Law Office of James A. Dumont, Esq., P.C.

15 Main St., P.O. Box 229, Bristol VT 05443
Office 802-453-7011; Cell 802-349-7342; Fax 802-505-6290
email: jim@dumontlawvt.com; website: dumontlawvt.com

James A. Dumont, Esq.

June 30, 2025

Ms. Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801
By email: Julie.Moore@Vermont.gov

Ms, Danielle Fitzko
Commissioner
Department of Forests, Parks, and Recreation
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3702
By email: Danielle.Fitzko@vermont.gov

Ms. Andrea Shortsleeve
Commissioner
Department of Fish & Wildlife
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3702
By email: Andrea.Shortsleeve@vermont.gov

Re: Worcester Range Management Plan Rulemaking Petition

Dear Secretary Moore and Commissioners Fitzko and Shortsleeve:

I write on behalf of Standing Trees and the 28 persons who have signed the attached petition.

I have previously written to your counsel to set forth our view that under Vermont's Administrative Procedure Act, the Worcester Range Management Unit – Long Range Management Plan (Plan) constitutes a rule. The statute defines a rule to consist of an "agency statement of general applicability which implements, interprets, or prescribes law or policy."[1] In the Plan, the Agency of Natural Resources (Agency) has prescribed and is implementing a written policy that is meant to apply generally to a class of subsequent decisions about how the Worcester Range lands will be managed. The Plan provides the policy foundation upon which later individualized assessments will be made. The Plan's approach is explained repeatedly in the Agency's Responses to comments on

[1] 3 V.S.A. § 801(b)(9).

the proposed plan, such as the Agency's Comment Themes 10, 15, 33, 107 and 114. The Agency, therefore, must adhere to the rulemaking requirements set forth in 3 V.S.A. §§ 836-844. The Agency has a legal obligation to do so.

To avoid any question about your duties, I now enclose a petition pursuant to 3 V.S.A. § 831(c). That section states: "An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules." The Plan constitutes a rule, but, in any case, it is an "an existing practice or procedure." A practice consists of "a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties." The Plan is at least an existing practice because the Plan affects thousands of Vermonters, including but not limited to the abutting landowners who have executed the petition. Pursuant to 3 V.S.A. § 831(c), therefore, we are petitioning for initiation of rulemaking for this practice or procedure. Pursuant to 3 V.S.A. § 806(a), we expect that the Agency will initiate rulemaking within 30 days of receipt of this petition. Please provide me with a copy of the document initiating rulemaking.

As the petition lays out, the Plan designates portions of the Worcester Range for timber harvesting that would cause many environmental harms and imperil the lands' extraordinary public benefits for private gain. The Agency's failure to adhere to the rulemaking process to date has undermined the public's ability to engage with the Agency on these critical issues during the Plan's development.

For example, as you know, Vermont's longtime and unlawful failure to address phosphorus runoff into Lake Champlain has had disastrous consequences for our treasured lake. The failure led the U.S. Environmental Protection Agency to require adoption of Total Maximum Daily Loads, or TMDLs, for Lake Champlain to try to reverse the Lake's decline. The Plan relies heavily on Acceptable Management Practices, or AMPs, such as use of water bars, to mitigate the phosphorus runoff that the Plan's proposed harvesting will cause. Because the Department of Forests, Parks, and Recreation (FPR) did not follow the requirements of rulemaking, the scientific basis for FPR's reliance was not made public until FPR published its "Responses" to our comments and the comments of many outraged citizens—but the publication of those Responses ended the public process. We and others never had the opportunity to respond to what turned out to be the faulty science relied upon in the Responses. When rulemaking does occur, we will submit expert analysis of that faulty science. Our experts will demonstrate that the scientific literature and its data do not support FPR's reliance on AMPs. In short, the Plan, FPR's Responses to comments on the Plan, and FPR's reliance on AMPs to protect the lake, are all baseless, arbitrary and capricious—which the rulemaking process will lay bare. In fact, implementation of the Plan will cause increased phosphorus runoff, will violate the EPA-required TMDLs and the Clean Water Act, and will make it even more difficult to restore the Lake. For these reasons, we expect that the Legislative Committee on Administrative Rules would vote against approval of the Plan/rule should it be presented in its present form.

The Plan and its Responses also rely on the supposed economic benefits of timber harvesting as a justification for the Plan. When the Plan undergoes rulemaking, we will submit expert analysis demonstrating that, in fact, timber harvesting in the Worcester

Range will hurt Vermont economically. The dollar value of the ecosystem services that the standing timber in the Worcester Range provides to Vermonters vastly exceeds the dollar value of all of the benefits of harvesting, including revenue to the State, employment and taxes. These ecosystem services include protection of clean water, flood resilience, protection of wildlife that predate on harmful and disease-spreading insects, recreational use, carbon storage, benefits to the tourist economy from recreational use, and tax revenues. This is public land and it must be used in a manner that protects public interests, as mandated by 10 V.S.A. § 2601(a). For these reasons as well, once rulemaking occurs, we expect that the Legislative Committee on Administrative Rules would vote against approval of the Plan/rule should it be presented in its present form.

Additionally, the rulemaking process will also give us, and others, the opportunity to submit expert analysis of the State's claims that logging is a net benefit for fish and wildlife, or for the forest's ability to adapt to changes in the climate and other stressors. The scientific literature supports the conclusion that logging can create habitat for certain species—but the literature reveals that native biodiversity (including Vermont's threatened and endangered species) and forest resilience will be best served by allowing existing interior and mature forests in the publicly-owned portions of the Worcester Range to remain buffered from commercial logging.

We look forward to hearing from you.

Sincerely,
James A. Dumont
James A. Dumont, Esq.

cc: Mr. Zack Porter
Christophe Courchesne, Esq.
Hannah Smith, Esq.
Catherine Gjessing, Esq.
Meghan Purvee, Esq.

PETITION TO COMMENCE RULEMAKING & ENVIRONMENTAL REVIEW

WHEREAS the Worcester Range has been described by the Vermont Department of Fish and Wildlife as a "linchpin, …the only place that's left in central Vermont that is large in scale and almost completely unfragmented."

WHEREAS the Worcester Range possesses remarkable ecological characteristics including its unfragmented habitat, history of passive management, intact watersheds, and geographic context that make it unique in Vermont and particularly worthy of conservation; and

WHEREAS these special ecological characteristics provide a wide range of environmental and economic benefits to the public, including flood and drought protection, clean air and water, recreation and tourism, endangered and threatened species protection, and habitat for a wide range of flora and fauna; and

WHEREAS the Worcester Range Management Unit is home to various endangered and threatened species including the Northern long-eared bat (*Myotis septentrionalis*), Indiana Bat (*Myotis sodalist*), Tri-colored Bat (*Perimyotis subflavus*), and Little Brown Bat (*Myotis lucifugus*); and

WHEREAS older forests contain unique habitat that supports plant and animal species that provide ecosystem services to the state economy, including bats and pollinators that benefit agricultural production; and

WHEREAS the watersheds within and downstream of the Worcester Range are owned by the State in trust for the public under the common law and the Vermont Constitution; and
WHEREAS the Vermont Constitution requires that these lands must be managed for the common benefit;

WHEREAS the Agency of Natural Resources ("ANR") has created a management plan ("the Plan") that designates portions of the Worcester Range for timber harvesting;

WHEREAS timber harvesting in accordance with ANR's plan would severely harm the special ecological characteristics of the Worcester Range, and would deprive the public of many of the Worcester Range's environmental and economic benefits while providing financial benefit to a small number of people at the expense of the public;

WHEREAS the Plan functions as a rule within the meaning of Vermont statutes but was not promulgated in compliance with Vermont statutes governing rulemaking;

WHEREAS ANR published the draft plan and held informal meetings with members of the public, but did not hold any public hearings at which members of the public could publicly address ANR and other members of the public as required by statute, did not perform environmental impact analysis and economic impact analysis and consideration of an alternative rule as required by statute, did not create an opportunity for public comments that were available to the public after receipt, did not address the State's duties under the Constitution and the public trust doctrine, and did not submit the proposed rule to the Legislative Committee on Administrative Rules and obtain that Committee's approval of the rule as required by statute.

WHEREAS, regardless of whether ANR has already violated Vermont law by failing to follow the statutory requirements for rulemaking, section 831(c) of the Vermont Administrative Procedure Act states that, where 25 or more persons request that an existing practice or procedure be adopted by rulemaking, the agency shall commence rulemaking, and by this Petition, the undersigned hereby make that request;

THEREFORE, the following 25 or more persons request that the Secretary of the Agency of Natural Resources or their designee, within 30 days, commence rulemaking to propose adopting the Worcester Range Management Plan as a rule.

___/s/____ Brian Tokar, 356 West Hill Rd., Worcester, VT, 05682_____4/13/25__

___/s/____ Allen Gilbert, 444 Hampshire Hill Rd., Worcester, VT 05682_____4/12/25__

___/s/____ Lila Richardson, 444 Hampshire Hill Rd., Worcester, VT 05682____4/12/25__

___/s/____ Sandra Denner, 454 Hampshire Hill Rd, Worcester, VT 05682____4/12/25___

___/s/____ Robert Carlson-Moeller, 456 Hampshire Hill Rd., Worcester, VT 05682___4/12/25_

___/s/____ Dunja Carlson- Moeller, 456 Hamsphire Hill Rd., Worcester, VT 05682___4/12/25_

___/s/____ Lizabeth Moniz, 101 Frazier Road, Worcester, VT 05682___4/12/25_

___/s/____ Katie Back, 406 Wood Rd, Worcester, VT 05682___4/12/25_

___/s/____ Lynn A. Wild, 5 St. Paul Street, Montpelier, VT 05602___4/16/25_

___/s/____ Ron Wild, 5 St. Paul Street, Montpelier, VT 05602___4/16/25_

___/s/____ Myron Dorfman, 160 Shady Rill Rd, Montpelier VT 05602___4/16/25_

___/s/____ Bodo Carey, 385 West Hill Rd, Worcester VT, 05682___4/16/25_

___/s/____ Phyllis Rubenstein, 15 College Street, Montpelier, VT 05602___4/16/25_

___/s/____ Kathy A. Johnson, 3 Cedar Street #1, Montpelier VT, 05602___4/16/25_

___/s/____ Frank White, 519 Hampshire Hill Rd, Worcester, VT 05682___4/16/25_

___/s/____ Carolyn Peduzzi, 576 Hampshire Hill Rd, Worcester, VT 05682___4/16/25_

___/s/____ Cecile Green, 364 West Hill Rd, Worcester VT 05682___4/19/25_

___/s/____ Janet Thouron, 330 North Bear Swamp Rd, North Middlesex 05682___4/19/25_

___/s/____ John Thouron, 330 North Bear Swamp Rd, North Middlesex 05682___4/19/25_

___/s/____Jeff Farber, 768 Stewart Road, Berlin, VT 05602___4/19/25_

___/s/____Meredith Kitfield, 209 Barre Street, C 301, Montpelier, VT 05602___4/18/25_

___/s/____Andrea L Stander, 5 St. Paul Street, Unit 1, Montpelier, VT 05602___4/18/25_

___/s/____Faith Brown, 118 Al Shir Rd, Colchester, VT 05602___4/18/25_

___/s/____Standing Trees, Zack Porter-Executive Director, PO Box 132, Montpelier, VT 05601___4/21/25_

___/s/____Jonathan Carter, 27 Eastman Farm Rd,. Burlington, VT 05408__4/22/25_

___/s/____Alan Coulter, 1809 Quaker village Rd, Weybridge, VT 05753___4/23/25_

___/s/____Mark Nelson, 289 Elzira Winter Road, Ripton, VT 05766___4/23/25_

___/s/____Christopher Gish, 3727 VT-15, Cambridge, VT 05464___4/23/25