



February 4, 2009

Meg Mitchell, Forest Supervisor
Green Mountain National Forest
231 North Main Street
Rutland, VT 05701

Dear Meg:

I write on behalf of the Center for Biological Diversity and its 200,000 members and online activists, as well as the Conservation Law Foundation, and the Vermont Chapter of the Sierra Club.

The Forest Service's actions in relation to the 2009 Vermont Border to Border snowmobile ride, as planned for the Green Mountain National Forest this Saturday, February 7, are in violation of the Appeals Reform Act and the National Environmental Policy Act ("NEPA"). Before the Forest Service grants a Special Use Permit for this event it must provide public notice, comment and appeal procedures. *Earth Island Institute v. Ruthenbeck*, 459 F.3d 954 (9th Cir. 2006); *Alaska Ctr. for the Env't v. United States Forest Serv.*, 189 F.3d 851 (9th Cir. 1999).

The Forest Service cannot approve the event under a categorical exclusion without public notice and comment pursuant to NEPA in order to determine, at minimum, whether there may be extraordinary circumstances that would preclude the use of a CE. *Alaska Ctr. for the Env't v. United States Forest Serv.*, 189 F.3d at 859, (citing 40 C.F.R. § 1501.7).

"Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If the Responsible Official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA (ch. 40). If the Responsible Official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS (ch. 20)." *FSH 1909.15 Ch. 30.3(3)*.

By definition, CEs are limited "to situations where there is an insignificant or minor effect on the environment." *See Alaska Ctr. for the Env't*, 189 F.3d at 859. Even if a proposed action appears to fit the CE invoked, an agency may not use a CE when "extraordinary circumstances" exist. *California v. Norton*, 311 F.3d 1162, 1168 (9th Cir. 2002) (citing 40 C.F.R. § 1508.4). "Extraordinary circumstances" has been defined as those "in which a normally excluded action may have a significant environmental effect." *Id.* In cases where "extraordinary circumstances" exist, the proposed action requires preparation of an EA or an EIS. *Id.* As described below, there are numerous ways in which the Border to Border event may have a significant environmental affect.

In determining the propriety of the use of a CE, the agency is required to utilize what is referred to as a "scoping process" to "determine the scope of the issues to be addressed and for identifying the significant issues related to a proposed action." *Alaska Ctr., 189 F.3d at 859* (citing *40 C.F.R. § 1501.7*) (noting that the Forest Service is required to conduct scoping for "all proposed actions, including those that would appear to be 'categorically excluded'"). One of the purposes of "scoping" includes notifying those who may be affected by a government proposal that the agency is beginning to consider the impacts of the proposed action. *Id.* If the scoping process ultimately reveals the existence of "extraordinary circumstances having a significant effect on [the] environment," the agency may not simply invoke the CE, and is required, at a minimum, to prepare an EA. *See Alaska Ctr., 189 F.3d at 859.*

Special Use Permits for OHV (off-highway vehicle) events are also expressly subject to notice, comment, and administrative appeal pursuant to the Appeals Reform Act, as found by the Ninth Circuit in *Earth Island Institute v. Ruthenbeck*. This was reiterated by the statement of Mark Rey, then Undersecretary of Natural Resources and Environment, USDA, in his testimony to the U.S. House of Representatives on November 15, 2005:

Based on the court's order, the following actions are now expressly subject to notice, comment and appeal:

- timber sales;
- prescribed burning;
- cutting trees for thinning or wildlife purposes over 5 contiguous acres; (Thinning is a critical activity for ecosystem restoration. Timber sales, prescribed burning, and thinning are conducted to reduce hazardous fuels.)
- creating or maintaining wildlife openings; (This activity is a key wildlife habitat improvement for creating habitat diversity, edges and hiding cover.)
- designating Off Highway Vehicles (OHV) routes;
- constructing new OHV routes and facilities;
- upgrading, widening, or modifying OHV routes;
- special use permits for OHV activities;
- gathering geophysical data using certain techniques;
- trenching for data gathering on mineralization; and,
- clearing vegetation for sight paths for minerals, energy, or geophysical investigation or support facilities. (Inclusion of these last 3 activities imposes new procedural delays for virtually all oil and gas exploration activities.)

Emphasis added. *See* <http://www.fs.fed.us/congress/109/house/oversight/re/111505.html>

The Border to Border event and its poor and unlawful management by the Forest Service has unfolded against a backdrop of chronic disregard for the environmental and social impacts of the Green Mountain National Forest's snowmobile program, as well as the agency's legal obligations to disclose, analyze, and provide for public input on activities and projects that may have significant effects on Forest resources and values.

The Center (and its predecessor, Forest Watch), along with the Conservation Law Foundation and Vermont Sierra Club, have submitted comments on virtually all snowmobile projects on the national forest over the last 2-3 years. Over the same time period, I, as staff person for Forest Watch and then the Center, have had several conversations on the phone and in person with you and members of your staff, about the problems associated with the Forest's snowmobile

program. I have gone on field trips with Forest Service staff and sent volunteers to tour sites of proposed snowmobile projects. This past fall, I submitted an in-depth letter and photos documenting violations of Forest wetland protection standards at a newly constructed snowmobile route. In 2008, the Center submitted two Freedom of Information Act requests to the Forest Service, requesting information about every aspect of the snowmobile program on the GMNF.

Dating back at least to April 2003, when Forest Watch, the Conservation Law Foundation, and another Vermont conservation group sent a letter to Paul Brewster, then Forest Supervisor, explaining how the Forest Service was failing to meet legal and environmental standards for its snowmobile program, your agency has been aware of conservationists' many concerns about snowmobile management and the impacts of snowmobile use on the national forest.

Specifically, these concerns include:

- impacts to wildlife, soils, water, unfragmented forest and non-motorized areas, quiet recreation, aquatic ecosystems, and other resources and values
- cumulative effects on the environment of snowmobiling combined with other activities and threats
- lack of public notification and involvement
- systematic and improper use of the categorical exclusion in order to avoid the needed "hard look" and in-depth analysis of a Forest-wide motorized recreation network
- lack of monitoring
- inadequate law enforcement
- failure to comply with NEPA, ARA, and FACA

From the many the actions and communications described above, it would seem patently obvious that the Center wants to be informed about all snowmobile-related projects and activities on the Forest. The Forest Service's lack of transparency as it concerns snowmobile-related decision making has been a root problem, and we have worked very hard and in good faith to let you know that this must change.

Nonetheless, the Center for Biological Diversity learned of the massive Border to Border ride only because an alert colleague in New York state noticed a promotional flyer on a bulletin board and sent it to me. No notice was given in the Schedule of Proposed Actions and to my knowledge, no public notice has been printed in any newspaper in the state.

Despite my repeated inquiries about this event beginning several weeks ago, it was only yesterday that I finally received a map showing the Border to Border route on the national forest. As of last Friday, January 30, based on my conversation with the staff person in charge of coordinating the permit application for the event, the Forest Service still did not know exactly where the ride would be located on the Forest. The start time was not known for certain, either.
Dave Bosch, pers. comm.

The Forest Service also appears to have been unaware that the Border to Border ride, which heads north and east after leaving the national forest, would be crossing the Appalachian Trail in its east-west segment between the Green Mountain crest and the Connecticut River. The GMNF has responsibility for managing this section on behalf of the National Park Service. According to inquiries made with the Appalachian Trail Conservancy last week, no one had yet notified that

organization that a very large organized snowmobile ride soon would be crossing the nationally significant hiking trail—a matter of some considerable concern to Conservancy staff because VAST routes in the crossing area were very controversial only a few years ago. *Dick Andrews, pers. comm.*

The disorganized and laissez faire conduct of the Forest Service with regard to this particular event speaks volumes. It reflects a general lack of seriousness about snowmobiling's impacts, and the need, as first priority, to protect the natural and social values of the Forest and the public's interest in these values. This cavalier attitude is absolutely unsupported by the law and by science, which includes a voluminous literature on the many direct and indirect negative effects of snowmobiling.

This is an event that involves over 300 snowmobiles traversing the southern unit of the Forest within a few hours' time. There are impacts to air, water, vegetation, and wildlife that should be considered and analyzed. There will be noise impacts to other national forest visitors and surrounding communities.¹ There is potential for conflict with other recreationists, especially cross-country skiers and snowshoers who have no foreknowledge of the event because the Forest Service has not put out any public notice about it.

In addition to the impacts of the event itself, there are the cumulative effects of the Border to Border ride in combination with other snowmobile activities on the GMNF, which include, in addition to use by private snowmobilers, several other large, organized group rides over the course of the winter, numerous guided snowmobile tours, and the ongoing maintenance, relocation, and new construction of snowmobile routes on the Forest.

The problems with Border to Border exemplify the problems with the GMNF snowmobile program as a whole. Both are poorly managed and largely unmonitored; decision making is screened from public view; and violation of environmental and administrative law is characteristic and chronic.

Given that the Border to Border event is scheduled to occur in only a few short days, we request a meeting with you as soon as possible to discuss this matter further. Thank you.

Sincerely,

Mollie Matteson, Conservation Advocate
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¹ Regarding noise, consider this statement on the Border to Border website (<http://www.vtb2bn24.org/>): "The unmistakable rumble of two-strokes will dominate the night." Regarding air and water pollution, consider this claim, also on the "B2B" website: Snowmobiles of the first B2B Ride used an estimated 9,000 gallons of fuel!" It is well documented that a great deal of fuel passes unburned through two-stroke snowmobile engines, ending up in the snowpack, and ultimately, in aquatic ecosystems.

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