



November 1, 2024

Vermont Agency of Natural Resources
Department of Forests, Parks and Recreation
c/o Hannah Phillips, State Lands Administration Program Manager
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801

Submitted via email, ANR.StateLandsPlanning@vermont.gov

**Re: Standing Trees' Comments on Pre-Rulemaking Draft
Lands Management Planning Rule**

Dear Ms. Phillips:

Standing Trees submits the following comments on the draft Lands Management Planning Rule ("draft rule") posted by the Vermont Agency of Natural Resources ("ANR" or "Agency").

Standing Trees is a grassroots-membership organization that works to protect and restore New England's forests, with a focus on public lands in Vermont and New Hampshire. Standing Trees works to ensure that New England's public lands are managed using just and equitable policies and practices that support the region's residents and natural ecosystems. Standing Trees promotes managing public lands and waters to safeguard the region's native biodiversity; improve public health; contribute to flood and drought resilience; maximize carbon uptake and storage; and maintain clean water and clean air. The Environmental Advocacy Clinic at Vermont Law and Graduate School submits these comments on Standing Trees' behalf. Standing Trees appreciates that the Agency provided the opportunity to comment on the draft rule before the formal rulemaking process; and that the Agency included additional land management classifications. Standing Trees also values the opportunities for public input throughout the draft rule. Beyond these comments, Standing Trees is available and willing to provide any additional information that might help in the Agency's decision-making.¹

In sum, ANR's current draft rule falls short of fulfilling ANR's legal obligations. First, although the draft rule involves opportunities for public input at the statewide lands

¹ These comments are not intended to provide a comprehensive response to the draft rule, and Standing Trees reserves all rights to provide further comments on any of these or any other topics during the rulemaking process.

management level, the draft rule lacks public participation procedures at the site-specific management levels. Second, the draft rule fails to account for fundamental statutory mandates, including the public trust doctrine and the Global Warming Solutions Act. Third, the draft rule fails to acknowledge that the proposed site-specific agency actions (Long Range Management Plans and Interim Stewardship Plans) are rules subject to the procedures established by the Vermont Administrative Procedure Act. Fourth, the Long Range Management Plan Content provision lacks defined public input processes, as well as specified provisions and legal authority regarding the resource analysis processes informing the plans. Fifth, Long Range Management Plans may be renewed without public input following a 20-year period, leaving out an entire generation of Vermonters from the decision-making process. Sixth, Land Management Classifications lack clear authority as to how the plans will be enforced and specificity as to what types of lands are examples of highly sensitive lands. Lastly, unbounded Universal Management Actions subsume the draft rule by creating sweeping authority for agency action without the need for Long Range Management Planning or any public review and comment.

ANR should adopt the redlined text contained in these comments. This rulemaking is ANR's opportunity and obligation to plan for the future of Vermont's public lands; ANR should do so by emphasizing public input.

I. SUMMARY OF COMMENTS

These comments identify clear opportunities and obligations for the Agency to strengthen the environmental protections in the draft rule. We begin by briefly listing our suggested changes to the draft rule, followed by detailed comments for each provision. We also provide a redlined version of the draft rule with suggested modifications. All relevant statutory and regulatory provisions are listed in Appendix A.

Standing Trees requests the following:

- that the Agency identify clear decision points where it takes and publishes a final action;
- that the Agency identify the size and scope for each listed Universal Management Action to ensure de minimis impact;
- that the Agency perform supplemental analysis of any additional non-listed action undertaken in accordance with a long range management plan ("LRMP"), alternatives to that action, and its environmental impacts;
- that the Agency require a public comment period before the Secretary exercises their discretion to extend an LRMP;
- that the Agency identify when and where during the LRMP decision-making process that ANR shall conduct a cumulative impacts analysis that considers potential

actions within the planning area in the context of the surrounding landscape, along with a public process;

- that the Agency account for the public trust doctrine and provide a decision made on the record after opportunity for public hearing and submission of evidence whenever a decision impacts the public trust;
- that the Agency comply with the National Environmental Policy Act (“NEPA”) when federal funding mandates NEPA compliance;
- that the Agency require documentation of consistency with other state and federal laws and regulations;
- that the Agency issues a detailed procedure for resource analysis in compliance with state law, federal law, and climate goals;
- that the Agency provide processes requiring analysis of a reasonable range of alternatives, including a “no action” alternative;
- that the Agency define the scope of public participation during timber sale development and analysis, prior to a final decision of approval; and
- that the Agency define at what stage(s) the public shall have an opportunity to comment on a draft Statewide Plan, draft LRMP, or a proposed amendment to a Statewide Plan or LRMP.

II. DETAILED COMMENTS

Our detailed comments below follow the order of proposed provisions of the draft rule. Each comment describes the issues associated with problematic provisions, proposes a redline of the draft rule, and, where needed, provides Standing Trees’ further comments discussing the issue.

Section 1.1(b) Purpose

Issue: Purpose

The draft rule only includes the term “requirements” in the second clause of the purpose statement.

Proposed redline of draft rule

(b) The purpose of this ANR Lands Management Rule is to establish **the requirements for** a management planning framework and process, and to set forth the requirements for public **review and** input related to land management planning.

Section 2(c) Applicability

Issue: Management actions to address emergency situations that pose a threat to natural resources

The draft rule permits emergency management actions that are not defined in size or scope. Likewise, the draft rule does not define “threat to natural resources.”

Proposed redline of draft rule

Nothing in this rule shall prevent ANR from taking management actions on ANR lands to address emergency situations that pose a threat to public safety. ~~or natural resources.~~

Comment

The draft rule appropriately allows ANR to take “management actions on ANR lands to address emergency situations that pose a threat to public safety.” But the allowance of theoretical emergency management actions to avert a “threat to . . . natural resources” is dangerously broad, ambiguous, subjective, and lacking in justification.

For example, lightning-caused fires are historically relatively rare events in Vermont and Northern New England.² The U.S. Forest Service noted in June 2024 that fire is predicted to be a “very low” threat to mature and old-growth forests of the Northeast even through the end of this century.³ However, fire is a natural disturbance that is an important agent of ecological change, fostering heterogeneity in forest structure and composition. Land managers would hopefully allow such a fire to burn unless or until it threatened public safety. As written, it is unclear whether a natural fire would be considered an “emergency situation” and a “threat to . . . natural resources” under the draft rule.

Furthermore, many disturbances, including insect infestations and diseases—regardless of whether they are “natural”—often have a smaller ecological impact than “management actions” that may be employed to address such “threats,” such as salvage logging.⁴

Without specific language that defines “threats” and “emergencies” for natural resources, or language that establishes constraints on potential management actions, ANR’s draft rule could undermine and jeopardize the due process, transparency, and accountability in decision-making that this draft rule seeks to establish.

Section 4.1.1 Statewide Plan Content

² Lorimer & White, *Scale and Frequency of Natural Disturbances in the Northeastern US: Implications for Early Successional Forest Habitats and Regional Age Distributions*, 185 FOREST ECOLOGY & MGMT. 41, 52–54 (2003).

³ *Mature and Old-Growth Forests: Analysis of Threats on Lands Managed by the Forest Service and Bureau of Land Management in Fulfillment of Section 2(c) of Executive Order No. 14072*, U.S. DEP’T OF AGRIC. FOREST SERV. & U.S. DEP’T OF THE INTERIOR BUREAU OF LAND MGMT. 18 (2024).

⁴ See Section 4.1.1(a) for further discussion.

Issue: Universal Management Actions (i.e., categorical exclusions)

The draft rule includes a non-exhaustive list of actions called “universal management actions” that ANR can implement on all ANR lands without an approved LRMP.⁵ The key issues with this provision are: (1) the draft rule does not identify the size or scope of each UMA; (2) the list of UMAs is non-exhaustive; (3) the draft rule does not specify if or how ANR may amend the list of UMAs; and (4) the draft rule contains broad and subjective UMAs that undermine the very purpose of the draft rule.

Proposed redline of draft rule

4.1.1 Statewide Plan Content

(a) Universal Management Actions: A list of actions that can be implemented on all ANR lands without an approved [LRMP]. These actions ~~are~~ ~~may include but not be~~ are limited to: ongoing maintenance (i.e., not an expansion of the physical footprint) of existing infrastructure such as; ~~recreational trails, kiosks, parking lots, campsites and platforms, buildings, and viewing platforms;~~ roads, bridges, and culverts, ~~except where these occur along Class C Roads or other roads or trails closed to public use kiosks, parking lots, camp sites and platforms, buildings, and viewing platforms;~~ ~~limited vegetation management such as~~ removal of hazard trees ~~along roads or recreational trails,~~ maintenance of existing open areas (old fields, roadsides, orchards, viewsheds, etc.); ~~forest health mitigation activities such as treatment or removal of disease trees;~~ natural resource research ~~that does not involve road or skid trail construction or reconstruction and/or vegetation cutting or removal;~~ invasive species management and eradication ~~except for use of chemicals or bio-controls;~~ and public safety or emergency response activities; ~~limited water quality and wetland restoration and improvement projects; and limited habitat management and enhancement activities.~~

- i. ANR shall identify the size and scope of each UMA to ensure de minimis impact.
- ii. ANR may amend the list of UMAs. Proposed amendments shall be subject to the public engagement process identified in Section 5.
- iii. ANR shall ensure that all UMAs encourage climate adaptation and resilience in accordance with 10 V.S.A. § 592. ANR shall review all UMAs when the Vermont Climate Council updates the Climate Action Plan every four years to ensure continued compliance.
- iv. ANR shall ensure that UMAs that involve logging comply, at a minimum, with Acceptable Management Practices established in accordance with 10 V.S.A. § 2622(b).

⁵ At the public comment meeting on 9/16, Hannah Phillips stated that the list of UMAs will develop through the public planning process.

- v. ANR shall ensure that UMAs do not conflict with the public trust doctrine. If a UMA is considered an encroachment according to 29 V.S.A. § 402(3), ANR shall apply for an encroachment permit from the Department of Environmental Conservation.

(b) Universal Vegetation Management Standards. Cutting of any trees over 150 years of age is prohibited. Vegetation management is prohibited in:

- i. Any area determined to meet the definition of “old forest” in Vermont Conservation Design;
- ii. Any area determined to be “rare,” “exemplary,” “outstanding,” “A-ranked,” or of “statewide significance”;
- iii. Any area that constitutes a Hydrologic Reserve Zone as defined by “Enhancing Flood Resiliency of Vermont State Lands” (Underwood & Brynn, 2015);
- iv. Any State Park, unless otherwise stated by statute;
- v. Any area of contiguous state land, regardless of the presence of unpaved roads, greater than or equal to 4,000 acres, except those lands in the Intensive Management Land Management Classification 4.0 or lands that meet the description of areas in Land Management Classification 4.0, namely: ski areas (leased acreage); camping areas (State Park campgrounds, designated camping areas on ANR lands); day-use areas; trailhead parking areas; buildings and structures (houses, maintenance facilities, fish hatcheries, barns); railroad rights-of-way (rail trails and railroad beds managed by ANR); major utility rights-of-way; and district designation (areas not otherwise described above, but possessing other characteristics consistent with the description of an Intensive Management Area); and
- vi. Any land designated by ANR as a Highly Sensitive Management Area.

Comment

ANR should adopt the proposed redlines so that UMAs are defined in size and scope in a similar manner to how federal agencies define categorical exclusions under the National Environmental Policy Act (“NEPA”). ANR should also account for instances where federal funding triggers NEPA requirements and account for Vermont’s public trust doctrine. Finally, ANR should ensure that UMAs are, at a minimum, consistent with AMPs.

- I. UMAs should be amended to be consistent with NEPA’s categorical exclusions.

The UMAs resemble NEPA’s categorical exclusions (“CEs”). NEPA defines CEs as “a category of actions that a[n] . . . agency has determined normally **does not significantly alter** the quality of the human environment.” 42 U.S.C. § 4336e(1) (emphasis added). Designating an activity as a CE permits an agency to “categorically exclude[] [the activity] from further

analysis and documentation in an [Environmental Impact Statement] or [Environmental Analysis].” 36 C.F.R. § 220.6 (2020).

UMAs and CEs are functionally similar—they are both actions that an agency can take without the need for environmental review. Under NEPA, every agency identifies its own CEs, and the size and scope of the activity.⁶ For example, the U.S. Forest Service has identified the categories of activities that qualify as CEs at 36 C.F.R. § 220.6. One listed CE is “[t]imber stand and/or wildlife habitat improvement activities.” *Id.* § 220.6(e)(6). The Forst Service defines the scope of this activity to include only those activities that do not use herbicides or those activities that require less than one mile of road construction. *Id.* Unlike the Forst Service’s CEs, the draft rule does not contain any language that limits the size or scope of the UMA. Therefore, ANR should include appropriate size and scope limits for each UMA to ensure that UMAs have a de minimis effect on Vermont’s natural environment.

In addition, NEPA directs federal agencies to “identify to the public the categorical exclusion[s] that the agency plans to use for its proposed actions.” 42 U.S.C. § 4336c(3). As written, the draft rule does not specify whether the list of UMAs is exhaustive. Again, to ensure compliance with NEPA, ANR should explicitly state that the list of UMAs is exhaustive. That way, if ANR decides to amend or add a UMA, it will trigger a public comment period that will satisfy NEPA requirements.

To illustrate the importance of size and scope limits on UMAs, consider the draft rule’s proposal to include “forest health mitigation activities such as treatment or removal of disease[d] trees” and “limited habitat management and enhancement activities” as UMAs.

First, diseased trees are a natural part of forest ecosystems. Some diseases do not pose a threat to ecosystem health. In fact, some diseases may enhance ecosystem health by contributing to standing snags and downed woody debris. As a result, these diseases can support in-situ carbon sequestration and storage, provide essential habitat for a wide range of species, remove phosphorus pollution, and increase water absorption and retention, mitigating floods and droughts. “Treatments” that are frequently employed to address disease or insect infestations are often more harmful than the disturbances themselves. Harvard forest researchers found that:

[M]anagers often initiate activities that may impose greater ecosystem impacts than the disturbances themselves From an ecosystem perspective there are strong arguments against preemptive and salvage logging or the attempt through silvicultural means to improve the resistance or resilience of

⁶ See 42 U.S.C. § 4336e(1) (“The term ‘categorical exclusion’ means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment”).

forests to disturbance and stress. There are often valid motivations for salvage or preemptive logging including financial considerations, human safety, and a desire to shape the long-term composition and resource-production characteristics of forests. Nonetheless, there are many ecological benefits derived from leaving forests alone when they are affected or threatened by disturbances and pest and pathogen outbreaks.⁷

Despite significant scientific concern and controversy, ANR's proposed UMAs would effectively allow ANR to eliminate certain species from state lands with zero transparency or accountability. The U.S. Forest Service estimates that cankers are present on 87% of American beech trees in Vermont, largely due to beech bark disease.⁸ As written, the draft rule would allow removal of significant quantities of beech or other disease-impacted trees on state lands without environmental analysis or public review and comment.

Next, the proposed UMA for “[l]imited habitat management and enhancement” is also ripe for abuse. Without an effective definition for the term “limited,” there is a heightened risk of misuse. Recently finalized LRMPs, such as the Worcester Range Management Unit LRMP, justify commercial and non-commercial timber harvests and other treatments using a variety of “habitat management and enhancement” goals:

The [Worcester Range Management Unit] is predominately forested and managed to achieve a variety of goals and objectives. Forest management strategies focus on maintaining and enhancing habitat, biodiversity, forest health, and vigor to maximize the benefits and services of healthy forests. A range of harvest techniques will be used to provide wildlife habitat, biodiversity, healthy and vigorous forests, protection of water resources, opportunities for research, high-quality forest products, and the demonstration of forest management. Management activities will enhance both hard and soft mast species. Young forest conditions will be created by establishing groups and patches in suitable locations to support the 1–20-year forest age class across the [Worcester Range Management Unit], which is important to many wildlife species, and to meet the [Vermont Conservation Design] target for that habitat component within the management unit.⁹

⁷ David R. Foster & David A. Orwig, *Preemptive and Salvage Harvesting of New England Forests: When Doing Nothing Is a Viable Alternative*, 20 CONSERVATION BIOLOGY 959, 959 (2006).

⁸ RANDALL S. MORIN ET. AL, U.S. DEP'T AGRIC., VERMONT FORESTS 2017 59 (2020)

⁹ BARRE DISTRICT STEWARDSHIP TEAM, AGENCY OF NAT'L RES., WORCESTER RANGE MANAGEMENT UNIT LONG-RANGE MANAGEMENT PLAN xiv (2024).

“Limited” is an ambiguous term. The Worcester Range Management Unit is a “limited” region of Vermont totaling approximately 19,000 acres. In theory, ANR could argue that all proposed “habitat management and enhancement” goals in the Worcester Range Management Unit LRMP are “limited.”

The sum effect of the UMAs discussed above is to contradict, undermine, and subvert the remaining components of the draft rule, such that any public review and input becomes a discretionary exercise.

- II. The draft rule should recognize that UMAs that implicate federal funding may be required to comply with NEPA requirements, as applicable.

Implementation of UMAs on public lands may involve actions that are subject to the National Environmental Policy Act (“NEPA”). Although NEPA typically applies to major federal actions, state projects that receive federal funding may also require NEPA review at their outset, or as may be required by the terms of the federal funding, when the state makes later changes to those projects. *See Environmental Review*, AGENCY OF NAT. RES.: DEP’T OF ENV’T CONSERVATION, <https://dec.vermont.gov/water-investment/water-financing/srf/environmental-review> (last visited Oct. 7, 2024) (“All federally funded projects are required to comply with [NEPA].”). The State has already established two review procedures, called State Environmental Review Procedures, that meet NEPA requirements. *Id.* Therefore, the framework to comply with NEPA exists, and ANR may need to comply with NEPA when implementing any long range planning process or management actions on public lands that receive federal funding when mandated by applicable funding requirements. Where applicable, NEPA may require that ANR engage in a robust public participation process, disclose direct, indirect, and cumulative impacts of each long range planning process or management action, consider reasonable alternatives to the action, and determine whether or not the action requires detailed environmental analysis through an environmental impact statement. 40 C.F.R. § 1508.1(i) (2024).

- III. The public trust doctrine imposes a duty on ANR to consider impacts on navigable waters, groundwater, and submerged lands.

The public trust doctrine provides that “[l]akes and ponds that are public waters of Vermont and the lands lying thereunder are a public trust, and it is the policy of the State that these waters and lands shall be managed to serve the public good.” 29 V.S.A. § 401. In 2007, the Vermont Legislature extended the public trust doctrine to include groundwater resources. 10 V.S.A. § 1390. As codified, this doctrine prohibits any encroachment into public lands and waters subject to the public trust doctrine. 29 V.S.A. § 401. An encroachment occurs when “any material or structure [is placed] in any lakes and ponds that are public waters or [alters] the lands underlying any waters.” 29 V.S.A. § 402(3).

Therefore, ANR must ensure that no UMA, or any management action, constitutes an encroachment on navigable waters, groundwater, and/or submerged lands.

In addition, the public trust doctrine imposes on the Department of Environmental Conservation (“DEC”) the duty to manage all encroachments into navigable waters, groundwater, and submerged lands. The DEC does so by issuing encroachment permits for projects that encroach on lands and/or waters subject to the public trust doctrine. 29 V.S.A. § 401. If any UMA constitutes an encroachment, as defined by 29 V.S.A. § 402(3), ANR must obtain an encroachment permit.

When deciding whether to issue an encroachment permit, the DEC divides its responsibilities into two discrete inquiries: (1) whether the project adversely affects the public good; and (2) whether the project conflicts with the public trust doctrine.¹⁰ The public trust statutes provide the DEC with guidance on how to determine if a project adversely affects the public good, as the statute directs the DEC to

consider the effect of the proposed encroachments as well as the potential **cumulative effect** of existing encroachments on water quality, fish and wildlife habitat, aquatic and shoreline vegetation, navigation, and other recreational and public uses, including fishing and swimming, consistency with the natural surroundings, and consistency with municipal shoreland zoning ordinances or any applicable State plans.

29 V.S.A. § 405(b) (emphasis added). Per the DEC, “[t]o review whether a project is in keeping with the [p]ublic [t]rust [d]octrine, there must be a public purpose, a public benefit, or both, that outweighs any adverse impact on the public resource.” *Id.* When engaging in this balancing test, the DEC will consider three factors: (1) “[t]he intended public purposes served by the encroachment”; (2) “[t]he anticipated public benefits created by the proposed encroachment, which includes benefits located within or outside of public waters”; and (3) “[p]otential adverse impacts of the proposed encroachment and cumulative impacts of existing encroachments on the public resource.” *Id.* In the case that any management action encroaches on navigable waters, submerged lands, or groundwater, ANR must conduct a cumulative impacts analysis of water impacts and other relevant environmental impacts.

Moreover, ANR should consider impacts to public trust waters and submerged lands beyond encroachments. The Supreme Court of Vermont has recognized that “[t]he purpose of the [public trust] doctrine is to preserve the public’s interest in Vermont’s navigable waterways.” *Parker v. Town of Milton*, 169 Vt. 74, 79, 726 A.2d 477, 481 (1998). Thus, the

¹⁰ Lake Encroachment Individual Permit Application Public Trust Review Procedure, Vt. Agency of Nat. Res. Dep’t of Env’t Conservation Watershed Mgmt. Div. 2 (2024).

public trust doctrine does not limit ANR’s obligations to solely consider encroachments. Instead, this doctrine broadly protects the public interest in public trust resources. ANR should consider the impacts that UMAs have on submerged lands, navigable waters, and groundwater—especially when defining size and scope—to preserve the public good.

- IV. At a bare minimum, UMAs should be no less protective than the Department of Forests, Parks and Recreation’s Acceptable Management Practices (AMPs).

While *Standing Trees* questions the protective value of AMPs, UMAs should at least meet the protections afforded by AMPs.¹¹ The Department of Forests, Parks and Recreation (FPR) developed AMPs “to provide measures for loggers, foresters, and landowners to utilize, before, during, and after logging operations to comply with the Vermont Water Quality Standards and minimize the potential for a discharge from logging operations in Vermont in accordance with 10 V.S.A. § 1259.” DEP’T OF FORESTS, PARKS, & RECREATION, ACCEPTABLE MANAGEMENT PRACTICES FOR MAINTAINING WATER QUALITY ON LOGGING JOBS IN VERMONT 1 (2018).

AMPs apply to logging activities on both public and private lands. *Id.* at 2. Logging is broadly defined to include “forest management purposes or . . . the purpose of clearing land for some other type of land use, such as commercial, residential, or utility development.” *Id.* Thus, UMAs explicitly or implicitly associated with logging should comply with FPR’s AMPs to minimize disruptions and adverse water quality effects.¹² Although AMPs are described as advisory in the statute, ANR treats AMPs as binding. *See* ACCEPTABLE MANAGEMENT PRACTICES FOR MAINTAINING WATER QUALITY ON LOGGING JOBS IN VERMONT, DEP’T OF FORESTS, PARKS, AND RECREATION 4 (2011) (“The AMP’s have the force of law”); 10 V.S.A. § 2622(b). As measures that are familiar to ANR, AMPs should be included in the draft rule so that at a minimum, UMAs comply with AMPs. ANR’s statutory obligations mandate far more than adherence to AMPs; however, AMPs represent a minimum baseline requirement for UMAs. 10 V.S.A. § 2853(5); 10 V.S.A. § 2601(a).

4.2.1 Long Range Management Plan Content

Issue:

Long Range Management Plan Content defines neither a public input process nor specified provisions and legal authority regarding the resource analysis processes that should inform

¹¹ Given that UMAs require analysis, ANR should consider whether the protective measures required by AMPs are sufficient to adequately protect water resources.

¹² The draft rule identifies several UMAs that include logging without explicitly naming logging: “vegetation management such as removal of hazard trees, maintenance of existing open areas (old fields, roadsides, orchards, viewsheds, etc.), forest health mitigation activities . . . and habitat management and enhancement activities.”

the plans. The management plan should detail a substantive standard and procedural process for resource analysis and protection.

Proposed redline of draft rule

Long Range Management Plans

Purpose: To establish a management planning process that provides for public input and the management of specific ANR land management units or portions of ANR land management units for a variety of uses and purposes that are in the public interest and are consistent with Vermont statutes and ANR policies.

- (a) ANR shall develop and issue LRMPs in accordance with 3 V.S.A. §§ 836-844. A final LRMP is a final agency action subject to judicial review.
- (b) LRMPs for lands that receive federal funding shall have an opportunity for public input pursuant to Section 5. These LRMPs shall comply with NEPA requirements, if applicable, including an environmental review process where ANR considers alternatives.
- (c) ANR may amend LRMPs in accordance with Section 5. ~~ISPs may be amended when necessary.~~
- (d) ANR shall ensure that all LRMPs advance climate adaptation and resilience in accordance with 10 V.S.A. § 592. ANR shall review all LRMPs when the Vermont Climate Council updates the Climate Action Plan every four years to ensure continued compliance.
- (e) ANR shall ensure that LRMPs are not in conflict with the public trust doctrine. If an LRMP is considered an encroachment, as defined by 29 V.S.A. § 402(3), ANR shall apply for an encroachment permit from the Department of Environmental Conservation.

Long Range Management Plan Content

A LRMP shall contain the following minimum content:

- (a) Introduction and Parcel/Land management Unit Description – A LRMP may apply to a specific parcel or land management unit or any portion of a parcel or land management unit.
- (b) Public Input – A LRMP shall integrate and expressly respond to public input. ANR shall make public the status of the resources subject to an LRMP and make public the projected impacts of the LRMP on the resources through a resource analysis.
- (c) Resource Analysis – A LRMP shall include a report describing the initial status of the enumerated resources below. ANR shall include a description of the attributes, characteristics, and values of the lands within the Management Unit based on Vermont Conservation Design and the Act 59 Inventory and Conservation Plan. ANR shall develop substantive resource standards to protect

or enhance the identified resources, including ecosystem services. Finally, a LRMP shall identify positive and adverse impacts of management actions on the resources, as well as compliance with applicable requirements restricting resource use. ANR shall provide for public review and comment on the resource analysis.

i. Legal and Policy Constraints, including but not limited to compliance with:

- (a) the Act 59 Conservation Plan
- (b) Climate Action Plan

ii. Ecological and Wildlife Resources

- ~~(a)~~ Threatened or endangered species, critical habitat.

iii. Forest Resources

Provisions for compliance with 10 V.S.A. § 2622, which provides that “revised acceptable management practices shall ensure that all logging operations, on both public and private forestland, are designed to: prevent or minimize discharges of sediment, petroleum products, and woody debris (logging slash) from entering streams and other bodies of water; improve soil health of forestland”.

iv. Water Resources – Assessments of future and present impacts on water quality under Vermont Water Quality Standards Environmental Protection Rule Chapter 27 including consideration of practicable alternatives. ANR shall

- (a) Conduct an assessment of flood impacts, including modeling of impacts on downstream flooding from proposed management activities and opportunities for flood mitigation and resilience;
- (b) Ensure compliance with Clean Water Act including relevant TMDLs;
- (c) Disclose baseline water quality data to facilitate future monitoring.

v. Fisheries

vi. Forest Health

vii. Cultural Resources

- (a) Consultation with State and Federally-recognized Tribes

viii. Recreation

ix. Infrastructure

x. Climate Change Assessment

- (a) Current carbon storage estimates for the Management Unit;
- (b) Greenhouse Gas Emissions from proposed management actions shall be quantified and disclosed, providing context to the public of the estimated GHG emissions (from biogenic and fossil-fuel sources), carbon sequestration potential, and the net change in relevant carbon stocks in light of the proposed actions and timeframes under consideration, and explain the basis for the analysis.

xi. Analysis of a reasonable range of alternatives, including a No Action Alternative.

xii. Economic analysis including ecosystem services evaluation and comparison of economic benefits of alternatives, including No Action alternatives.

(d) Management Strategies and Actions

i. Assignment of Land Management Classifications (LMCs) – as set forth in Section 4.1.3 of this rule.

ii. Implementation Schedule

iii. Monitoring and Evaluation

iv. Demonstration of compliance with substantive standards for the LRMP, including protection of assessed resources and other legal requirements

(e) Appendix

i. Public Responsiveness Summary

ii. Property Information:

iii. Conservation Purpose and Background

iv. Legal Restrictions

v. Features for Management Consideration

Comment

- I. LRMPS are rules pursuant to the Vermont APA; therefore, public comment is a statutorily mandated requirement during the development of a LRMP.

The Vermont Administrative Procedure Act (“VT APA”) defines a “rule” as an “agency statement of general applicability that implements, interprets, or prescribes law or policy.” 3 V.S.A. § 801(b)(9). Under this definition, LRMPS are a rule because a LRMP establishes the generally applicable actions for a specific tract of land.¹³ As a result, LRMPS are subject to the procedures for adopting rules laid out in 3 V.S.A. §§ 836-844.

ANR must complete the following steps to issue an LRMP: “fil[e] the proposed rule; publish[] the proposed rule; hold[] a public hearing and receiv[e] comments; fil[e] the final proposal; respond[] to the Legislative Committee on Administrative Rules when required; and fil[e] the adopted rule.” 3 V.S.A. § 836(a). Moreover, “the agency proposing the rule shall post on its website information concerning the proposal.” *Id.* § 836(b).

Thus, the draft rule should offer some definitive language as to how a plan may evaluate public input. We offer the language that the draft rule “shall expressly respond to public

¹³ See section 4.2 (“Purpose: to establish a management planning process . . . for a variety of uses and purposes”).

input” to make the language more directive and to surpass mere consideration of public input. This language will hold the Agency accountable to give written reasonably based responses.

II. The draft rule shall detail the resource analysis process.

In general, the Agency shall substantively detail the process through which resource analysis will be completed by providing the public with a report as to the initial status of the resources, under 4.2.1(c). The Agency shall identify the relevant law and legal limits governing a particular resource and disclose the project’s particular impact on the relevant resources. In order to ensure compliance with the law, ANR’s analysis should: (1) identify the initial status of resources before a plan is enacted; (2) assess the projected status of resources after the plan; and (3) identify whether this projection complies with state and federal law. Seeing that the Agency in the drafting stage lacks a full framework for substantive resource analysis, a suggested resource analysis process should follow a NEPA-like approach. To take an important example, NEPA analysis for greenhouse gas emissions considers “the estimated GHG emissions (from biogenic and fossil-fuel sources), carbon sequestration potential, and the net change in relevant carbon stocks in light of the proposed actions and timeframes under consideration, and explain the basis for the analysis.” COUNCIL ON ENV’T QUALITY, NATIONAL ENVIRONMENTAL POLICY ACT GUIDANCE ON CONSIDERATION OF GREENHOUSE GAS EMISSIONS AND CLIMATE CHANGE (2023), <https://www.federalregister.gov/documents/2023/01/09/2023-00158/national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions-and-climate>. An initial resource quantification is crucial to ensure that ANR fulfill its statutory obligations to protect these resources.

Furthermore, the draft rule should conform to the statutory requirement that all adopted rules comply with the Vermont Climate Action Plan. 10 V.S.A. § 592 directs the Vermont Climate Council to create the Vermont Climate Action Plan and update said plan every four years. The Climate Action Plan “**shall** set forth specific initiatives, programs, and strategies, including regulatory and legislative changes, necessary to achieve the State’s greenhouse gas emissions reduction requirements pursuant to [the GWSA] and build resilience to . . . [the] anticipated effects of climate change.” 10 V.S.A. § 592(b) (emphasis added). One goal of the Climate Action Plan is to “achieve long-term sequestration and storage of carbon and promote best management practices to achieve climate mitigation, adaption, and resilience.” 10 V.S.A. § 592(b)(3). Moreover, the statutes state that “[t]he Secretary of Natural Resources **shall** adopt rules . . . consistent with the Vermont Climate Action Plan.” 10 V.S.A. § 593(a). ANR must verify that the LRMPs conform to all requirements under the Climate Action Plan to ensure that public lands develop climate resilience. Additionally, ANR must review all LRMPs when the Vermont Climate Council updates the Climate Action Plan every four years to ensure continued compliance.

Finally, the Agency should include alternatives, including no action alternatives, in their resource analysis. This would include detailing: (1) what options the Agency considered, (2) why the other options were less favorable to the Agency, (3) how the Agency selected its preferred option, and (4) a comparative analysis of how each option compares to the Agency's applicable provisions and environmental goals under the Climate Action Plan, state law, and federal law. This will allow the public the needed insight for meaningful opportunity to participate and will also help the Agency measure whether they are fulfilling the statutory mandate to "ensure that these natural resources and facilities remain viable and available for this and all future generations." 3 V.S.A. § 2807. Failure to consider alternatives and comparatively assess the scope of resource exhaustion under each option will distance the Agency from ensuring the resources remain viable in the future because the Agency will not know which option is least detrimental to the resource.

- III. The draft rule shall specify resource analysis processes that focus on endangered species, threatened species, and critical habitats.

The resource analysis section generally mentions a resource analysis of Ecological and Wildlife Resources but does not specify the resource analysis with an emphasis on endangered species, threatened species, and critical habitats. Vermont law requires that

[a]ll agencies of this State shall review programs administered by them that may relate to this chapter and shall, in consultation with the Secretary, utilize their authorities only in a manner that does not jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation or recovery programs established by this chapter or by the Secretary under his or her authority.

23 V.S.A. § 5406. Thus, the draft rule should clearly reflect the statutory mandate requiring agencies to consult the secretary of ANR in a review process in an effort to ensure the agencies take care not to "jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation." 23 V.S.A. § 5406.

- IV. The draft rule shall, at a minimum, ensure that management actions comply with AMPs.

As discussed in Comment IV to Section 4.1.1(a), ANR shall, at a bare minimum, ensure compliance with AMPs.

- V. The Agency shall review water resource impacts in a manner consistent with its administration of the Vermont Water Quality standards.

Vermont's Water Quality Standards apply to all "waters" in Vermont. Vermont Water Quality Standards, Environmental Protection Rule § 29A-101(c). When completing resource

analysis, ANR has an obligation to comply with both federal and state law to ensure compliance with state water quality standards.

To take one example of an appropriate approach, Vermont Water Quality Standards require projects subject to Section 401 of the federal Clean Water Act (i.e., “any federally licensed or permitted activity that may result in a discharge into waters of the United States”) to obtain a certification from the Agency that the project complies with those standards, and only if the project applicant demonstrates:

(1) [t]here is no practicable alternative proposed activity that would have a less adverse impact on water and wetlands of the State, and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequence . . . [and] (2) [t]here is a reasonable assurance that the discharge will not result in a violation of these, rules including any applicable water criteria and the Antidegradation policy articulated in these rules.

Vermont Water Quality Standards, Environmental Protection Rule § 29A-206(b)(1).

These standards also emphasize the importance of public input when assessing water quality. For example, in the Section 401 certification process,

applicant[s] shall provide notice of their § 401 Water Quality Certification application any person or adjoining property owner . . . Any person may request a public meeting on the draft decision issued under this section within 14 days of the issuance of the draft decision. The secretary shall hold a public meeting whenever any person files a written request for such a meeting.

Id. § 29A-206(e)(1)-(4).

Thus, a LRMP considering water resource analysis should emphasize transparency consistent with the Agency’s other processes for ensuring compliance with Vermont Water Quality Standards.

4.2.2 Long Range Management Plan Development

Issue: 20+ year planning horizons.

Long Range Management Plans are proposed to be developed on an as needed basis, generally for a management period of 20 years, with no provision for public input on any extensions. A renewal after a 20- year period will have the effect of cutting out a generation of Vermonters from having input on the plan as previously written. Thus, the rule is contrary to the legislature’s assignment to the Agency to ensure the viability of land for future generations.

Proposed redline of draft rule

4.2.2 Long Range Management Plan Development

(a) LRMPs will be developed on an as-needed basis, when management actions other than Universal Management Actions are proposed for a land management unit or a portion of a land management unit. LRMPs will be developed for a management period of no more than twenty years. **A LRMP that is older than twenty years may be extended at the discretion of the Secretary, upon public notice and an opportunity to comment, followed by issuance of a new record of decision.** Such notice must be issued no later than one year prior to the expiration of the 20-year management period. **The notice shall include a statement as to whether the LRMP continues to comply with 3 V.S.A. § 2807, whether amendments are necessary to ensure public “natural resources and facilities remain viable and available for [present] and future generations,” and whether the LRMP is updated and guided by the best available science.**

(b) LRMPs are required for any management **action not expressly included in the list of** Universal Management Actions.

(c) A LRMP may be applicable to a portion or portions of an ANR parcel or land management unit.

(d) Plans under the LRMP **pertaining to the availability of natural resources and facilities shall be subject to public input.**

(e) A LRMP may be amended as described in Section 4.5 below.

Comment

The Vermont legislature has entrusted ANR with safeguarding the public lands. Specifically, “[t]he lands, facilities, and recreational assets owned or managed by the Department of Forests, Parks and Recreation are held as public assets for the citizens of Vermont and require proper management to ensure that these natural resources and facilities remain viable and available for this and all future generations.” 3 V.S.A. § 2807. We offer the additional language that LRMPs “older than twenty years may be extended at the discretion of the Secretary, upon public notice and an opportunity to comment, followed by issuance of a new record of decision.” The viability of public lands and natural resources is not to be taken lightly, and their management on behalf of the people of Vermont requires frequent and periodic opportunities for public input, transparency, and accountability in decision-making. Within 20 years a new generation of Vermonters will emerge. This, paired with new information and technology, makes it necessary for the Secretary to consult the public prior to the renewal or revision of previous LRMPs. The legislature has stated that the

purpose of LRMPs is to ensure that “natural resources and facilities remain viable,” recognizing this we also urge the Agency to demonstrate how its management of public lands has met the legislature’s charge to preserve the viability of lands prior to a 20-year renewal of LRMPs. One way the Agency can honor its constitutional and statutory obligations to the public is to include a statement as to whether the LRMP continues to comply with 3 V.S.A. § 2807, or whether amendments are necessary to ensure consistency with the best available science and that public “natural resources and facilities remain viable and available for [present] and future generations.”

Additionally, we urge the Agency to be more specific in section 4.2.2(b) and indicate that LRMPs are required for any management action not expressly included in the list of Universal Management Actions. This slight change in language offers more clarity into the scope and limits of LRMPs.

4.2.3 Land Management Classifications

Issue:

ANR should clarify how lands are to be managed, and there should be presumptions about which types of lands will be placed into the Highly Sensitive Management Area (“HSMA”) category. The Agency should also resolve unclear and inconsistent classification categories by clarifying that HSMA’s are both Ecological Reserves as defined in Act 59 and Wildlands as defined in “Wildlands in New England” (Foster et al 2023).

Proposed redline of draft rule

4.2.3 Land Management Classifications

The following Land Management Classifications (LMC)s will be applied to portions of a land management unit during the LRMP process.

(1) Highly Sensitive Management

An area with rare or outstanding biological, ecological, geological, scenic, cultural, or historic significance, **or an area of any size and current condition where the Agency’s management intent is to allow natural processes to prevail without intervention, and where strict protection of present and future resources is the primary consideration for management. Human activities and uses should not compromise the exceptional feature(s) identified. These areas are considered “Wildlands” as defined in “Wildlands in New England” (Foster et al 2023), and “Ecological Reserves” as defined in Act 59. Highly Sensitive Management areas shall include:**

- a) **any area determined to meet the definition of “old forest” in Vermont Conservation Design;**

- b) any area determined to be “rare,” “exemplary,” “outstanding,” “A-ranked,” or of “statewide significance;”
- c) any area with a Late Successional Index score of 6 or higher according to “A Revised Rapid-Assessment Late-Successional Index for common northeastern forest types” (Whitman and Hagan 2009).
- d) State Parks, unless otherwise prohibited by statute and excepting those areas managed as Land Management Classification 4.0, Intensive Management.
- e) any area that constitutes a Hydrologic Reserve Zone as defined by the Enhancing Flood Resiliency of Vermont State Lands (Underwood & Brynn, 2015).

Sub-Classes:

- 1.1 Rare or exemplary natural communities or species (as defined by the Nongame & Natural Heritage Program).
- 1.2 Sensitive wildlife habitat (communal breeding sites, bat caves, RT&E habitats).
- 1.3 Ecological representation areas, including associations of natural communities, geophysical settings, or other areas which make an outstanding contribution to meeting the ecological representation goals identified in Vermont Conservation Design.
- 1.4 Exceptional cultural features, including State Archaeological Landmark Sites. These include state (archeologist)-designated archeological sites of significance for the scientific study or public representation of the state's historical, prehistorical or aboriginal past.
- 1.5 Exceptional geological features (cliff, rock-walled gorge, flat rock outcrop, river channel ledge, cascade or any other substantial or unusual bedrock exposure).
- 1.6 Exceptional scenic resources (undeveloped mountaintops, scenic vistas, high elevation/steep slope areas visible from state and federal highways).
- 1.7 Exceptional water resources (lake, pond or stream side buffer areas).
- 1.8 Natural Areas (areas designated pursuant to 10 V.S.A., 83 § 2607).
- 1.9 Research Natural Areas (areas designated by the ANR for no-trace forest ecosystem monitoring and research).
- 1.10 Areas protected by deed restrictions or conservation agreements.
- 1.11 Areas of any size and current condition in which management is explicitly intended to allow natural processes to prevail without intervention.

1.12 District designation (areas not otherwise described above but possessing other characteristics consistent with the description of a Highly Sensitive Management Area).

(2) Special Management

An area with special resources where protection and/or enhancement of those resources is an important consideration for management, but a wide range of uses and management activities, including intensive management, are acceptable when protection of the special resource may be achieved. However, timber harvesting, wildlife management, roads, and recreational activities should not compromise the special resource(s) identified.

Sub-Classes:

2.1 Biological (including aquatic), cultural, and geological resources (important but not exemplary as determined by the Nongame and Natural Heritage Program, the State Archaeologist, and the State Geologist).

2.2 Critical plant and wildlife habitat (important bear feeding and foraging areas, wildlife travel corridors for black bear, bobcat, reptiles, amphibians, deer wintering areas, migratory bird habitat, wetlands, fisheries, presence of edge of range species, mast stands).

2.3 Long Trail/Appalachian Trail corridors.

2.4 Wildlife and forestry demonstration areas

2.5 Areas protected by deed restrictions or conservation easements or agreements.

2.6 Research monitoring areas (designated by the ANR for conducting long-term monitoring and research on forest ecosystems where silvicultural treatments and other activities incorporate the needs of monitoring and research projects).

2.7 Wellhead protection areas.

~~2.8 Agricultural land.~~

2.8 Special recreation area.

2.9 Special viewshed area.

2.10 District designation (areas not otherwise described above, but possessing other characteristics consistent with the description of a Special Management Area)

2.11 Ecological Enhancement Areas are areas that are designated by ANR in which active management in the near-term may create or restore conditions that will qualify these lands as a Highly Sensitive Management Area in the long-term.

(3) General Management

An area where the dominant uses are sustainable forest management, wildlife habitat management, concentrated trail networks, dispersed recreation, and other general land uses. In these areas, minimizing conflict between activities is a primary management consideration. Resource areas within or adjacent to a General Management area may require special consideration. This category includes all areas of land that do not meet the other classification categories.

(4) Intensive Management

An area that is easily accessible and characterized by a high level of human activity and high intensity development on or adjacent to state land. Aesthetics and safety are the primary management considerations in these areas. However, more sensitive resources that occur within these areas may require special consideration.

Sub-Classes:

- 4.1 Ski areas (leased acreage).
- 4.2 Camping areas (State Park campgrounds, designated camping areas on ANR lands).
- 4.3 Day-use areas.
- 4.4 Trailhead parking areas.
- 4.5 Electronic communication sites (leased sites).
- 4.6 Buildings and structures (houses, maintenance facilities, fish hatcheries, barns).
- 4.7 Railroad rights-of-way (rail trails and railroad beds managed by ANR).
- 4.8 Major utility rights-of-way.
- 4.9 District designation (areas not otherwise described above, but possessing other characteristics consistent with the description of an Intensive Management Area.)

Comment

- I. Highly Sensitive Management Areas are both Wildlands and Ecological Reserve Areas.

The Agency should specify that HSMAs include an area of any size or condition in which the agency intends to allow natural processes to prevail. The Agency should expressly point to examples of lands which qualify as HSMAs, including old-growth forests. Furthermore, in the interest of consistency and transparency, the Agency should provide clarity that Highly Sensitive Management Areas are both Wildlands and Ecological Reserve Areas.

According to “Wildlands in New England” (Foster et al 2023),

‘Wildlands’ are tracts of any size and current condition, permanently protected from development, in which management is explicitly intended to allow natural processes to prevail with ‘free will’ and minimal human interference. Humans have been part of nature for millennia and can coexist within and with Wildlands without intentionally altering their structure, composition, or function.

All lands currently classified by ANR as Highly Sensitive Management Areas are included in the “Wildlands in New England” report (Foster et al 2023) and “Interactive Web Map” available at <https://wildlandsandwoodlands.org/wildlands-webmap/>. The full Wildlands in New England Report is available for download at <https://wildlandsandwoodlands.org/wp-content/uploads/2023/07/Wildlands-in-New-England-Full-Report-20230705.pdf>.

Additionally, Act 59 defines an “Ecological [R]eserve [A]rea” as “an area having permanent protection from conversion and that is managed to maintain a natural state within which natural ecological processes and disturbance events are allowed to proceed with minimal interference.” 10 V.S.A. § 2801(1). The Act 59 State Land Working Group determined that the following state lands “align with the Category 1 Ecological Reserve definition”: Highly Sensitive Management Areas “assigned when management plans are developed for state land parcels”; Natural Areas “established in 10 VSA 2607 [and] assigned by signature of the Commissioner of the land-owning department and the Governor;” “State lands protected with Conservation Easements with ‘primary ecological intent;” and “State lands protected with Conservation Easements with ‘ecological protection zones”” See “VCSI Working Group Reports Merged” at pp. 1-2, available for download at <https://vhcb.org/sites/default/files/programs/conservation/VCSI/VCSI%20Working%20Group%20Reports%20Merged.pdf>.

4.3 Interim Stewardship Plans

Issue: Interim Stewardship Plans

The draft rule permits ANR to develop an Interim Stewardship Plan (ISP) for a site. The ISP governs the permitted uses on the site during the period from when ANR acquires the land in fee simple to when ANR develops a LRMP for the site. The key issues with this provision are: (1) that the ISP is not subject to public input; (2) that the ISP may be amended at the Agency’s discretion without public input; and (3) that the ISP may last indefinitely as the draft rule does not require the Agency to develop a LRMP for a site.

Proposed redline of draft rule

4.3 Interim Stewardship Plans

Purpose: Interim Stewardship Plans (ISPs) are developed to provide for certain uses and management activities that occur upon acquisition of land by ANR before a LRMP is developed. This Rule covers ISPs for land acquired by ANR in fee when an ISP is required by funding sources or easement holders, or when the District Stewardship Team determines an ISP is necessary to address uses and management activities not covered by the Universal Management Activities in the Statewide Plan for the interim period until an LRMP is developed.

- (a) ISPs are generally focused on uses and management that are consistent with the purpose of the acquisition, and the conservation easement, and includes uses and management activities that are necessary to address stewardship concerns, provide basic public access, and protect natural resources. ~~Legal or authorized recreational uses~~ existing at the time of acquisition that are compatible with ANR policy may be incorporated into the ISP at the discretion of ANR in accordance with the terms and conditions of the conservation easement. Universal Management Activities may be included in the ISP.
- (b) ~~ANR shall develop and issue ISPs in accordance with 3 V.S.A. §§ 836-844. A final ISP is a final agency action subject to judicial review.~~
- (c) ~~ISPs for lands that receive federal funding shall have an opportunity for public input pursuant to Section 5. These ISPs shall comply with NEPA requirements, if applicable, including an environmental review process where ANR considers alternatives.~~
- (d) ~~ANR may amend ISPs in accordance with Section 5. ISPs may be amended when necessary.~~

4.3.1 Interim Stewardship Plan Content

- (a) Minimum Content:
 - i. ~~Introduction and Parcel/Land management Unit Description. An ISP may apply to a specific parcel or land management unit or any portion of a parcel or land management unit.~~
 - ii. ~~Public Input. An ISP shall integrate and expressly respond to public input. ANR shall make public the status of the resources subject to an ISP and make public the projected impacts of the ISP on the resources through a resource analysis.~~
 - iii. ~~Resource Analysis. An ISP shall include a report describing the initial status of the enumerated resources below. ANR shall include a description of the~~

attributes, characteristics, and values of the lands within the Management Unit based on Vermont Conservation Design and the Act 59 Inventory and Conservation Plan. ANR shall develop substantive resource standards to protect or enhance the identified resources, including ecosystem services. Finally, an ISP shall identify positive and adverse impacts of management actions on the resources, as well as compliance with applicable requirements restricting resource use. ANR shall provide for public review and comment on the resource analysis.

1. Legal and Policy Constraints, including but not limited to compliance with:
 - a. the Act 59 Conservation Plan
 - b. Climate Action Plan
2. Ecological and Wildlife Resources
Threatened or endangered species, critical habitat.
3. Forest Resources
Provisions for compliance with 10 V.S.A. § 2622, which provides that “revised acceptable management practices shall ensure that all logging operations, on both public and private forestland, are designed to: prevent or minimize discharges of sediment, petroleum products, and woody debris (logging slash) from entering streams and other bodies of water; improve soil health of forestland”.
4. Water Resources - Assessments of future and present impacts on water quality
Assessments of future and present impacts on water quality under Vermont Water Quality Standards Environmental Protection Rule Chapter 27 including consideration of practicable alternatives. ANR shall
 - a. Conduct an assessment of flood impacts, including modeling of impacts on downstream flooding from proposed management activities and opportunities for flood mitigation and resilience;
 - b. Ensure compliance with Clean Water Act including relevant TMDLs;
 - c. Disclose baseline water quality data to facilitate future monitoring
5. Fisheries
6. Forest Health
7. Cultural Resources
Consultation with State and Federally-recognized Tribes
8. Recreation and Public Use
9. Infrastructure
10. Climate Change Assessment
 - a. Current carbon storage estimates for the Management Unit

- b. Greenhouse Gas Emissions from proposed management actions shall be quantified and disclosed, providing context to the public of the estimated GHG emissions (from biogenic and fossil-fuel sources), carbon sequestration potential, and the net change in relevant carbon stocks in light of the proposed actions and timeframes under consideration, and explain the basis for the analysis
- 11. Analysis of a reasonable range of alternatives, including a No Action Alternative
- 12. Economic analysis including ecosystem services evaluation and comparison of economic benefits of alternatives, including No Action alternatives

(b) Management Strategies and Actions

- i. Implementation Schedule
- ii. Monitoring and Evaluation
- iii. Demonstration of compliance with substantive standards for the ISP, including protection of assessed resources and other legal requirements

(c) Appendix

- i. Public Responsiveness Summary
- ii. Property Information:
- iii. Conservation Purpose and Background
- iv. Legal Restrictions
- v. Features for Management Consideration

(d) Interim Management Actions

- i. ANR shall ensure that all Interim Management Actions advance climate adaptation and resilience in accordance with 10 V.S.A. § 592. ANR shall review all Interim Management Actions when the Vermont Climate Council updates the Climate Action Plan every four years to ensure continued compliance.
- ii. ANR shall ensure that Interim Management Actions are not in conflict with the public trust doctrine. If an Interim Management Action is considered an encroachment, as defined by 29 V.S.A. § 402(3), ANR shall apply for an encroachment permit from the Department of Environmental Conservation.

Comment

ISPs are statements of general applicability—thus, they are rules subject to the procedures enumerated in the Vermont Administrative Procedure Act. ANR should amend the draft rule and identify opportunities for public input within this process. The VT APA defines a “rule” as an “agency statement of general applicability that implements, interprets, or

prescribes law or policy.” 3 V.S.A. § 801(b)(9). Under this definition, ISPs are a rule because an ISP establishes the generally applicable actions for a specific tract of land.¹⁴ As a result, ISPs are subject to the procedures for adopting rules laid out in 3 V.S.A. §§ 836-844.

ANR must complete the following steps to issue an ISP: “fil[e] the proposed rule; publish[] the proposed rule; hold[] a public hearing and receiv[e] comments; fil[e] the final proposal; respond[] to the Legislative Committee on Administrative Rules when required; and fil[e] the adopted rule.” 3 V.S.A. § 836(a). Moreover, “the agency proposing the rule shall post on its website information concerning the proposal.” *Id.* § 836(b).

The other provisions we propose applicable to LRMPs should apply to ISPs as well. See section 4.2 Comments. For example, when ISPs have an impact on public trust resources, ANR must comply with the public trust doctrine. See section 4.4.1(a) Comment III for a detailed discussion on ANR’s obligations under the public trust doctrine. Finally, when ANR adopts ISPs on lands that received federal funds, ANR may be required to comply with NEPA requirements, as applicable. See section 4.4.1(a) Comment II.

4.4.2 Procedure for Annual Stewardship Plan Development

Issue: Procedure for Annual Stewardship Plan Development

The draft rule authorizes the agency to develop Annual Stewardship Plans (ASPs). Each ASP shall contain a complete list of the management actions that ANR plans to undertake over the next year. The key issue with this provision is that the provision does not specify how the public will be provided detailed, site-specific information and opportunities for public input on each management action.

Proposed redline of draft rule

4.4.2 Procedure for Annual Stewardship Plan Development:

- (a) The ASP shall be developed by ANR staff.
- (b) The ASP, and any amendments or updates to the ASP, shall be posted to the ANR website and distributed by email to any member of the public who elects to receive notifications about ASPs.
- (c) The ASP shall include links to the ANR website with detailed, site-specific plans and analysis pertaining to each proposed project or management action, including Universal Management Actions, as well as an estimated timeline for public input opportunities and a final decision.
- (d) ASPs can be amended ~~on an as-needed basis~~ to incorporate new projects or modify the scope of existing projects **so long as the ASP update is posted to the ANR website**

¹⁴ See Draft Rule § 4.3 (“[ISPs] are developed to provide for certain uses and management activities that occur upon acquisition of land by ANR before a LRMP is developed.”).

and notification is sent to any member of the public who has elected to receive such updates.

4.5.1 and 4.5.2 Drafting and Amendments to LRMPs, and Public Engagement

Issue:

Given that LRMPs are rules subject to the VT APA, the proposed LRMP amendment process should conform to the VT APA as well.

Proposed redline of draft rule

Amendments to Long Range Management Plans

4.5.1 ANR may amend an existing Long Range Management Plan or the Statewide Plan when determined to be required by ANR to address the following:

- (a) Proposed substantial changes in management goals or objectives;
- (b) Proposed substantial change in land use or land classification;
- (c) Proposed new uses not addressed in the existing LRMP; or
- (d) To add a new parcel of land acquired by ANR to the LRMP when management goals and activities are not covered in the Statewide Plan.

4.5.2 Proposed amendments shall be subject to the public engagement process defined in Section 5 **and in compliance with the Vermont Administrative Procedure Act.**

5. Public Engagement and Input

Issue: Public Participation

Proposed redline of draft rule

5.1 Scoping

- (a) Public scoping: ANR shall conduct public scoping to assess public opinion regarding the uses and management of ANR Lands prior to drafting a Statewide Plan, ~~or~~ LRMP, **or any project or management action, including Universal Management Actions. ANR will post on publicly available websites all records and project-level documents, including any supplemental analyses completed since the approval of the applicable LRMP.**
- (b) The public shall be notified two weeks in advance of **the start of** public scoping and shall have a minimum of 30 days to provide public scoping comments regarding a Statewide Plan, ~~or~~ LRMP, **or Draft Management Actions considered in an LRMP or ASP.**

- (c) At a minimum, notification shall take the form of **emails to anyone subscribed for ANR updates**, press releases, and posting on ANR's website. ANR may use other forms of public notice as determined appropriate.

5.2 Public Comment and Public Informational Meeting

- (a) Public Comment: The public shall have the opportunity to comment on **any and all: a draft Statewide Plan, draft LRMP, or a proposed amendment to a Statewide Plan or LRMP**.
- a. Draft Statewide Plans;
 - b. Draft LRMPs;
 - c. Draft amendment to a Statewide Plan;
 - d. Draft amendment to a LRMP;
 - e. Draft amendment to an ISP;
 - f. Draft Management Actions, including those listed in an ASP; and
 - g. Proposed extension of an LRMP.
- (b) ANR shall hold at least **two ~~one~~** public informational meetings, **including one in-person meeting and one live virtual meeting**, regarding a draft Statewide Plan, draft LRMP, **draft ISP, or draft management action**, as well as any **draft ~~or a proposed~~** amendment to a Statewide Plan, **LRMP, or ISP**.
- (c) The public shall be notified and the draft plan, **~~or~~ amendment, or Management Action** shall be posted at least two weeks in advance of a public informational meeting and the **start of a** public comment period. The public comment period shall last for at least 30 days.
- (d) At a minimum, notification shall take the form of **emails to anyone subscribed for ANR updates**, press releases, and posting on ANR's website. ANR may use other forms of public notice as determined appropriate.
- (e) Responsiveness Summary: a public responsiveness summary shall be included in the final draft LRMP, Statewide Plan, **ISP, Management Action**, or amendment **thereof**, which will address public comment received.
- (f) Records: All public comments received during the official scoping and public comment periods shall be maintained in accordance with ANR records retention procedures approved by the Vermont Secretary of State.

5.3 Agency Decision

Any agency decision to approve an ISP, LRMP, amendment thereof, or any Management Action or Universal Management Action, shall constitute a decision subject to judicial review.

Comment

As discussed above, site-specific LRMPs and ISPs are rules subject to the VT APA procedures. ANR must comply with VT APA public comment requirements. The VT APA defines a “rule” as an “agency statement of general applicability that implements, interprets, or prescribes law or policy.” 3 V.S.A. § 801(b)(9). Each site-specific plan established pursuant to the draft rule is a rule under this definition because the site-specific plans identify all generally applicable activities that ANR may take on the public lands.¹⁵ Therefore, ANR “shall . . . adopt[]” the site-specific management plans in accordance with the procedures established in 3 V.S.A. § 836(a):

[R]ules shall be adopted by taking the following steps: (1) prefiling, when required; (2) filing the proposed rule; (3) publishing the proposed rule; (4) **holding a public hearing and receiving comments**; (5) filing the final proposal; (6) responding to the Legislative Committee on Administrative Rules when required; and (7) filing the adopted rule.

ANR should revise the draft rule and incorporate the redlined changes to ensure that the draft rule complies with the VT APA.

III. CONCLUSION

As written, ANR’s draft rule fails to ensure that state lands management lives up to the Agency’s statutory obligations and provides a robust, comprehensive framework for state lands management that ensures the protection of the state’s natural resources and provides needed opportunities for public review and feedback. To remedy these shortcomings, ANR should adopt the redlines as proposed and address the enumerated issues listed above.

Respectfully submitted,

STANDING TREES

By its attorneys:

¹⁵ See section 4.2 (“Purpose: to establish a management planning process . . . for a variety of uses and purposes”); section 4.3 (“[ISPs] are developed to provide for certain uses and management activities”).

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APPENDIX A

3 V.S.A. § 2853(5)

The commissioner with the approval of the Secretary, may . . . [m]ake regulations consistent with law for the internal administration of the department and its programs.

10 V.S.A. § 2603(c)(1)

The Commissioner [of the Department of Forests, Parks and Recreation], subject to the direction and approval of the Secretary, shall adopt and publish rules in the name of the Agency for the use of State forests, or park lands[.]

10 V.S.A. § 578(a)

Vermont shall reduce emissions of greenhouse gases from within the geographical boundaries of the State and those emissions outside the boundaries of the State that are caused by the use of energy in Vermont by . . . not less than 26 percent from 2005 greenhouse gas emissions by January 1, 2025 . . . not less than 40 percent from 1990 greenhouse gas emissions by January 1, 2030 . . . [and] not less than 80 percent from 1990 greenhouse gas emissions by January 1, 2050.

10 V.S.A. § 592

The [Vermont Climate Action] Plan shall include specific initiatives, programs, and strategies that will . . . build and encourage climate adaptation and resilience of Vermont communities and natural systems.

3 V.S.A. § 2807(a)(2)

The lands, facilities, and recreational assets owned or managed by the Department of Forests, Parks and Recreation are held as public assets for the citizens of Vermont and **require proper management to ensure that these natural resources and facilities remain viable and available for this and all future generations.**

3 V.S.A. § 2825(a)

The primary **duties of the Secretary are to coordinate the activities of the various departments and divisions of the Agency for the proper development, management, and preservation of Vermont's natural resources.** to develop policies for the proper and beneficial development, management, and preservation of resources in harmony with the State

comprehensive planning program and to promote the effective application of these policies by the departments and divisions affected.

Vermont Water Quality Standards, Environmental Protection Rule Chapter 29A.

§ 29A-206

(a) Section 401 of the Clean Water Act requires that for any federally licensed or permitted activity that may result in a discharge into waters of the United States, the State issue, waive, or deny water quality certification ensuring the discharge will comply with all applicable water quality requirements (33 U.S.C. § 1341).

(b) A water quality certification shall not be issued unless the applicant demonstrates all of the following:

(1) There is no practicable alternative to the proposed activity that would have a less adverse impact on waters and wetlands of the State, and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequences. An alternative is considered practicable if it is available and capable of being completed after taking into consideration cost, existing technology, and logistics in light of overall purposes of the proposed activity.

e) Public noticing of § 401 Water Quality Certification application, draft decision, and final decision.

(1) The applicant shall provide notice of their § 401 Water Quality Certification application to any person or adjoining property owner that receives notice of the federal license or permit application for which the § 401 Water Quality Certification is sought. Adjoining property owners are those whose property adjoins the waterbody or aquatic site where the work is being proposed.

(5) Any person may request a public meeting on the draft decision issued under this section within 14 days of the issuance of the draft decision. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(7) The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision or

permit to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

10 V.S.A. § 2622.

(a) Silvicultural practices. The Commissioner shall adopt rules to establish methods by which the harvest and utilization of timber in private and public forestland will be consistent with continuous forest growth, including reforestation, will prevent wasteful and dangerous forestry practices, will regulate heavy cutting, will encourage good forestry management, will enable and assist landowners to practice good forestry management, and will conserve the natural resources consistent with the purposes and policies of this chapter, giving due consideration to the need to ensure continuous supplies of forest products and to the rights of the owner or operator of the land. The rules adopted under this subsection shall be advisory and not mandatory except that the rules adopted under section 2625 of this title for the regulation of heavy cutting shall be mandatory as shall other rules specifically authorized to be mandatory.

(b) Acceptable management practices. On or before July 1, 2016, the Commissioner shall revise by rule the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont. The revised acceptable management practices shall ensure that all logging operations, on both public and private forestland, are designed to: prevent or minimize discharges of sediment, petroleum products, and woody debris (logging slash) from entering streams and other bodies of water; improve soil health of forestland; protect aquatic habitat and aquatic wildlife; and prevent erosion and maintain natural water temperature. The purpose of the acceptable management practices is to provide measures for loggers, foresters, and landowners to utilize, before, during, and after logging operations, to comply with the Vermont Water Quality Standards and minimize the potential for a discharge from logging operations in Vermont in accordance with section 1259 of this title. The rules adopted under this subsection shall be advisory and not mandatory. (Added 1977, No. 253 (Adj. Sess.), § 1; amended 1997, No. 15, § 1, eff. May 6, 1997; 2015, No. 64, § 49.)

23 V.S.A. § 5406

All agencies of this State shall review programs administered by them that may relate to this chapter and shall, in consultation with the Secretary, utilize their authorities only in a manner that does not jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation or

recovery programs established by this chapter or by the Secretary under his or her authority.

10 V.S.A. Chapter 123: Protection of Endangered Species

3 V.S.A. Chapter 25

Section 1. Introduction.

This rule is required by 3 V.S.A. § 847(e) for the effective administration of 3 V.S.A. Chapter 25. It applies to every agency of state government adopting rules under the Vermont Administrative Procedures Act (APA). For a fuller understanding of the rulemaking process, consult 3 V.S.A. §§ 801 - 849 and the rules of procedure of the Legislative Committee on Administrative Rules (LCAR). For the purpose of the Rule on Rulemaking, the filing of any new rule, amendment, or repeal of an existing rule shall be described as a rule.

Section 2. Filings.

The APA requires agencies to make filings of every new, amended, or repealed rule at least four times during the rule making process.

3 V.S.A § 847

(a) Availability from agency. An agency shall make each rule it has finally adopted available to the public online and for physical inspection and copying. Online, the agency shall post its adopted rules on a separate web page that is readily accessible from a prominent link on its main web page, that lists adopted rules by title and topic, and that is searchable.

(b) Register; code.

(1) The Secretary of State (Secretary) shall keep open to public inspection a permanent register of rules. The Secretary may satisfy this requirement by incorporating the register into the centralized rule system created pursuant to section 818 of this title.

(2) The Secretary shall publish a code of administrative rules that contains the rules adopted under this chapter. The requirement to publish a code shall be considered satisfied if a commercial publisher offers such a code in print at a competitive price and at no charge online. However, if the Secretary establishes the centralized rule system under section 818 of this title as a digital system, then the system shall include the online publication of this code.

(c) Rules for administration. The Secretary of State shall adopt rules for the effective administration of this chapter. These rules shall be applicable to

every agency and shall include uniform procedural requirements, style, appropriate forms, and a system for compiling and indexing rules. (Added 1981, No. 82, § 6; amended 1995, No. 61, § 5; 2013, No. 142 (Adj. Sess.), § 10; 2015, No. 131 (Adj. Sess.), § 19; 2015, No. 169 (Adj. Sess.), § 11; 2017, No. 156 (Adj. Sess.), § 2.)

10 V.S.A. § 6301.

It is the purpose of this chapter [Chapter 155: Acquisition of Interests in Land by Public Agencies] to **encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land** and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare; and **to encourage the use of conservation and preservation tools** to support farm, forest and related enterprises, thereby strengthening Vermont's economy to improve the quality of life for Vermonters and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

3 V.S.A. § 801(b)(9)

'Rule' means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

10 V.S.A. § 2601(a)

The conservation of the forests, timberlands, woodlands, and soil and recreational resources of the State are hereby declared to be in the public interest.

It is the policy of the State to encourage economic management of its forests and woodlands, **to sustain long-term forest health, integrity, and productivity**, to maintain, conserve, and improve its soil resources, and to control forest pests to the end that forest benefits, including maple sugar production, are preserved for its people, floods and soil erosion are alleviated, hazards of forest fires are lessened, its natural beauty preserved, its wildlife protected, the development of its recreational interests is encouraged, the fertility and productivity of its soil are maintained, the impairment of its dams and reservoirs is prevented, its tax base is protected,

and the health, safety, and general welfare of its people are sustained and promoted.

10 V.S.A. § 2801(1)

'Ecological reserve area' means an area having permanent protection from conversion and that is managed to maintain a natural state within which natural ecological processes and disturbance events are allowed to proceed with minimal interference.