March 23, 2020

Jay Strand
NEPA Coordinator / Forest Planner
Manchester Ranger District
Green Mountain National Forest
99 Ranger Road
Rochester, Vermont 05767

Dear Mr. Strand:

Please accept the following comments from the Vermont Natural Resources Council and Audubon Vermont on the Environmental Assessment (EA) for the Somerset Integrated Resource Project (Somerset IRP) on the Green Mountain National Forest (GMNF), Manchester Ranger District.

As we mentioned in our scoping comments, we acknowledge the Forest Service's desire to achieve resource goals, objectives, and future conditions as provided by the direction in the 2006 Green Mountain National Forest Land and Resource Management Plan—or the Forest Plan, which we actively engaged in when it was being developed. We commend the Forest Service for its plans to create pollinator habitat; improve aquatic habitat quality using wood placement in streams, a strategy known to be beneficial for brook trout; improve aquatic organism passage, reduce erosion and place barriers on up to 11.7 miles of system roads; improve water quality at Grout Pond by moving campsites, revegetation, and improving drainage; decommission approximately 5.5 miles of recreational trails to reduce trail redundancy, close user created or unmaintained trails, provide new recreational opportunities in a sustainable manner, and limit trail impacts to wetland areas.

We strongly believe a bedrock principle of public land management is to allow the public to comment on proposed management decisions and environmental analyses of proposed projects. While not anticipated during the scoping period, the Forest Service made the right decision to allow the public to comment on the Environmental Assessment. We hope the following comments are helpful and will inform the development of the Somerset IRP.

Range of Alternatives:

In our scoping comments, we encouraged the Forest Service to examine a range of alternatives in the EA based on the premise that providing only one proposed action and a no action alternative was inadequate for an integrated project of this scale with such a broad range of proposed management activities. We specifically recommended that an analysis of alternatives should include various levels of temporary road construction and silvicultural treatment approaches, and strategies to reduce or avoid impacts to American marten, northern long-eared bat or sensitive wildlife and plant species. In addition, we also stated in our scoping comments that the amount of proposed road building may impact water quality, encourage the spread of non-native species, encourage illegal OHV activity, and lead to other impacts. We encouraged the Forest Service to analyze these impacts in the EA to develop a range of alternatives that considered lower degrees of road development to implement desired actions.

We are disappointed that the Forest Service dismissed this request and determined that there "were no issues identified to warrant consideration of alternatives," especially in light of the long list of relevant issues identified by the public on pages 10-11 of the EA.[1]

Section 102(2)(E) of NEPA requires that an agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."[2] An agency is required to consider reasonable alternatives to the proposed action and to evaluate their impacts upon the environment as well. Reasonable alternatives can include those beyond the authority of the individual agency as well as those which may only partially complete the proposal's goal.[3] Courts have historically insisted that agencies "consider such alternatives to the proposed action as may partially or completely meet the proposal's goal."[4]

According to the Forest Service, "the content analysis of scoping comments received for the Somerset project scoping notice did not identify any unresolved conflicts specific to the proposed action."[5] However, the Forest Service, in response to our comments to consider a range of alternatives with lower degrees of road development stated:

> There are 31.4 miles of temporary roads proposed for construction and use in the Somerset project proposed action. Several issues of resource concern such as water and soil resource effects from proposed road construction were considered when discussing possible action alternatives to include for analysis in the Somerset Project EA. Although the issues were identified, the comments of origin did not provide specific reasons or locations where the concerns could be directed other than within the general project area. As a result of this lack of specificity, the responsible official

[1] Somerset Integrated Resources Project – Environmental Assessment (EA), at 10-11.
[2] 42 U.S.C. § 4332(2)(E) (2018).
[3] *Natural Resources Defense Council v. Morton*, F.2d 827 (D.C. Cir. 1972).
[4] *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 93 (2nd Cir. 1975).
[5] Somerset IRP, Content Analysis and Response to Comments, at 23.

> determined any development of an alternative with a reduced amount of temporary roads would be too arbitrary. With no description of the specific location of concern or no identification of which roads have the most potential for resource effects, it would not be possible to meaningfully develop an alternative to address the issues.[6]

In this response, the Forest Service acknowledged that are resource issues of concern such as water and soil resource effects from proposed road construction, but then blames a lack of specificity in our comments related to the exact location of concern to explain why no alternatives would be developed. This response indicates a misunderstanding of the role of federal agencies under NEPA. The public is entitled to rely on the Forest Service in the EA to disclose the locations that may be of concern. Expecting the public to clarify this level of specificity before an EA is completed puts an undue burden on the public. In essence, the Forest Service is saying the public needs to conduct our own assessment of location impacts before the EA is complete in order to persuade the Forest Service that road building impacts are valid enough to have an adequate range of alternatives considered.

In the EA, the Forest Service discloses that some sections of temporary roads will be in locations that do not follow existing non-system roads or trails. Some sections of these roads will be on soils with a severe erosion hazard rating, wet soils where risks of slope failure and gully erosion are substantially increased, and on slopes of 30 to 45 percent where slope failure is a concern,[7] which could potentially violate several provisions of the Forest Plan.[8] In addition, the EA discloses that once constructed, "temporary roads can have long-tem adverse effects to soil quality, because it is often difficult to revert soils in the road prisms back to functioning pre-construction conditions over the course of 20 years without substantial resources."[9] In the EA, the Forest Service states that the standard temporary road closure required by contract provisions "would minimize levels of soil and wetland resource degradation associated with *most* temporary roads," and then acknowledges that some portion of temporary roads "may continue to degrade soil quality due to poor conditions preexisting their use as temporary roads" and additional "effects from vegetation removal and compaction from timber hauling activities would further compromise resources."[10]

These disclosed effects underscore the potential impacts of some of the proposed road building activities. In addition, the Forest Service recognizes that new temporary roads can serve as

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[6] *Id*.
[7] EA at 71
[8] *See* GMNF Land and Resource Management Plan, Soil, Water, and Riparian Area Protection and Restoration Standard S-3: Heavy construction and logging equipment operations shall only occur when soil conditions are such that compaction, rutting, and erosion will be minimal. Equipment operations shall be carefully monitored to assure that erosion and sedimentation are minimized. Prompt corrective measures shall be implemented if erosion or sedimentation problems arise; Road Operation and Maintenance Guideline G-1: New road grades should generally be between 2 and 20 percent. If grades greater than 10 percent are deemed necessary, they should only be considered if other alternatives are too expensive and mitigating measures, such as additional drainage control, are possible.
[9] *Id*. at 72.
[10] *Id.*

pathways of dispersal for non-native plants.[11] The Forest Service states, in the EA, that if "mitigation measures are followed with the risk rating and determination of action, the chance of reaching the threshold of non-native invasive plants having an unacceptable adverse effect on resources can be reduced."[12] This statement, however, means that there is a non-trivial chance there will be an unacceptable adverse effect on resources. Based on the disclosed effects in the EA, the Forest Service should have developed a meaningful alternative to the proposed action by eliminating problematic sections of road building, including proposed areas where there is high risk of unacceptable soil degradation or the spread of invasive species. At a minimum, such an alternative could have reduced problematic temporary roads not following existing non-system roads or trails, and the Forest Service still would have accomplished many of the stated goals of the project. Based on the specific information disclosed in the EA, we believe it was arbitrary for the responsible official to determine that it "would be too arbitrary" to develop an alternative with reduced road construction.

Cumulative Effects:

In our scoping comments, we stated our interest in understanding the cumulative effects of proposed road and vegetation management with the adjacent Early Successional Habitat Creation Project (ESHCP). It is our understanding that the 7-10 year timeline of the Somerset IRP—which includes up to 9,328 acres of timber harvest and the construction of up to 31.4 miles of temporary roads—will overlap with the 10-15 year timeline of the ESHCP—which includes up to 15,000 acres of early successional management and the construction of up to 25 miles of new roads, and 9 miles of reconstructed roads on the Manchester District. Portions of these projects are located in the same town, such as Glastenbury and Sunderland, and the combined effects of the two projects may negatively impacts soils, water quality, and species such as American marten, black bear, or other species that are affected by fragmenting activity and changes in landscape level habitat.

We are concerned about the cumulative effects of the two projects because the 2006 Forest Plan EIS stated that the Forest Service expected relatively little new road construction on the entire GMNF.[13] Between the ESHCP and the Somerset IRP there are over 24,000 acres of proposed timber harvest with the construction of up to 17 miles of new permanent roads, up to 39.4 miles of temporary roads, and the reconstruction of up to 26.7 miles of road over the next 15 years. This can hardly be considered a minor increase in road development and there is the potential for compounding cumulative environmental impacts. The Forest Service must adequately examine the cumulative effects of the proposed action along with other proposed projects in the southern portion of the GMNF including the ESHCP, paying particular attention to net road development. This analysis should have been disclosed to the public with the opportunity to comment in EA.[14]

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[11] *Id*. at 48.
[12] *Id*. at 49.
[13] *See* U.S. Forest Service, Green Mountain National Forest, Final Environmental Impact Statement for the Land and Resource Management Plan, at 3-351 (2006).
[14] *See Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895-897 (9th Cir. 2002) (The Forest Service has a duty to consider the cumulative impacts of timber sales that are proposed for the same national forest and "will effect separate but additive changes to the density of roads within the geographic area.") *citing* 40 C.F.R. §§ 1508.25, 1508.7 (2001); *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078-79 (9th Cir. 2002) (requiring the BLM to consider all "reasonably foreseeable future actions" with an impact on the resource

In the EA, rather than disclosing the cumulative effects of both the Somerset IRP and the ESHCP, the Forest Service limits review of cumulative effects to just the Somerset project area. The EA limits cumulative effects analysis to the project area for impacts to American marten, non-native invasive plants, aquatic resources, soil and wetlands, recreation, and heritage sites. In contrast, for sensitive plant species, the cumulative effects area was determined to be the entire GMNF[15]. The EA states that "the only other present or foreseeable future project planned for locations where these species are known to occur is the Early Successional Habitat Creation Project scattered throughout the Manchester District for which design criteria are in place to minimize impact to these species."[16]

The Forest Service references the Forest Service Manual as the basis for expanding the spatial extent of the cumulative effects area for sensitive plant species because the Forest Service "is required to prevent the loss of the viability for sensitive plant species in this context," but the Forest Service Manual requires the Forest Service to "maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands."[17] It was arbitrary for the Forest Service to expand the cumulative effects analysis area for sensitive plant species to the ESHCP area, but then limit it to just the project area for other resources, including species like American marten, an endangered species in Vermont, or black bear, which can be negatively affected by roads.[18]

In addition, in many of the cumulative effects sections, the EA states that small amounts of vegetation management have occurred on state and private land in the project area. For example, the EA states that the cumulative effect on forest habitat composition and age class from projects on private land would be negligible to American Marten habitat because the amount of activity is so low.[19] While we understand that it may be difficult to spatially analyze the degree to which private land management is impacting forest habitat composition and age class, our understanding is close to half to the available privately owned forestland in the state is enrolled in the Current Use Program and is under some kind of active forest management. To consider cumulative effects, "some quantified or detailed information is required" and general statements about "possible effects" do not constitute "a hard look absent a justification regarding why more definitive information could not be provided."[20] The Forest Service should coordinate with the Department of Forests, Parks, and Recreation to provide estimates on active management in the

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being managed, including future timber sales proposed within the same district, as part of a cumulative impacts analysis within an EA); *City of Tenakee Springs v. Clough,* 915 F.2d 1308, 1313 (9th Cir.1990) (granting a preliminary injunction halting logging because the Forest Service failed to analyze the cumulative impacts of a proposed timber sale together with four other proposed sales within the Tongass National Forest).

[15] EA, at 59.

[16] *Id*. at 59-60.

[17] Forest Service Manual, Section 2670.22.

[18] *See e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d at 1078 (In the absence of an EIS analyzing the impact of reasonably foreseeable future timber sales within a District, it was arbitrary and capricious to not include an analysis of the cumulative impacts of such sales in that District); *Neighbors of Cuddy Mountain v. Forest Service*, 137 F.3d 137, 1380 (9th Cir. 1998) (Because three proposed sales were reasonably foreseeable, the Forest Service was obligated to assess the cumulative impact of all sales the availability of old growth habitat for pileated woodpecker).

[19] EA, at 46.

[20] *Neighbors of Cuddy Mountain v. Forest Service*, 1379-1380

project area from state lands and private lands that are enrolled in the Current Use Program to inform the cumulative effects analysis with detailed information.

In conclusion, we call on the Forest Service to conduct an appropriate cumulative effects analysis by providing more quantified information and expanding the area to include the ESHCP area for identified resource issues of concern in the EA.

Forest Plan Compliance:

As we stated in our scoping comments, we believe the level of temporary road building proposed in the project does not comply with the 2006 Forest Plan, and thus violates the National Forest Management Act.

The 2006 Forest Plan EIS disclosed the following about the cumulative effects of road development and construction:

> **Cumulative Effects**: Analysis of cumulative effects looks at past, present, and reasonably foreseeable future actions. Following direction in the 1987 Forest Plan, there has been relatively little new road construction in the 18 years of Plan implementation to date. The 1987 Plan emphasizes reconstruction and maintenance of the existing transportation system, and restoring roads with environmental resource problems. Over the past 18 years, 19.9 miles of road have been restored to meet their approved road management objective, 10.1 miles have been reconstructed, and 6.6 miles have been constructed; these figures do not include parking areas (USDA 2004). No road construction or reconstruction has occurred since 1997 except to provide a small number of parking spaces where needed.
>
> *No temporary roads* have been constructed the past 10 years. Construction of logging roads for timber harvest by loggers has also been minimal. These roads are not generally open to the public and are rehabilitated after use. Miles of road maintenance have also been well below predicted levels because of reduced budgets.
>
> Basing predictions for new road development in the foreseeable future on what has occurred over the past Plan period follows the logic that construction of new permanent or *temporary roads* is not expected to differ much from that of the recent past.
> …
> Based on the relatively minor potential increase in new road development, *temporary new roads*, and road maintenance, through current projects or in the foreseeable future, there would be no measurable cumulative impact in regards to the issue of planning for and managing roads and the transportation system in the short and long-term.[21]

[21] U.S. Forest Service, Green Mountain National Forest, Final Environmental Impact Statement for the Land and Resource Management Plan, at Page 3-351 (2006) (Emphasis added).

The proposed project would increase construction of temporary roads at a level that was not contemplated, analyzed or disclosed in the Forest Plan EIS. The Forest Service offers the following response to our stated concern that amount of proposed road construction is not consistent with the Forest Plan EIS:

> Response: The Somerset project includes the construction and use of 31.4 miles of temporary roads to access timber harvest treatment areas (Somerset Project EA, Chapter 2, Section 2.2.6, Table 2-8, page 28). A temporary road is defined as a road needed only for short-term use, such as by timber purchasers for access to a single timber sale (Forest Plan, Chapter 6, page 153). No new permanent system roads are proposed. The Forest Plan allows for timber harvest on suitable forest lands to achieve desired forest habitat objectives (Forest Plan, Chapter 2, page 11). Appendix D of the Forest Plan provides the estimated proposed and probable management practices expected during the first two decades of Forest Plan implementation (2006 to 2026). Although up to five miles of permanent system local roads are indicated for the first decade, there are no temporary roads listed as an activity.[22]

Under the Forest Service's logic, even though the Forest Plan EIS analyzed the cumulative effects of road building under the context of there being only a minor potential increase in new road development, temporary new roads, and road maintenance, since Appendix D does not list temporary roads as a listed activity, the proposed Somerset IRP must therefore be in compliance with the Forest Plan. This assertion is unsupported and illogical. Under the reasoning that the Forest Service offers, there would be virtually no constraints on the level of temporary road building.

Appendix D of the Forest Plan does describe the proposed amount of roads that will be reconstructed at 5-10 miles, but the EA for the Somerset IRP states there will be 17.7 miles of OML 1 roads that will be reconstructed or maintained.[23] In addition, the Forest Service acknowledges Appendix D of the Forest Plan proposes 5 miles of permanent new local road construction in the first decade, but the Service's plan to build 17 miles of permanent new roads as part of the ESHC Project demonstrates that, between the two projects combined, the Forest Service is moving well beyond the boundaries of what has been analyzed and approved in the 2006 Forest Plan.

Management activities "undertaken by the Forest Service must comply with the Forest Plan, which in turn must comply with NFMA."[24] This includes adhering to Forest Plan standards and guidelines related to minimizing erosion and sedimentation.[25] In addition, it is not permissible to

[22] Content Analysis and Response to Comments, at Page 22.
[23] EA, at Page 31.
[24] *WildEarth Guardians v. Jeffries*, 370 F. Supp. 3d 1208. 1232 (D. Oregon 2019) *citing Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 932 (9th Cir. 2010).
[25] *See* footnote 8.

increase road density, especially beyond what was analyzed in the Forest Plan, in a piecemeal fashion without evaluating the cumulative environmental impacts.[26] The reason we raise this issue is not to preclude management from occurring on the GMNF, but rather to flag our concern that the amount of road construction and reconstruction that is currently being proposed on the Manchester District is not consistent with the Forest Plan or Appendix D. If the Forest Service wants to significantly increase the level of temporary and permanent road building on the GMNF, then a plan amendment should be executed so the public can understand and comment on the cumulative effects of these decisions.

Roadless Areas:

We support the Forest Service's decision not to plan any road construction or harvest activities in Inventoried Roadless Areas, and to maintain the current roadless character of the Glastonbury Inventoried Roadless Area.

Age Class Distribution and Harvest Treatments:

Table 3-3 in the EA suggests that the implementation of Alternative B will increase the regenerating age class on suitable lands in 2030 to 11%. This target appears to come at the expense of old forest, which will be reduced by 10% in the project area. The percentage of mature forest, however, will stay the same. According to Table 1-4, the HMU Objective with the Somerset project area is to move regenerating forests within a range of 1,172 - 3,298 acres. According to Table 3-3, under Alternative B, 3,273 acres will be met on suitable lands in the project area by 2030. The acceptable range provided in the EA means that there is room for an alternative that decreases the amount of proposed road building, and harvest treatments of old forests, while still meeting goals for early successional habitat.

Because of the values that old forests provide, including carbon storage, the regenerating age class target does not need to come at such a high expense to old forests when it is possible to manipulate young or mature forest stands to create regenerating forest. We recommend implementing more management in younger or intermediate aged stands to reduce impacts to old forests.

According to the EA, the proposed project would create up to 2,851 acres of early successional habitat by 2030 using even-aged management, which is 7% of all USFS land in the project area (or 11% of the suitable lands in the project area). This is higher than the 3-4% recommended in the Vermont Agency of Natural Resources Conservation Design for the Southern Green Mountain biophysical region and Audubon Vermont's target of 3-5%. Of the 2,851 acres, it appears only 21 acres will be created through clearcuts, with the remainder through shelterwood harvest. While this limitation on clearcuts is positive, since shelterwood harvests will create a greater degree of structural complexity, our concern is that there are 5,363 acres of group selection and group selection with improvement cut in the proposed action. Group sizes can

[26] *WildEarth Guardians v. Jeffries,* at 1238.

range up to two acres, and it is not clear what estimated percentage of group selections will be in this upper range. Two acre cuts create early successional habitat, so there is the potential that harvests under the Somerset IRP will create significantly more early successional habitat than is currently disclosed. This conclusion supports the need for, and flexibility of, the Forest Service to craft an alternative that reduces road building and even aged-management while still meeting early successional habitat goals. Furthermore, it underscores the need to examine the cumulative effect of the amount of early successional habitat being created in the aggregate with the ESHCP.

Climate Resilience and Carbon Storage/Sequestration:

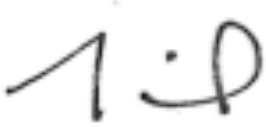
The EA only provides a cursory mention of climate resilience and carbon management on page 38. We found the analysis to be inadequate in the EA. We encourage the Forest Service to bolster this analysis and utilize some of the tools currently available for forest management planning that address climate adaptation and resilience, such as the USFS Northern Institute of Applied Climate Science Adaptation Workbook. In addition, as weather events become more intense, there will be the potential for impacts to water quality, as more road construction will lead to wash out events with increased sedimentation affecting stream integrity. Such impacts should be factored into the EA.

Soil Productivity:

The Forest Service should implement specific coarse woody debris material targets to maintain soil productivity. The Forest Guild provides suggested targets, and more specificity is needed in the mitigation measures (see http://www.forestguild.org/publications/research/2010/FG_Biomass_Guidelines_NE.pdf.)

Please refer to our introductory comments for project components we support. Thank you for the opportunity to comment on the EA.

Best,



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