

The Catskill 3500 Club joins the Adirondack Mountain Club in questioning plans for expansion of the state-owned Belleayre Mountain Ski Center in relation to the New York State Constitution, Article XIV, Section 1:

1. Land to be acquired and altered is located within the Catskill Park boundary line, and we question whether DEC can legally acquire these lands for the purposes of expanding the Belleayre Mountain Ski Center without a constitutional amendment to Article XIV, Section 1 of the New York State Constitution. No new ski trails and facilities can be constructed on the proposed Highmount and Big Indian additions to the Catskill Forest Preserve without an authorizing amendment to Article XIV, Section 1, approved by the voters specifically authorizing those improvements on these new parcels.
2. We question whether proposed tree cutting, rock removal, and slope alterations of the lands of the Catskill Forest Preserve at the Belleayre Mountain Ski Center can be legally undertaken for the purpose of providing an exclusive or predominant access and/or benefit to privately owned ski-in-ski-out properties under Article XIV, Section 1. We believe that an opinion from the Attorney General must be sought on this constitutional question.
3. BMSC's constitutionally authorized build-out of 25 miles of ski trails [only] will be exceeded when proposed support facilities for 10 miles of new trails are constructed. We question whether these buildings and supporting infrastructure can be legally accommodated within the constitutional limits currently set forth in Article XIV, Section 1. In addition, the cumulative impacts of the construction of these new trails and the tree clearing for ski trails, ski lifts and buildings will result in a very substantial vegetation removal in this Forest Preserve land.

Please read **“Expansion of Belleayre Mountain Ski Center,”** below, for a full explanation by the Adirondack Mountain Club's legal team. In its scoping comments, ADK outlined many potential adverse environmental impacts of the Belleayre Mountain Modified Project and Unit Management Plan on the Forest Preserve and the natural resources of the Catskill Park. ADK endorses and supports the inclusion in the SEQRA review each issue identified and outlined in the Draft Scope for the Belleayre Mountain Modified Project and Unit Management Plan as if fully set forth herein. Very critical issues have been left out of the document or are in need of further clarification.

EXPANSION OF BELLEAYRE MOUNTAIN SKI CENTER

According to the Draft Scope, the Department of Environmental Conservation (DEC) proposes to acquire portions of the former Highmount Ski Center totaling approximately 78 acres to accommodate a westward expansion of Belleayre Mountain Ski Center. Given that the land to be acquired is located within the Catskill Park boundary line, we question whether DEC can legally acquire these lands for the purposes of expanding the Belleayre Ski Center without a constitutional amendment to Article XIV, Section 1 of the state constitution.

We assert that DEC must request an official Attorney General Opinion to answer the question of whether the 1947 and 1986 constitutional amendments authorizing the creation and subsequent expansion of the Belleayre Mountain Ski Center apply only to the lands that were part of the Intensive Use area at the time that each of the respective constitutional amendments were approved by the voters. ADK asserts that the 1947 and 1986 Belleayre constitutional amendments could apply only to lands actually in state ownership and subject to Article XIV, section 1 at the time of each respective voter approval.

Since the proposed Big Indian Plateau and Highmount Forest Preserve acquisitions were not part of the Catskill Forest Preserve in either 1947 or 1986, it is ADK's legal position that those respective amendments to Article XIV, section 1, cannot support the cutting of trees and alteration of the “wild forest character” of these properties in order to expand the Belleayre Ski Center. The voters in 1947 and 1986 could not have authorized the cutting of trees and

alteration of the wild forest that would not be added to the Catskill Forest Preserve until decades later. This scoping process must analyze and resolve these state constitutional law questions.

Further, ADK understands that approximately 10 miles of new trails are proposed as part of the BMSC expansion. ADK believes that this trail expansion alone would expand the ski center to its full, constitutionally authorized build-out of 25 miles of ski trails. It appears that DEC has thus far not included the footprint of the seven proposed ski lifts, the new snow-making reservoir, new Tomahawk Lift Base Lodge, expanded Sunset Lodge, new Visitor Center, new Amphitheatre, new sand/salt storage facility, expanded snowmaking infrastructure and other appurtenances in calculating the current Article XIV, section 1 limits on tree cutting and wild forest character alteration.

ADK asserts that DEC, as part of this issues scoping process, must calculate the square footage and total cleared area associated with the new ski trails, lifts, and associated buildings proposed for construction on existing state lands. DEC must then determine whether or not these proposed facilities can be legally accommodated within the constitutional limits currently set forth in Article XIV, section 1 of the NYS constitution. ADK believes that the cleared area of the existing and proposed ski trails, buildings, reservoirs and appurtenances must be taken into account in calculating the permissible area of tree cutting and wild forest alteration authorized by the citizens of New York in 1947 and 1986.

ADK asserts that no new ski trails and facilities can be constructed on the proposed Highmount and Big Indian additions to the Catskill Forest Preserve without an authorizing amendment to Article XIV, section 1, approved by the voters specifically authorizing those improvements on these new parcels.

The decision in the landmark case Balsam Lake Angler's Club v. NYSDEC, 199 A.D.2d 852, (Third Dept. 1993) allows only those public facilities and public uses that are compatible with the character and preservation of wild forest lands and which do not involve any material cutting of trees. Moreover, the decision prohibits: 1) any public use or activity requiring a material degree of tree cutting and/or 2) activities that are incompatible with the wild forest character, even though they are recreational and do not require material amount of tree cutting and 3) any private use of the Forest Preserve.

ADK believes that DEC's apparent decision not to count the cleared dimensions for the proposed additional ski lifts, new buildings and other appurtenances against the 25-mile constitutional limit is contrary to the limitations set forth in the Balsam Lake decision and are contrary to the intent of Article XIV Section 1 of the NYS Constitution. The ski lifts and any additional buildings and appurtenances require tree removal and must be counted against the dimensional limitations of the 1947 and 1986 amendments to Article XIV, section.

ADK is very concerned about the cumulative impacts of the construction of these new trails as well as the impacts of additional structures on these Forest Preserve lands. The amount of tree clearing for both the ski trails, ski lifts and buildings will result in a very substantial amount of vegetation removal. It is important for the DEC SEQRA scoping process to set forth the nature and degree of alteration of the wild forest character and number of trees to be removed that are in excess of 6 inches diameter at breast height (dbh).

ADK is also concerned about the proposal to create ski-in, ski-out access from the resort to BMSC. The Agreement in Principle (Agreement) states that the Highmount Spa design proposes "a ski lift and ski trails to create a connection to the Belleayre Mountain Ski Center." (Agreement in Principle, 4) The Agreement also states that DEC and Crossroads Ventures will execute a memorandum of understanding (MOU) to: "memorialize collaboration in their respective improvements and future operations to maximize efficiencies and improve the visitor experience." (Agreement in Principle, 14) Without public scrutiny of the MOU it is impossible to understand exactly how the proposed connections between the resort and BMSC are to be configured. We are especially concerned about the prospect of DEC constructing trails and lifts on Forest Preserve lands for the exclusive or predominant benefit of a private corporation.

ADK maintains that this scoping process must address the Article XIV issue of whether or not the proposed tree cutting, rock removal, and slope alterations of the lands of the Catskill Forest Preserve at the BMSC can be legally undertaken for the purpose of providing an exclusive or predominant access and/or benefit to privately owned ski-

in-ski-out properties under Article XIV, Section 1 of the NYS Constitution. We believe that an opinion from the Attorney General must be sought on this constitutional question as part of this scoping process.

Additionally, DEC must evaluate in the scoping process the impacts of the proposed Belleayre Mountain Ski Center expansion of the east side of BMSC on the 1200 acres to be added to the Forest Preserve on the Big Indian Plateau. We understand that the proposed Belleayre East lift would be located at or near the eastern border of the BMSC and adjacent to the newly acquired lands that should be classified as Wilderness under the Catskill Park State Land Master Plan.

OTHER ISSUES

Visual Resources and Aesthetics

The SDEIS must address all visual impacts of the modified project's structures, cleared areas and their lighting. Given that the modified project proposal involves two substantially expanded resort complexes on the west side of Belleayre Mountain and a substantial expansion of the BMSC, the SDEIS must include a revised assessment of the visual impacts of the modified project proposal. We understand from reviewing the Agreement in Principle that nineteen high-level (above 3,000 feet) single-family residences are planned for the Highmount Resort. We are particularly concerned that the scoping process identify and evaluate the visual impacts of these units and any and all other structures contemplated in the Agreement in Principle on users of recreational trails and the many mountain summits and scenic viewpoints of the Catskill Forest Preserve.

The SDEIS should include a cumulative evaluation of the visual impact of the modified project's buildings, exterior lighting, roads, additional ski trails, parking areas and other facilities. The SDEIS should outline from which areas of the Catskill Forest Preserve, and other public lands such as state forests, the modified project would be visible from. It is now very likely that the cleared areas, buildings and appurtenances of the modified BMSC/Belleayre Resort Highmount Spa projects would be visible from many of the peaks and scenic viewpoints on hiking trails in the surrounding Catskill Forest Preserve.

Further, the SDEIS must additionally include a detailed visual impact analysis for DEC's proposed expansion of the Belleayre Mountain Ski Center. The SDEIS must also address the issue of nighttime light pollution from both the modified resort proposal and the proposed expansion of the Belleayre Mountain Ski Center.

The visual impact assessments should analyze whether the modified project is visible from any area of statewide significance designated in the Inventory of Aesthetic Resources section of the New York State Department of Environmental Conservation document titled *Assessing and Mitigating Visual Impacts*, dated July 31, 2000, which includes the Catskill Park as a whole as an aesthetic resource in itself.

Noise Impacts

Operational noise from the integrated project proposal resort must be evaluated as part of the SEQRA review given the project's close proximity to the Catskill Forest Preserve's wild forest and wilderness units.

Water Impacts

The SDEIS must also carefully evaluate the cumulative impacts of the modified project in conjunction with the impacts of the planned expansion of the BMSC, especially the impact of increased snowmaking on the amount of water available for local stream flow and aquatic habitats. The SDEIS should also evaluate the impact of the proposed lodging units on underground and surface water supplies.

Alternatives

The scoping process and the SDEIS must analyze, identify and discuss lesser build alternatives for both the expansion of the Belleayre Mountain Ski Center as well as the private Belleayre Resort Wildacres and Highmount Spa proposal.

Lead Agency Status

We strongly believe that DEC should no longer be the lead agency on this project because of the integration of the modified resort proposal and the associated expansion of BMSC. ADK believes there is a legal conflict of interest given DEC's very substantial interest in the integrated ski center expansion/private resort complex proposal.

De Novo SEQRA Adjudicatory Process

Overall, the proposals for the expansion of the Belleayre Mountain Ski Center together with the very substantial increase in the Belleayre Resort development on the west side of the mountain are cumulatively so extensive that a completely new SEQRA process must be undertaken.

ADK asks that the Interim Decision of DEC Deputy Commissioner Carl Johnson (issued 12/29/2006) that limited the issues to be adjudicated from 12 issues to six be rescinded and vacated in all respects and that all twelve issues initially identified, water supply and groundwater and surface water impacts, aquatic habitat impacts, stormwater impacts, impacts to the Catskill Forest Preserve, impacts to wildlife, noise impacts, traffic impacts, visual impacts, impacts to community character, secondary and induced growth impacts, cumulative impacts, and alternatives be analyzed and evaluated de novo and a full SEQRA adjudicatory process on all twelve issues be commenced ab initio.

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