle Trails on Forest Preserve Lands in the Adirondack and Catskill Parks (Management Guidance).² According to the Management Guidance, the widest permissible mountain bike trails have a 36 inch tread. A mountain bike racecourse that is eight feet wide does not conform to the Management Guidance.

Notably, the 2021 UMP states (at 2- 5) that new mountain biking trails would comply with the Management Guidance. However, since the tread of the racecourse will be greater than 36

² Available at https://extapps.dec.ny.gov/docs/lands_forests_pdf/bikeguidance.pdf.

increase and the racecourse does not conform to the Management Guidance, it also does not comply with the 2021 UMP.

ORDA Must Prepare a Revised Work Plan

We urge DEC to require ORDA to revise the Work Plan to include the Article 14 analyses required by CP-78, and an opportunity for public comment on these analyses. The Work Plan must also be revised to address the Master Plan and CP-78 compliance issues discussed above.

On behalf of the Board of Directors of Protect the Adirondacks, thank you for the opportunity to share our comments on this draft Work Plan.

Sincerely,

A handwritten signature in black ink that reads "Claudia K. Braymer". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Claudia Braymer
Executive Director

cc: Michelle Crew, Esq., ORDA General Counsel
Molly Breslin, Esq., DEC Office of General Counsel
Megan Phillips, APA Deputy Director for Planning