

## **PETITION TO COMMENCE RULEMAKING & ENVIRONMENTAL REVIEW**

Whereas global climate change and the loss of biodiversity and species abundance threaten the health and well-being of every resident of Vermont, the United States of America and the earth, and disproportionately harm the health and well-being of disadvantaged minorities and the poor, and risk the future of our children; and

Whereas Vermont alone cannot solve the climate and extinction crises but Vermont in the past has served as a model for other states through the actions it has taken to protect the environment and civil rights; and

Whereas the Vermont Stronger State Hazard Mitigation Plan instructs the state to leverage our natural lands, including public lands, to increase the resilience of Vermont to floods, droughts, and other impacts associated with climate change; and

Whereas the Phosphorus TMDL's for the Vermont Segments of Lake Champlain require changes to forest management to reduce nutrient pollution in Lake Champlain; and

Whereas Vermont Conservation Design provides a blueprint for maintaining and recovering Vermont's native biodiversity and ecosystem services by protecting, restoring, and connecting lands and waters; and

Whereas the Vermont Climate Action Plan calls for increasing the amount of old forests to at least 9% of Vermont's forestland, as called for in Vermont Conservation Design, to store carbon and increase resilience to climate change; and

Whereas many leading scientists have concluded that allowing forests to grow older and allowing older forest ecosystems to become more complex is substantially more effective at sequestering carbon than managing for young forests, harvesting of trees and planting of new trees, or creating patch-cuts or clear-cutting; and

Whereas Vermont possesses large reserves of maturing trees and forest ecosystems that, if left to grow, would provide increased biodiversity, carbon, water quality and disaster risk reduction benefits; and

Whereas combustion of wood to produce electricity produces an amount of greenhouse gases, per kilowatt hour, greater than those produced by combustion of fossil fuels to produce electricity; and

Whereas Vermont statute 10 V.S.A. § 5406 states that every agency of the state "shall.. utilize their authorities only in a manner that does not jeopardize... threatened or endangered species;" and

Whereas Vermont statute 10 V.S.A. § 5403 prohibits the taking of any threatened or endangered species; and

Whereas the Northern Long-eared Bat is listed by the Vermont Fish and Wildlife Board as an endangered species and is currently proposed for listing as an endangered species by the US Fish and Wildlife Service; and

Whereas Northern Long-eared Bats require large diameter old trees and/or dead standing trees within structurally complex old forests for necessary roosting habitat; and

Whereas Vermont statute 10 V.S.A. § 2603 requires the Commissioner of Forests, Parks and Recreation to promulgate rules governing the use of State Forests and Parks; and

Whereas the Commissioner of Forests, Parks and Recreation, instead of promulgating rules to govern the harvesting and other cutting of trees in State Forest and Park lands, has relied upon written practices or procedures known as "Agency of Natural Resources: Uses of State Land" signed on November 17 and November 18, 2008 and "FPR #21, State Lands Management Planning," which was adopted effective January 30, 1995; and

Whereas Vermont statute 10 V.S.A. § 2607 authorizes the Commissioner of Forests, Parks and Recreation to designate Natural Areas within State Forests and Parks, and requires the Commissioner to issue regulations governing the use of Natural Areas; and

Whereas the Commissioner of Forests and Parks has designated Natural Areas but instead of promulgating rules to govern the harvesting or other cutting of timber or any other use of Natural Areas, relies upon the written practices or procedures known as “Agency of Natural Resources: Uses of State Land” signed on November 17 and November 18, 2008 and “FPR #21, State Lands Management Planning,” which was adopted effective January 30, 1995; and

Whereas Vermont statute 10 V.S.A. § 4145(a) authorizes rulemaking by the Fish and Wildlife Board to govern use of lands known as Wildlife Management Areas; and

Whereas the Fish and Wildlife Board allows harvesting and other cutting of trees in Wildlife Management Areas by issuance of Special Use Permits but has issued no rules governing when a Special Use Permit for timber harvesting will be issued and instead relies upon the written policy known as “Agency of Natural Resources: Uses of State Land” signed on November 17 and November 18, 2008; and

Whereas in 2008 and 1995, it was not Vermont policy to mandate protection of endangered species and to combat climate change; and

Whereas in 2008 and 1995 it was not known that the Northern Long-eared Bat would suffer from catastrophic population declines due to disease, and there was substantially less scientific basis for concluding that preservation of forests to allow them to mature into complex, mature forests would be more effective at sequestering and storing carbon than timber harvesting; and

Whereas a 2015 report on enhancing flood resiliency of Vermont State Lands commissioned by Vermont Forests, Parks and Recreation found that “the majority of State Lands are located in forested headwater settings, which are particularly susceptible to generating runoff during storm events, given their topography and geologic setting. This inherent vulnerability to overland flow and soil erosion has been exacerbated by a legacy of land use modifications (deforestation, development of road and trail networks) most often pre-dating State acquisition of the lands. Natural vulnerabilities and legacy impacts have combined to create upland forests particularly sensitive to a rapidly changing climate,” and therefore concluded that “In light of increasing storm frequency, intensity, persistence and magnitude, management for enhanced flood resiliency on State Lands will require greater emphasis on forest health and stewardship of forest ecosystem services, including water retention, infiltration and filtering;” and

Whereas “Agency of Natural Resources: Uses of State Land” and “FPR #21, State Lands Management Planning” do not mention protection of threatened or endangered species, combatting climate change or sequestration of carbon, and neither document requires the Commissioner of Forests, Parks and Recreation or the Commissioner of Fish and Wildlife to determine the impacts of a proposed use of State Forests, Parks and Wildlife Management Areas on threatened or endangered species, climate change or carbon sequestration and to base decisions upon those analyses; and

Whereas State Forests, Parks and Wildlife Management Areas are public trust lands that must be managed in the public interest in accordance with the law of public trusts, and the public trust is not consistent with practices or procedures that allow the Commissioner of Forests, Parks and Recreation and the Commissioner of Fish and Wildlife to exercise standard-less judgment about the manner and extent to which they consider impacts on climate change mitigation and resilience, maintenance and recovery of biodiversity and protection of threatened and endangered species; and

Whereas the Commissioners of both Departments in October of 2021 signed management plans for the Camel’s Hump Management Unit, which plans were based on “Agency of Natural Resources: Uses of State Land” and these plans contemplate timber harvesting and tree cutting on State Forest, Parks and Wildlife Management Areas; and

Whereas the Management Plan states that endangered Northern Long-eared Bats and other endangered species are present in the State Forests, Parks and Wildlife Management Areas addressed by the Camel’s Hump Management Plan and designates areas for timber harvesting and other tree-cutting—

but the Commissioners have taken no action to determine if the planned harvesting and cutting will harm or destroy habitat of Northern Long-eared Bats and the other endangered species listed in the Management Plan; and

Whereas the Camel's Hump management plans designate approximately 3,800-acres of lower-altitude area of the Camel's Hump Management Unit—the forests with the greatest potential for carbon sequestration, water quality protection, disaster risk reduction and biodiversity, including habitat for Northern Long-eared Bats—for timber harvesting; and

Whereas the Camel's Hump management plans do not adequately account for the impacts of proposed harvest and impacts of logging trucks on town roads, culverts and bridges – many of which are sensitive and fragile to such impacts and degradation of which harms water quality; and

Whereas the Camel's Hump management plan authorizes cutting of trees within the Camel's Hump Natural Area and Ecological Area, contrary to the purposes of 10 V.S.A. § 2607 and without the benefit of regulations implementing 10 V.S.A. § 2607; and

Whereas the Vermont Administrative Procedure Act states that where a statute requires an agency to adopt rules, or where 25 or more persons request that an existing practice or procedure be adopted by rulemaking, the agency shall commence rulemaking; and

Whereas the Vermont Administrative Procedure Act requires that during rulemaking an agency must include an analysis of the environmental impact of the proposed rule, including the scientific information and studies upon which the rule is based, and requires that the environmental impact analysis shall analyze the anticipated environmental impacts, whether positive or negative, from adoption of the rule, including i) the emission of greenhouse gases, ii) effects on the ability of the environment to provide benefits, and iii) regulation of climate, and iv) also shall compare the environmental impact of the rule with the environmental impact of alternatives to the rule;

THEREFORE, the following 25 or more persons request as follows:

First, that each Commissioner refrain from authorizing any harvesting or cutting of trees within the Camels Hump Management Unit unless and until the Commissioners have determined, based on field studies, that the planned harvesting and cutting will not harm or destroy habitat of Northern Long-eared Bats and other endangered species listed in the Plan;

Second, that the Commissioner of Forests, Parks and Recreation within 30 days comply with 10 V.S.A. §§ 2603 and 2607 by commencing rulemaking to adopt rules to govern the harvesting and cutting of trees in State Forests and Parks and in Natural Areas, and they request that these rules require consideration of current State policies and scientific and economic data pertaining to the lost sequestration of carbon and the effects on greenhouse gas emissions, water quality, biodiversity, endangered species protection, habitat fragmentation, and the public trust in deciding whether to authorize any proposed harvest or cutting of trees on State Forest and Park lands;

Third, that each Commissioner within 30 days commence rulemaking to consider adoption of the procedures titled “Agency of Natural Resources: Uses of State Land” and “FPR #21, State Lands Management Planning” and as part of the evaluation of the environmental impact of doing so to consider adoption of an alternative rule that would require consideration of current State policies and scientific and economic data pertaining to the lost sequestration of carbon and the effects on greenhouse gas emissions, water quality, biodiversity, endangered species protection, habitat fragmentation, and the public trust in deciding whether to authorize each proposed harvest of timber on State Forest, Park, Natural Areas and Wildlife Management Area lands; and

Fourth, that each Commissioner refrain from authorizing any harvesting or cutting of trees within the Camels Hump Management Unit until after rulemaking has been completed and each proposed harvest or cut has been evaluated pursuant to final promulgated rules.

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