

29 March 2019

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**RE:** Tree Removal for Facility Upgrades at the Olympic Sports Center at Mount Van Hoevenberg

Dear Peter and Cort,

Thank you for the opportunity to comment on the Tree Removal for Facility Upgrades at the Olympic Sports Center at Mount Van Hoevenberg.

**ADK** (Adirondack Mountain Club) is dedicated to protecting and advocating for New York State's wild lands and waters while also teaching people how to enjoy natural places responsibly. Since 1922, the organization has offered people opportunities to stay and play in as well as protect, discover, and explore the outdoors. Today, ADK has 30,000 members in 27 chapters statewide and is served by a professional, year-round staff. The organization is recognized as a vital voice in the commitment to environmental stewardship and ethical outdoor recreation in New York State. ADK members hike, camp, snowshoe, cross-country ski, paddle, and cycle the lands and waters of the Adirondack Park and other state lands. Our members are also monitors and maintainers of trails and recreation infrastructure as well as watchdogs of public lands and watersheds to monitor for invasive species or irresponsible and destructive motorized trespass.

We respectfully request that you consider the following concerns and comments.

On March 9, 2019 Mike Pratt of the Olympic Regional Development Authority (ORDA) delivered a presentation to the Forest Preserve Advisory Committee (FPAC) at the Department of Environmental Conservation (DEC) on Broadway in Albany. We were distressed to hear for the first time that ORDA plans to cut thousands of trees on Forest Preserve land.

Although tree cutting was mentioned in the Mount Van Hoevenberg Unit Management Plan (MVHUMP), it was not presented that the tree cutting would occur on Forest Preserve Land.<sup>1</sup> In fact, the MVHUMP stated very clearly “None of the proposed management actions will require the cutting of any trees on Forest Preserve lands.”<sup>2</sup> The MVHUMP even says in a discussion about the Biathlon Stadium Configuration, “...**construction of a new biathlon range in this location would require the clearing of trees on Forest Preserve lands and therefore is not viable.**”<sup>3</sup>

There is an oblique reference in the MVHUMP to tree cutting in the context of a discussion of Regulatory Issues and The New York State Constitution Article XIV, “The proposed tree cutting and vegetative removal, while significant in number, appears reasonable in relation to the overall size of the terrain encompassing the proposed actions, and the substantial public benefit to be derived from the improved outdoor recreational amenities to be provided.”<sup>4</sup>

The discussion in the MVHUMP under Regulatory Issues argues that the McDonald case establishes that cutting trees on the Forest Preserve is not an absolute prohibition, but that considerable use can be made of the Forest Preserve by the public if the use is subject to reasonable regulations.<sup>5</sup> The MVHUMP argues further, using the McDonald case, that “the amount of trees that can constitutionally be cut and removed is determined on a case-by case basis.”<sup>6</sup>

The MVHUMP uses the Balsam Lake case to present the proposal to cut 3,528 trees on five acres at the Mount Van Hoevenberg Complex as extremely reasonable since the cutting would occur on Forest Preserve classified as Intensive Use. The MVHUMP states, “The reasonableness of these actions is also manifested in Mount Van Hoevenberg’s classification as an “intensive use area.”<sup>7</sup> The tree cutting in the Balsam Lake case occurred on Forest Preserve classified as Wild Forest, and the MVHUMP states “Wild forest areas are considerably more restricted in their contemplated use than are intensive use areas such as Mt. Van Hoevenberg.”<sup>8</sup> However, the MVHUMP errs in this line of reasoning since the New York State Constitution does not distinguish between different land classifications, but treats all Forest Preserve land units equally where the cutting of trees is contemplated.

Although the ENB notice says that “Tree Cutting will be in compliance with Lands and Forests Policy# 91-2 on Cutting, Removal or Destruction of Trees and Other Vegetation on Forest Preserve Lands,” none of the required documentation and decision-making outlined in this policy has been presented to the public.<sup>9</sup>


The proposed tree-cutting action is relying on a MOU between DEC and ORDA<sup>10</sup> in taking this course of action despite the MVHUMP clearly stating that the action would not occur. In this case, the MVHUMP was not silent about this action, but stated that it would not, and could not occur. Therefore, the proposed action contradicts the 2018 MVHUMP. DEC and ORDA cannot move forward with an action that the MVHUMP clearly states is not viable and will not happen. Even if the MVHUMP were amended to unambiguously describe for the public the intention to cut thousands of trees on the Forest Preserve, the action would still not be viable because the degree of cutting planned is unconstitutional. The cutting of 3,528 trees on five acres of Forest Preserve exceeds the decision in Association for the Protection of the Adirondacks v. MacDonald case which found in favor of the Association for the Protection of the Adirondacks who challenged the cutting of 2,500 trees on 4.5 acres.<sup>11</sup>

The action proposed by DEC and ORDA in the February 27 2019 Environmental Notice Bulletin is unconstitutional and would necessitate litigation by the Adirondack Mountain Club and other allied conservation organizations. We strongly urge DEC and ORDA to abort the current plan to cut 3,528 trees on lands of the Forest Preserve, and redesign the project.

We reserve the right to amend these comments after the site visit and meeting with Mike Pratt and other ORDA staff planned for Friday April 5, 2019.

Thank you for considering the above comments.

Sincerely,



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<sup>1</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf)

<sup>2</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section V-1)

<sup>3</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section VI-2)

<sup>4</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section III-6)

<sup>5</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section III-4)

<sup>6</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section III-3)

<sup>7</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section III-6)

<sup>8</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (Section III-6)

<sup>9</sup> [https://apa.ny.gov/State\\_Land/Appendix\\_A.pdf](https://apa.ny.gov/State_Land/Appendix_A.pdf)

<sup>10</sup> [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/mvh2018ump.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/mvh2018ump.pdf) (page 178 of the UMP, page 8 of the MOU)

<sup>11</sup> <https://casetext.com/case/association-protection-adirondacks-v-macdonald>