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ORVIS SUGARBUSH EXPANSION SPECIAL USE PERMIT PROJECT

Decision Memo

**USDA Forest Service, Eastern Region
Green Mountain National Forest
Middlebury Ranger District
Town of Lincoln, Addison County**

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Orvis Sugarbush Expansion Special Use Permit Project
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I. SUMMARY

As District Ranger for the Rochester and Middlebury Ranger Districts of Green Mountain National Forest (GMNF), I am authorizing amendment of the existing 10-year special use maple tapping permit (SUP) of William Orvis. The amendment will allow an expansion of his operation, by 150 maple taps, on National Forest System (NFS) lands adjacent to his existing permit area in the Town of Lincoln, Vt.

II. DECISION TO BE IMPLEMENTED

A. Background and Project Area

William Orvis is currently authorized to tap maple trees (approximately 600) for maple syrup (special forest product gathering) on NFS lands north of the village of Downingville and east of the local Downingville Road in the Town of Lincoln. After appropriate review, his existing permit was re-issued on February 21, 2008. Just prior to that, on January 15, 2008, Mr. Orvis had submitted a request to expand his area of maple tapping to include an additional mainline and feeder lines into an area lying next to his existing permit area and mostly along Forest Road 348. This would allow for an additional 150 taps beyond what he is currently permitted to tap. Access would be on existing Forest Service roads, FR348 and 348A. The proposed area was inspected by a Forest Service rep and found to be acceptable. The expansion was not part of re-issuing the existing permit. Therefore, his application for this expansion was accepted and an analysis completed.

Refer to the map in Appendix 1 for further details.

B. Purpose and Need

The purpose of this action is to approve an amended SUP authorizing expansion of a current SUP for the collection of maple syrup, a special forest product. Maple tapping is a historic and on-going cultural activity on the Vermont landscape. The need for the project is to allow NFS lands to be used for the activity of maple tree tapping. This decision is intended to contribute to accomplishment of the 2006 GMNF Land and Resource Management Plan (Forest Plan) Goal 8 of providing for a sustainable supply of forest products (Forest Plan, p. 14).

A meeting to discuss the status and future need for increased maple tapping operations in Vermont was held October 5, 2007 between Green Mountain National Forest staff, representatives of the Vermont Maple Sugar Makers' Association, and Bob Paquin, staff of Senator Patrick Leahy's office. At this meeting, it was noted that there is a need to increase the number of maple taps and lands available for maple tapping in the State of Vermont for several reasons benefiting the public at large, including: to combat a world-wide maple sugar shortage; to increase revenue to the State of Vermont; to combat the loss of historical sugar tapping operations in Vermont resulting from large farm tracts being divided into smaller parcels or sold to landowners who do not tap trees; to fight forest fragmentation due to the desire to retain maple

groves (sugarbushes) and their economic value; and to contribute to the public's desire to manage the GMNF as a "working forest," an issue repeatedly heard during development of the 2006 Forest Plan.

C. Description of Decision

My decision is to authorize amending the existing 10-year SUP of William Orvis to allow expansion of his maple tapping operation. The amendment would be subject to the general terms and conditions included in his current maple tapping authorization, as specified in the GMNF's Maple Tapping Specifications (Appendix 2). Beyond these specifications, Forest Plan standards and guidelines would be applied to activities associated with this SUP, including those for non-native invasive species (NNIS) and soil and water resources. The following mitigative steps should be incorporated into the terms and conditions of the SUP:

1. Particular care should be exercised during wet times to minimize soil and water erosion concerns, particularly during setup and takedown of tapping materials.
2. Any ATV access allowed for setup and/or removal of tap lines shall be by permit only. Further care should be exercised in wet areas, particularly when moving off existing skid roads used for main access.
3. To prevent introduction of NNIS, any wheeled or tracked equipment used to access site should be free of debris that may contain seeds or other plant propagules of NNIS.

The tapping operations will include a network of plastic tubing to carry sap from the trees to storage tanks placed either on adjacent private land or on NFS lands on a seasonal basis. Mr. Orvis will be authorized for an additional main line and feeder lines, allowing 150 additional taps. Minor adjustments may be made with line structure in order to reach the 150-tap setup. No new roads will be built in order to access the project areas and no structures will be built on NFS lands. Specific actions authorized and prohibited in the SUP are identified in the Green Mountain National Forest Maple Tapping Policy.

Forest Service research personnel from Durham, New Hampshire actively monitor all the sugarbush areas for forest health related concerns such as insects, pests, and diseases. Green Mountain National Forest Authorized Officials retain the authority to suspend tapping if monitoring shows stand health has been compromised by insects or disease. In addition, GMNF staff annually monitors the sugarbushes for compliance with SUP terms and conditions, particularly the Maple Tapping Specifications noted above, during the maple tapping season to ensure impacts on NFS lands and resources are minimized. The Authorized Officials retain the authority to enforce conditions of the SUP such as proper erosion control measures, number and placement of taps on trees, and the size of trees that are eligible for tapping. Improper application of the permitted activities can lead to suspension or revocation of the privileges granted by the SUP.

In addition to the amended SUP, a Forest Products Removal Permit will be needed. This removal permit is not approved as part of this decision but will be issued separately in accord with an approved plan for the product being removed.

Documentation of the analysis for this project may be found in the Project Record located at the GMNF Middlebury Ranger District Office in Middlebury, Vermont.

III. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment when they are within one of the categories found at 36 CFR 220.6(d) and (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

A. Category of Exclusion

Based upon the environmental analysis contained in the Project Record and on experience with similar activities on the GMNF, I have concluded that this decision can be appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment. I have determined that the selected action is a routine activity within the following category of exclusion found at 36 CFR 220.6 (e)(3), "approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land."

B. Extraordinary Circumstances

The list of extraordinary circumstances that were examined for this analysis may be found at 36 CFR 220.6(b). The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effects of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. I have concluded that there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the Project Record. A summary of the project's potential effects on each resource condition is as follows:

1. Federally Listed Threatened or Endangered Species or Designated Critical Habitat, Species Proposed for Federal Listing or Proposed Critical Habitat, or Forest Service Sensitive Species

The Endangered Species Act requires that federal activities not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. In accordance with Section 7(c) of this Act, a report of the listed and proposed, threatened, or endangered species that may be present in the project area was reviewed. This activity would occur at an elevation between 1700 and 2000 feet. I have determined that the likelihood for occurrence of any of our forests T&E species is Low. The GMNF has historic occurrence records of three animal threatened and endangered (T&E) species (eastern cougar, gray wolf, and Canada lynx), and current occurrence records for one species (Indiana bat). The proposed activities associated with this decision do not represent a threat to roosting or to foraging Indiana bats. Surveys conducted within the Green Mountain National Forest and within the state of Vermont have identified their priority habitats to be at a much lower elevation. Given the low impact to terrestrial habitats associated with tapping for sap, immersing issues associated with bats infected with White Nose Syndrome, would not be of issue with this project. There is no potential or critical habitat within the project area, and as a result there would be "no adverse effect on species or critical habitat".

This site has not been surveyed for RFSS animals. However, based on the proposed activities it is my position that they would have "no impact" on any of the Regional Foresters Sensitive Species or their preferred habitats (Wildlife Biologist input, Project Record).

There are currently no federally listed Threatened or Endangered plant species on the GMNF. No plants on the RFSS list are known from the area; while the site does offer good potential rare plant habitat for species associated with rich woods, it was searched by staff from the Vermont Nongame and Natural Heritage Program, and no rare plants were found. In addition, the project will not affect the future potential of this site to provide good rare plant habitat. No impact to individuals or habitat is expected as a result of this project, and so it is not likely to contribute to a trend towards Federal listing or loss of viability.

Therefore, it has been determined that implementation of this decision would have 'no effect' on federally listed animal or plant species or their critical habitats. There would also be no significant impact to any plant or animal RFSS (Wildlife Biological Evaluation, Project Record; Plant Biological Evaluation, Project Record).

2. Floodplains, Wetlands, or Municipal Watersheds

There is no Water Source Protection Areas (WSPA), floodplains or major wetlands in or near the proposed project site. Any concerns in regards to small wetland areas or other soil and water concerns would be addressed by application of Forest plan standards and guides, and monitoring of permit terms and conditions. Therefore, there would be no significant impact to WSPAs, floodplains or wetlands (Forest Soil and Water Specialists input, Project Record).

3. Congressionally Designated Areas, such as Wilderness, Wilderness Study Areas, or National Recreation Areas

Wilderness:

The project is not in any Wilderness areas. The closest Wilderness area is the Breadloaf Wilderness, about 5 miles away. Wilderness is defined on the Forest as Management Area 5.1 (Forest Plan, p. 49). This decision, with impacts limited to the immediate area of activity, would not affect any Wilderness area (Recreation Planner input, Project Record).

Wilderness Study Areas:

There are no Wilderness Study Areas within the project area. This decision would not affect Wilderness Study Areas (Recreation Planner input, Project Record).

National Recreation Areas:

There are no National Recreation Areas within or close to the project area. This decision would not affect National Recreation Areas (Recreation Planner input, Project Record).

Wild and Scenic Rivers:

Although the GMNF does not contain any Congressionally designated Wild and Scenic Rivers, there are many river segments that are eligible to be further considered for addition to the National Wild and Scenic River System. These river segments and their associated corridors would lie within the eligible Wild, Scenic, and Recreational Rivers Management Area (MA 9.4). None of the river segments eligible to be considered for addition to the

National Wild and Scenic River System lie in the project area (Recreation Planner input, Project Record).

4. Inventoried Roadless Areas or Potential Wilderness Areas

The project site lies in Forest Plan roadless area 92027. This roadless area recognizes the existence of maple tapping activities (Forest Plan FEIS Appendix C, p. C-179). Activities associated with maple tapping SUPs were determined to have no significant impacts on roadless characteristics; no new roads will be constructed as part of authorizing the proposed expansion of the existing SUP. This decision complies with the 2006 Forest Plan and will not result in significant impacts on forest roadless areas (Recreation Planner input, Project Record).

5. Existing and Candidate Research Natural Areas

There are no Research Natural Areas in the project site. This decision, with impacts limited to the immediate area of activity, would not affect Research Natural Areas (Forest Ecologist input, Project Record).

6. American Indian and Alaska Native Religious or Cultural Sites

See Item 7 below.

7. Archaeological Sites, or Historic Properties or Areas

This decision complies with the National Historic Preservation Act, the Archaeological Resources Protection Act, and the Native American Graves Protection and Repatriation Act. Little or no ground disturbance is expected from this project. There would be No Effect on any historic properties or archaeological sites (Forest Archaeologist input, Project Record).

8. Other Resources

In addition to the above resource conditions that could lead to extraordinary circumstances, I also have considered the direct, indirect, and cumulative effects to other resources such as soil/water, fisheries, visuals, recreation, and non-native invasive species. The project would not result in significant impacts to these resources, particularly because all applicable Forest Plan Standards and Guidelines will be implemented.

IV. PUBLIC INVOLVEMENT

This project was internally scoped with Forest Service staff during Small Projects Day on October 22, 2008. External public involvement included contact with the applicant (permittee) and listing of this project in the *Green Mountain National Forest Schedule of Proposed Actions* (SOPA). This project will remain in the SOPA until implemented.

V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports

compliance with this Act.

Forest Plan Consistency (National Forest Management Act) –The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans, and that all site-specific project activities be consistent with direction in the plans. Revision of the GMNF Land and Resource Management Plan (Forest Plan) was completed and approved in 2006. The Forest Plan provides direction for all management activities on the GMNF.

The project site lies within the Remote Wildlife (MA 6.3) Management Area as described in the 2006 Forest Plan. MA (6.3) has an emphasis on providing a mix of different forest habitats while de-emphasizing recreational uses (GMNF Forest Plan, p. 60). Management Area Guideline (G-1) for non-recreation special uses states that “Non-recreational special use permits may be authorized provided they are consistent with Management Area emphasis and Desired Future Condition and they will neither threaten nor diminish the character or purpose for which the MA was designated.” This use and the associated activities are consistent with management area direction and the guideline for non-recreation special uses. As required by NFMA Section 1604(i), I find this project to be consistent with the Forest Plan including goals, objectives, desired future conditions, and Forest-wide and Management Area Standards and Guidelines.

Endangered Species Act - The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. In accordance with Section 7(c) of this Act, a report of the listed and proposed, threatened, or endangered species that may be present in the project area was reviewed. See Section III, Item B.1 of this document.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through Forest Plan Standards and Guidelines, specific project design criteria, and/or mitigation measures to ensure protection of soil and water resources.

Wetlands (Executive Order 11990) - Executive Order 11990 directs the agency to avoid to the extent possible the adverse impacts associated with the destruction or modification of wetlands, and to avoid support of new construction in wetlands wherever there is a practical alternative. See Section III, Item B2 of this document.

Floodplains (Executive Order 11988) - Executive Order 11988 directs the agency to avoid to the extent possible the adverse impacts associated with the occupancy and modification of floodplains, and to avoid support of floodplain development wherever there is a practical alternative. See Section III, Item B2 of this document.

National Historic Preservation Act - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. It also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. See Section III, Item B.7 of this document.

Archaeological Resources Protection Act - The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. See Section III, Item B.7 of this document.

Native American Graves Protection and Repatriation Act - The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. Little or no ground disturbance is expected from this project. See Section III, Item B.6 of this document.

Wild and Scenic Rivers Act - See Section III, Item B.3 of this document.

Federal Noxious Weed Act of 1974 and Executive Order 11312 (Non-Native Invasive Species) – The Federal Noxious Weed Act requires cooperation with State, local, and other federal agencies in the management and control of non-native invasive species (NNIS); Executive Order (EO) 11312 requires all pertinent federal agencies (subject to budgetary appropriations) to prevent the introduction of NNIS. This decision meets the intent of this law and EO by incorporating all pertinent Forest Plan Standards and Guidelines to ensure the management and control of NNIS.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this order. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

VI. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is not subject to an administrative review or appeal pursuant to 36 CFR 215 and the Earth Island Institute v. Ruthenbeck Ruling of October 19, 2005.

This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations of a similar nature to occupy and use National Forest System lands. To appeal this decision under 36 CFR 251, a written Notice of Appeal, meeting the content requirements at 36 CFR 251.90, must be postmarked or received within 45 calendar days after the date of notice of this decision to applicants and holders of written authorizations of a similar nature to occupy and use National Forest System land. However, when the 45-day filing period would end on a Saturday, Sunday, or Federal Holiday, the filing time is extended to the end of the next Federal working day. The Notice of Appeal must be sent to: USDA, Forest Service, Green Mountain & Finger Lakes National Forests, ATTN: Forest Supervisor, 231 Main Street, Rutland, VT 05701. The Notice of Appeal may alternatively be faxed to: USDA, Green Mountain National Forest, ATTN: Forest Supervisor, 802-747-6766. A copy of the appeal must simultaneously be sent to the District Ranger, Middlebury Ranger District, 1007 Route 7 South, Middlebury, Vt. 05753; fax to 802-388-3842. If an appeal is filed, I am willing to meet and discuss concerns. Additionally, if an appeal is filed, an oral presentation concerning the appeal (36 CFR 251.97) and/or stay of implementation (36 CFR 251.91) of the decision may be requested at any time prior to closing the appeal record.

VII. IMPLEMENTATION DATE

This decision may be implemented immediately.

VIII. CONTACT PERSON

Further information about this decision can be obtained from Special Use Administrator Dave Bosch during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Green Mountain & Finger Lakes National Forest Supervisor's Office, 231 North Main Street, Rutland, Vermont 05701, phone: (802) 747-6734, Fax (802-747-6766), or e-mail: dbosch@fs.fed.us.

IX. SIGNATURE AND DATE

/s/ Greg Smith

Date: 19 February 2009

GREG SMITH
Rochester/Middlebury District Ranger,
Green Mountain National Forest
Responsible Official

**APPENDIX 1:
MAP**

Attached separately

**APPENDIX 2:
MAPLE TAPPING SPECIFICATIONS**

Attached separately