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Via Email

October 7, 2025

Joseph M. Zalewski, P.E.
Regional Director
Region 5
NYS Department of Environmental Conservation
1115 State Route 86
P.O. Box 296
Ray Brook, NY 12977

RE: DEC Notice of Violation to ORDA for the Unauthorized Expansion and Modification of Existing Structures and Improvements at the Whiteface Mountain Intensive Use Area

Dear Mr. Zalewski:

Protect the Adirondacks (PROTECT) submits this letter concerning the September 22, 2025 Notice of Violation (NOV) issued by the Department of Environmental Conservation (DEC) to the Olympic Regional Development Authority (ORDA) regarding ORDA's unauthorized construction of new structures and alteration of terrain for a mountain biking racecourse on Forest Preserve lands at the Whiteface Mountain Intensive Use Area.

We commend the DEC for taking the important step of initiating formal enforcement proceedings against ORDA in response to these violations. As you are aware, this is not the first instance in which ORDA has undertaken unauthorized and unlawful development on constitutionally protected Forest Preserve lands. In fact, a proposed amendment to Article 14 of the New York State Constitution—the "Forever Wild" clause—will appear on the November ballot in an attempt to retroactively authorize numerous unlawful structures and modifications previously constructed by ORDA at the Mount Van Hoevenberg Olympic Sports Complex.

PROTECT strongly supports DEC's enforcement action in the Whiteface Mountain matter. This action appropriately underscores the seriousness of the violations and sends a necessary message to ORDA and the public regarding the importance of upholding constitutional and legal protections

Protect the Adirondacks

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for the Forest Preserve. We hope it will serve as a deterrent to future unauthorized activities by State entities on these protected public lands.

However, we respectfully submit that the NOV falls short in three key areas: (1) it fails to address ORDA's violations of Article 14 of the State Constitution; (2) it does not acknowledge ORDA's violations of the Adirondack Park State Land Master Plan (Master Plan); and (3) it does not provide for public review and comment on the corrective action plan that DEC is requiring ORDA to prepare.

The Racecourse Violates Article 14

Although the NOV correctly acknowledges that the Whiteface Mountain Intensive Use Area is subject to the protections of Article 14 of the New York State Constitution, it fails to address two critical ways in which ORDA's construction of the new mountain biking racecourse violates this constitutional provision: (1) The racecourse is not authorized under the specific Article 14 amendment permitting the development of a downhill ski center at Whiteface Mountain; and (2) The extensive terrain modifications associated with the racecourse construction fall squarely within the category of unconstitutional alterations to Forest Preserve lands as defined by the New York Court of Appeals in *Protect the Adirondacks v. NYS Department of Environmental Conservation*, 37 N.Y.3d 73 (2021).

The Racecourse Is Not Authorized by the Whiteface Amendment to Article 14

The Racecourse is Not Authorized by the Article 14 Whiteface Amendment: ORDA has publicly asserted that the mountain biking racecourse is authorized under the constitutional amendment that allows for the development and operation of a ski center at Whiteface Mountain. This interpretation is incorrect. The amendment authorizes the construction and maintenance of "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." N.Y. Const. art. 14, § 1 (emphasis added). The mountain biking racecourse constructed by ORDA is neither a ski trail nor an appurtenance to a ski trail. It is a separate, purpose-built facility that falls outside the scope of what the constitutional amendment authorizes and therefore violates Article 14.

The Terrain Modifications Violate the Forever Wild Clause: While certain uses—such as hiking and mountain biking—can be compatible with Forest Preserve lands if properly managed, they must not involve material alterations to the natural terrain or other disturbances that exceed constitutional bounds. In *Protect the Adirondacks*, the Court of Appeals made clear that substantial modifications to Forest Preserve lands—even in the absence of tree cutting—can violate Article 14. See *Protect the Adirondacks* 37 NY3d at 77. The Court held that construction of snowmobile trails requiring the "grading and leveling, and the removal of rocks and other natural components from the Forest Preserve . . . require greater interference with the natural development of the Forest Preserve than is necessary to accommodate hikers" and therefore violate the Forever Wild clause. *Protect the Adirondacks*, 37 NY3d at 77. The racecourse constructed by ORDA involves extensive terrain modification using heavy machinery, including excavators, earth rollers, loaders, and dump

trucks. It also includes the installation of a variety of constructed features such as jumps, berms, banked turns, rollers, rock gardens, and wall rides. These interventions constitute precisely the kind of significant physical alteration that the Court of Appeals deemed unconstitutional in *Protect the Adirondacks*.

The Racecourse Violates the Master Plan

Management actions on Forest Preserve lands may only be undertaken if included in an approved Unit Management Plan (UMP). Executive Law § 816; Master Plan at 11-12. Construction of the racecourse violates the Master Plan because the Whiteface Mountain UMP does not authorize construction of a new mountain biking racecourse.

The March 2, 2022 amendments to the Whiteface Mountain UMP authorize only a specific, limited set of mountain biking trail improvements. These include:

Construct[ion of] new mountain biking trails within the Whiteface Mountain Intensive Use Area *to foster interconnections between existing mountain biking trails at Whiteface with the existing trails within the Wilmington Wild Forest and the Flume Trail System*. This program will be supported and serviced by mountain infrastructure in the Bear Den area of Whiteface, out of which mountain biking activities will be based. Approximately half of the proposed trails will be located on existing cleared trails in the Whiteface Mountain Intensive Use Area. The proposed system includes approximately 19 miles of single track mountain biking trails with approximately 6 miles of easiest (green) trails, 10 miles of more difficult (blue) trails, and 3 miles of most difficult (black) trails.

Whiteface Mountain UMP 2022 Amendments at 2-4; (emphasis added).

Nowhere in the UMP or its amendments is there authorization for the construction of a mountain biking racecourse, let alone one containing numerous constructed features such as jumps, berms, banked turns, rollers, rock gardens, and wall rides. These features significantly depart from the single-track trail concept described in the UMP and introduce an intensity of use and terrain modification that is incompatible with the Master Plan's vision for Intensive Use Areas.

Further, Exhibit 3, Figure 3 of the UMP—depicting the newly authorized mountain bike trail system—does not show or contemplate the location or extent of the racecourse that ORDA has constructed. This is not a case of minor deviation from approved plans; it is a wholesale departure from the location and scope of authorized development.

ORDA's Corrective Action Plan Must be Subject to Public Review and Comment

While corrective action plans developed in response to DEC enforcement actions are not typically subject to public review, this case warrants an exception. The situation at Whiteface Mountain involves unauthorized construction by a State authority on constitutionally protected, publicly owned Forest Preserve lands—a significant violation that implicates the core values enshrined in Article 14 of the New York State Constitution.

Given the magnitude of the violations and the profound public interest in the preservation of the Forest Preserve, the corrective action plan required of ORDA must be released for public review and comment. Public involvement is essential to ensure transparency, accountability, and the integrity of any proposed remediation. Public involvement is also necessary to restore the public's trust in the use of DEC's Work Plan process.

The New York Court of Appeals has consistently affirmed the singular importance of the Forest Preserve and the constitutional protections that safeguard it. *See, e.g., Protect the Adirondacks*, 37 NY3d at 79 (“The Forest Preserve is a publicly owned wilderness of incomparable beauty”); *Matter of Adirondack Wild: Friends of the Forest Preserve v. NYS Adirondack Park Agency*, 34 NY3d 184, 187 (2019) (“The Adirondack Park is a world-renowned treasure in our own backyard . . . Our state's constitutional commitment to conservation for more than a century has ensured the continued protection of the region's iconic landscapes while providing extraordinary outdoor recreational experiences to citizens of this state and tourists from around the world”). These judicial statements reinforce the principle that the Forest Preserve is not merely land held in public trust—it is a constitutionally protected, irreplaceable resource, and its stewardship must be held to the highest standards.

The public has a direct and compelling interest in ensuring that ORDA is held fully accountable for its actions, and that any remediation plan is comprehensive, lawful, and consistent with the Forever Wild protections of Article 14. Releasing the corrective action plan for public scrutiny will allow citizens, stakeholders, and advocates to ensure that the damage done is meaningfully and lawfully addressed.

Conclusion

PROTECT respectfully urges DEC to take stronger and more comprehensive enforcement action in response to ORDA's unauthorized construction activities at Whiteface Mountain. Specifically, we request that DEC:

1. Explicitly recognize that ORDA's actions constitute violations of Article 14 of the New York State Constitution because the construction of the racecourse is neither authorized by the Whiteface Mountain constitutional amendment nor permissible under established precedent limiting terrain alteration and construction on Forest Preserve lands;
2. Acknowledge that the project violates the Adirondack Park State Land Master Plan, because it is not included in the approved Unit Management Plan for the Whiteface Mountain Intensive Use Area; and
3. Commit to releasing the required corrective action plan for public review and comment, ensuring transparency and accountability in the remediation of public Forest Preserve lands.

The public has a compelling and constitutionally protected interest in the stewardship of the Adirondack Forest Preserve. When a State entity engages in unauthorized development on these lands, it is critical that enforcement actions not only seek restoration, but also reaffirm that the rule of law applies to all and that the enduring protections of the “Forever Wild” clause will be upheld. Public involvement in the review of ORDA's corrective measures is essential to maintaining trust

in the State's environmental governance and to upholding the constitutional values that safeguard the Forest Preserve.

We appreciate the Department's initial steps in this enforcement matter and urge DEC to take the necessary additional actions to ensure full accountability, meaningful remediation, and lasting protection of this irreplaceable public resource.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Amato', with a stylized, cursive script.

Christopher Amato
Conservation Director and Counsel

CC: Amanda Lefton, DEC Commissioner
Anthony Luisi, DEC Deputy Commissioner and General Counsel
Aaron Love, DEC Regional Counsel
Ashley Walden, President/Chief Executive Officer, ORDA