



March 12, 2008

Sent via e-Mail to:
comments-eastern-white-mountain-saco@fs.fed.us

Katherine W. Stuart, District Ranger
Androscoggin District – White Mountain National Forest
300 Glen Rd
Gorham, NH 03581

Subject: Sierra Club and the Center for Biological Diversity's 36 CFR § 215 Substantive Comments for the Mill Brook Project

Dear Mrs. Stuart,

Please accept the following comments on behalf of Sierra Club and its New Hampshire Chapter as well as Chapter leader Todd Myse, John Harbison, Chair of the Sierra Club's Northeast Wilderness Steering Committee, and Jared Margolis, and on behalf of the Center for Biological Diversity and its Northeast Field Office as well as Public Lands Advocate Mollie Matteson. These comments are provided in accordance with 36 CFR § 215 and in response to the Preliminary Environmental Assessment of February 21, 2008 as well as the legal notice published in the Manchester Union Leader on February 28, 2008. Please send any responding information via email to Jared Margolis (jaredmargolis@hotmail.com, 151 Cilley Hill Rd, Jericho, VT 05465, Phone: 802-899-5875), Todd Myse (Todd.A.Myse@Alum.Dartmouth.org, PO Box 7024 Gilford, NH 03247, Phone: 603-744-5794), John Harbison (johnharbison@adelphia.net, 573 Coon Hill Road, Colchester, VT 05446-7343, Phone: 802-879-3940) and Mollie Matteson (mmatteson@biologicaldiversity.org, PO Box 188 Richmond, VT 05477, Phone: 802-434-2388).

We urge the Service to choose the Alternative that Does Not Log or Build Roads in the Kilkenny IRA

We are pleased to see that the Service has included an alternative in the preliminary EA that would not log or build roads within the Kilkenny IRA. We strongly urge the service to adopt this alternative as the proposed alternative, thus sparing this ecologically important area from intrusion and harm.

We note, however, that this alternative was created by removing the harvest units that exist in the IRA from the current proposed alternative. This provides a skewed comparison, wherein the amount of board feet, the unit costs and net value for alternative 3 make it less desirable. We recommend that an alternative be developed that would be more comparable with the proposed alternative, while still avoiding logging within the IRA. As the EA notes, the Mill Brook HMU consists of 17,000 acres, with 9,000 acres in MA 2.1. Preliminary EA at 2. The proposed alternative will take place on only 1,034 acres, and as such there is no reason to invade the IRA. An alternative that provides

similar benefits and opportunities to the proposed alternative, on lands outside the IRA, should be created.

We would note that in our review of the new WMNF Plan, there is nothing in MA 2.1 that requires the Forest Service to do the proposed logging and road reconstruction in the IRA. The Forest Service has the option to forgo these activities if it thinks the area's values should be protected. In this case, the values of this area are not fully discussed in the comment package, however the roadless character and potential wilderness designation should be sufficient justifications to fully develop a better alternative that does not log or build roads in the IRA.

Furthermore, the National Forest Management Act (NFMA) requires the Forest Service to protect various resources when proposing logging, and the Forest Service bears the burden of showing that it is protecting soils, watersheds, streams, fish, and wildlife. 16 USC § 1604(g)(3)(F) requires the Forest Service to “insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an even-aged stand of timber will be used as a cutting method on National Forest System lands only where (i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan.” (emphasis added). We see no such analysis in the Draft EA, and expect an optimality analysis in the final EA.

We urge the Service to conduct such analysis keeping in mind the special character of roadless areas, and to choose an alternative that does not invade such areas or damage their roadless character. Roadless character describes those characteristics most often present in inventoried roadless areas, which encompass:

unique opportunities for dispersed recreation, sources of clean drinking water, and large undisturbed landscapes that offer privacy and seclusion. In addition, these areas provide a bulwark against the spread of nonnative invasive plant species, support a diversity of habitats for native plant and animal species, conserve biological diversity, and provide opportunities for study, research, and education.

2001 Roadless Area Conservation Rule FEIS, p. S-1, available at [HTTP://roadless.fs.fed.us/documents/feis/](http://roadless.fs.fed.us/documents/feis/).

These are unique and ecologically important areas, the protection of which should be forefront in the planning process. For these reasons, an alternative that does not build roads or log within the IRA should be adopted.

There is no need for the creation of more early successional habitat in the WMNF

The Forest Service has not considered its own comprehensive study that acknowledges that there is no need at the landscape level to create more early-successional, regeneration-age class forest-wide, which the Mill Brook Project would do. In 1999, the White Mountain National Forest commissioned and received a comprehensive report in preparation for its forest plan revision that assesses the terrestrial biodiversity of the White Mountain National Forest and the surrounding region. See Cline, et al., *Assessment of Terrestrial Biodiversity in the White Mountain National Forest Region* (1999) (“WMNF Biodiversity Report”).

The report includes data and a lengthy discussion about the age class distribution of various forest types in the White Mountain National Forest region. *See Id.*, Chapter Two at 11-65 (“Forest Description for White Mountain National Forest (“WMNF”) and Surrounding Private Timberlands.”). Using the Forest Service’s own “Forest Inventory Analysis,” the report shows increasing trends in early-successional habitat acres (“Seed/Sap”) on private lands surrounding the national forest in New Hampshire, Vermont, and Western Maine. *See Id.*, Figures 2.43, 2.46, and 2.49. The report goes on to discuss and compare the White Mountain National Forest and surrounding forest types and age classes, explaining that much of the private land surrounding the national forest “is currently in young and regenerating stands.” *Id.* at 64. The report states:

The 1986 WMNF Plan called for increasing the amount of early successional habitat. . . . Currently, the area in early successional forest types on private lands appears to be in excess of that objective on private lands surrounding the WMNF. The requirements for early succession on forest types should be reconsidered in light of the current situation on private lands.

Id. at 63. The trend data and statements indicating increases in early successional forest types in the WMNF Biodiversity Report directly contradict one of the purposes of the Mill Brook Project. This fundamental flaw in the analysis casts doubt on the purpose and need for the project and the Forest Service’s entire premise that it must increase early-successional habitats in the White Mountain National Forest because it is declining in the region.

The Project will have a Significant Effect on the Roadless Character of the Kilkenny IRA and therefore an EIS must be prepared

“Road construction and reconstruction in inventoried roadless and contiguous unroaded areas constitute a significant environmental effect, as defined in the Council on Environmental Quality regulations (40 CFR Part 1508) and the Forest Service Environmental Procedures Handbook (FSH1909.15, Section 05) and, therefore, requires the preparation of an environmental impact statement (FSH1909.15, Section 20.6).” FSM 7712.16b, 66 Fed. Reg. at 3236 (January 12, 2001).

Although this statement was taken out of later versions of the FSM, it is more of “finding” or a “statement of fact” than a rule or directive. Nothing in the repeal of the EIS requirement alters the substance or applicability of this statement. *See* 66 Fed. Reg. at 65797 (December 20, 2001). In fact, when the proposed road-reconstruction and logging are combined, the proposed action is even more likely to constitute a significant effect on the quality of the human environment. For the following reasons that support the previous statement, the proposed action will affect unique characteristics represented in the Kilkenny IRA, it will be highly controversial, and it will set a precedent that requires the type of in-depth analysis that only a full EIS can provide. 40 CFR § 1508.27.

Unique Characteristics

“While NFS inventoried roadless areas represent about 2% of the total landbase of the United States, they provide unique opportunities for dispersed recreation, sources of clean drinking water, and large undisturbed landscapes that offer privacy and seclusion. In addition, these areas provide a bulwark against the spread of nonnative invasive plant species, support a diversity of habitats for native plant and animal species, conserve biological diversity, and provide

opportunities for study, research, and education.” Roadless Conservation Rule FEIS, p. S-1. (emphasis added).

In its final Roadless Conservation Rule, the Forest Service identified nine roadless characteristics that make IRAs unique. They are described as:

“Resources or features that are often present in and characterize inventoried roadless areas, including: (1) High quality or undisturbed soil, water, and air; (2) Sources of public drinking water; (3) Diversity of plant and animal communities; (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; (5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation; (6) Reference landscapes; (7) Natural appearing landscapes with high scenic quality; (8) Traditional cultural properties and sacred sites; and (9) Other locally identified unique characteristics.”

66 Fed. Reg. 3244, 3272 (January 12, 2001).

Most of these unique characteristics are present in the portion of the Kilkenny IRA where the Mill Brook Project is proposed. The Project will affect high quality soils by reconstructing roads, skidding logs, compacting soils and removing biomass that would eventually enrich the soil. Soil movement from road reconstruction and skidding in turn will adversely affect high quality waters, which have been recognized by the Forest Service by the designation of the Mill Brook as eligible for Wild and Scenic River status. EA at 82.

Diversity of plant and animal communities will be adversely affected because logging inherently simplifies forest structure and the clearcutting proposed will cause forest fragmentation. This simplification and fragmentation has the potential to adversely affect habitats for sensitive species that benefit from undisturbed areas of land. Most of the stands proposed for logging have not been entered for many decades and represent the reference landscapes that are unique and rare in IRAs of the White Mountains and the eastern United States.

We also note that the preliminary EA contains no indication of the number or placement of skid trails for logging activities, and as such it is difficult to comment on the potential results of such activities.

Simply put, the proposed logging and road reconstruction will have a combined adverse effect on the unique roadless and potential wilderness characteristics of the area, causing a significant effect on the quality of the human environment. Therefore the Forest Service must prepare an EIS for this project.

Highly Controversial and Precedential

“On many NFS lands, roadless area management has been a major point of conflict in the adoption of land management plans. This controversy continues today, accompanying most proposals to harvest timber, build roads, or otherwise develop these areas. The volume of appeals, litigation, and congressional debate over the last 20 years illustrates the importance that many Americans attach to the remaining roadless portions of NFS lands.” 66 Fed. Reg. 3244, 3272 (January 12, 2001) (emphasis added).

Regardless of the assertions in the preliminary EA to the contrary, we know of no projects other than those now proposed in the WMNF in the eastern United States that, since the initiation of the Roadless Conservation Rule, have proposed road building in an IRA. That means that the Mill Brook Project (along with the Than, Batchelder and Kanc7 Projects) is likely to set a precedent for new road-building in IRAs. The controversy described in the Roadless Conservation Rule continues to intensify because IRAs are so rare in the eastern United States and because the public demands that these areas not be developed. This is a highly controversial and significant issue, and the mere statement in the EA that this will not set such a precedent is not substantial enough to overcome this concern. With regards to the Kilkenny IRA, the WMNF FEIS notes that:

Approximately 44 percent of comments received in response to the White Mountain National Forest Forest Plan Revision NOI addressed roadless areas. Of these, 90 percent expressed support for the protection of roadless areas in general. Four comments, or 0.03 percent of comments received, specifically addressed [the Kilkenny] Inventoried Roadless Area and recommended its protection as Wilderness.

WMNF Plan Revision FEIS, Appendix C at C-100.

The WMNF FEIS further notes that:

The opportunity to experience solitude is high within the [Kilkenny] Inventoried Roadless Area. Topographic screening is high, vegetative screening is dense, and the distance from the perimeter to the core is moderate. Because the Inventoried Roadless Area is isolated from the rest of the White Mountain National Forest, the detached location of the Inventoried Roadless Area contributes to its isolation and opportunity for solitude. Intrusions of sight and sound are minimal.

Id. at C-97.

This is an incredible important ecological resource, and the preliminary analysis of Potential Effects in the Draft EA is woefully inadequate when it comes to effects on roadless character of the Kilkenny IRA. While the Draft EA discusses the roadless inventory criteria, this is not a sufficient analysis to deal with the various impacts on unique roadless characteristics. Many other values must be considered. For example, the Forest Service will allow loggers to build skid roads and trails. These skid roads and trails will combine to linearly disturb several miles of soil, similar to road building. The impacts on soils and naturalness from these skid roads and trails cannot be dismissed; they are lasting and will be visible for decades or centuries. If not properly mitigated, they can also have adverse effects on water quality. These skid roads and trails contribute to degradation of the roadless character of the IRA.

In addition to roadless character, the effect on wilderness character is at issue here. Logging and road building as proposed in the Mill Brook Project would have a significant effect on the wilderness character of the Kilkenny IRA because it would make the imprint of man's work substantially more noticeable, it would degrade opportunities for solitude, it would effectively reduce the size of potential "wilderness" quality land of the Kilkenny IRA, and it has the potential to affect the ecological, scientific, and scenic features of the area.

While the Preliminary EA does discuss the wilderness evaluation criteria, it does not go on to discuss the wilderness characteristics set forth in *California v. Block*, 690 F.2d 753 (9th Cir. 1982). This case sets forth the principle regarding an agency's obligation to consider wilderness characteristics and values before logging a roadless area. In *Block*, the court held that before making a "nonwilderness" designation (by logging in an IRA) an agency must "evaluate the impact of nonwilderness designations upon each area's wilderness characteristics and value." *Id.* at 764. The court listed a number of characteristics and values that must be evaluated: (1) the wilderness value of an area (e.g., tourism, sales of wilderness oriented recreational equipment, conservation of wildlife and flora populations, soil conservation and stability, watershed protection, clean air and water; (2) impact on area's wilderness characteristics and values; (3) the effect of development on future opportunities for wilderness classification; and (4) the economic benefits of nonwilderness designation of an area balanced against the consequent environmental loss. *Id.* at 760. After this decision was issued, the agency amended its Forest Service Handbook to incorporate the *Block* criteria into the agency's "nonwilderness" designation decision-making process.

In this case, the EA has failed to "evaluate the impact of nonwilderness designations upon each area[']s wilderness characteristics and value." *Block*, 690 F.2d at 764. These characteristics are an important component that must be discussed in the NEPA documents, and a cursory examination is simply not adequate.

The logging and road re-construction proposed will impact the unique characteristics that are provided by the Kilkenny IRA. This action is highly controversial and will set a precedent. For these reasons the Mill Brook Project constitutes a major federal action requiring the preparation of an EIS. 40 CFR § 1508.27.

The Service must examine the effects of the Mill Brook project on the viability of proposed, endangered, threatened, and sensitive species in an EIS

The Forest Service must also ensure that it is maintaining the viability of all vertebrate species and that the proposed project will not adversely affect the viability of proposed, endangered, threatened, and sensitive species (PETS). Even though the 2005 NFMA regulations relieve the agency of population inventory monitoring and allow the Forest Service to "comply with any obligations relating to management indicator species by considering data and analysis relating to habitat," this does not relieve the agency of other requirements in the 1982 NFMA Rule. The Forest Service must still meet their ultimate requirements 1) to maintain viable populations of existing native and desired non-native species in the planning area and must 2) provide habitat to support, at least, a minimum number of reproductive individuals with 3) habitat that is well distributed so that those individuals can interact with others in the planning area. 36 CFR § 219.19 (1982).

The new rules also do not relieve the agency of the requirement to monitor population trends of the management indicator species and determine relationships to habitat changes. 36 CFR § 219.19(a)(6) (1982). All of these requirements apply to the planning area, which includes both the area covered by the Forest Plan as well as the proposed project area. The project analysis must include determinations that the Forest Service will 1) maintain viability in the project area ("maintain viability"), 2) provide habitats to support, at least, a minimum number of reproductive individuals ("minimum numbers") 3) with habitat that is well distributed so that those

individuals can interact with others in the planning area (“well distributed”). There also must be reference to monitoring of population trends (even if only by habitats) of the management indicator species to determine relationships to habitat changes (“trend monitoring”). A thorough discussion and analysis of these points must be part of a sufficient viability determination in order to pass muster. We urge the Service to consider these issues in a full EIS.

The Chief’s Reservation on Road Building and Logging in IRAs may require his approval before this project proceeds

It is not clear if the Forest Service has met the requirements of Interim Directive 1920-2006-1, which in certain cases requires approval from the Chief before proceeding with projects in IRAs:

“The Chief reserves the following:…The authority to approve or disapprove road construction or reconstruction in inventoried roadless areas (FSM 1925.05) except those decisions delegated to the Regional Foresters at FSM 1925.04b, paragraph 1. This reservation remains in effect until a forest-scale roads analysis is completed and incorporated into each forest plan (FSM 7712.13b).”

FSM 1925.04a (January 16, 2006).

We would add that if an action such as the Mill Brook Project were proposed in the western United States, the Forest Service would prepare an EIS. Because IRAs are much rarer and are such a significant and unique resource in the Eastern United States, it is imperative that the Forest Service prepare and EIS for the Mill Brook Project.

The Service must assess climate change impacts in its NEPA review

Federal courts have determined that federal agencies must assess carbon dioxide emissions and other climate change impacts in project analyses. *Mid States Coalition v. Surface Transp. Bd.*, 345 F. 3d 520, 532 (8th Cir. 2003); *Border Power Plant Working Group v. Dept. of Energy*, 260 F. Supp. 997 (S.D. Cal. 2003); *Center For Biological Diversity v. National Highway Traffic Safety Administration*, No. 06-71891 (9th Cir. November 15, 2007). This requirement exists because of the enormous threat posed to the nation and its public lands by climate change.

The consequences of climate change have been well documented by scientists both globally and within New England. IPCC, *Fourth Assessment Report: Climate Change 2007* (2007), <http://www.ipcc.ch/ipccreports/assessments-reports.htm>; New England Regional Assessment (NERA) Group, *Preparing for Climate Change: The Potential Consequences of Climate Variability and Change—New England Regional Overview* (2001)(Chapt. 5, “Climate Impacts on Regional Forests), www.necci.sr.unh.edu/2001-NERA-report.html; Northeast Climate Impacts Assessment, “Confronting Climate Change in the U.S. Northeast: Science, Impacts, and Solutions” (2007), <http://www.northeastclimateimpacts.org>.

The results of climate change have already, and will increasingly involve substantial climatic disturbances such as rising temperatures, extreme weather events, seasonal changes affecting flora and fauna, increased invasive species, species migration, more ground level ozone, and worsened air quality.

Due to the severity of the threat that exists to our national forests from climate change, the Forest Service is required to account for these detrimental effects by 1) expressly addressing the consequences of specific proposed projects before implementation, 2) assess the benefits to climate and climate-related conditions by not undertaking the proposed project, and 3) considering the best way to utilize the national forests to meet the needs of the American people in light of climate change. 16 U.S.C. § 1602(5)(F).

Climate change is already altering the characteristics of our northern New England forests. Beckage, B. et. al. 2008, "A rapid upward shift of a forest ecotone during 40 years of warming in the Green Mountains of Vermont," published online 3/11/2008 ,Proc. Natl. Acad. Sci. USA, 10.1073/pnas.0708921105. In such a rapidly changing and uncertain environment, there are few answers, or even reasonable guesses to such questions as: What will forest-growing conditions be like? Which species will be favored at different elevations and in different locations? How logging will affect or alter community composition?

Given the climatic shifts and stresses already bearing heavily on our forests, the Forest Service must take an extremely cautious approach to manipulation of standing forest communities. Logging could accelerate the changes already occurring (e.g., by increasing run-off and sunlight, logging could increase soil surface temperatures and diminish soil moisture, thereby favoring more drought and heat-tolerant species).

Furthermore, there is now considerable scientific evidence that retention of older forests allows for greater carbon storage than logged or young forests. In forests that have been studied, logging causes a net increase in carbon emitted into the atmosphere. E.g., Grant, R. F. et. al. "Changes in net ecosystem productivity with forest age following clearcutting of a coastal Douglas-fir forest: testing a mathematical model with eddy covariance measurements along a forest chronosequence," 2007, *Tree Physiology*, 27:115–131; Pregitzer, K. S. and Euskirchen, E. S., (2004), "Carbon cycling and storage in world forests: biome patterns related to forest age," *Global Change Biology* 10 (12): 2052-2077; Carey, E. V. et. al., 2001, "Are old forests underestimated as global carbon sinks?," *Global Change Biology* 7(4):339-344.

The Forest Service must incorporate the latest scientific knowledge with regards to carbon flow and carbon storage in forests, as part of its analysis of the impacts of the Mill Brook project on the human and natural environment.

If you have any questions, feel free to contact Jared Margolis at 802-899-5875.

For Todd Myse, John Harbison, Mollie Matteson, the New Hampshire Chapter of Sierra Club and the Center for Biological Diversity,

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