

From: Kris pastoriza
Sent: Fri, 4 Feb 2022 13:44:18 -0500
To: lbarguen, Derek -FS; Brown, Brooke - FS
Subject: [External Email]Nash Stream 2
Attachments: 1-14-22 response to DNCR.pdf, 11-11-20 AMC Memo.pdf, AMC,TNC SPNHF NSF letter 2020.pdf, Request for meeting re. Nash Stream corrected.pdf, AMC,TNC,SPNHF NSF letter 2016.pdf, DNCR Response to K. Pastoriza 1.7.2022.pdf, 9-20-20_AMC_ATV Trails Memorandum.pdf, DRED 1994 Nash Stream Overview.pdf, USFS ATV Deed response Letter 9-25-01.pdf, NASH STREAM ATV CORD RESPONSE 040813.pdf

[External Email]

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Document 040813: "...today the Forest is a well managed special public holding...evaluated on a daily basis by DRED and its partners-- F&G, USFS and others."

January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, "Traditional, dispersed, non-motorized recreationists" for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The 'Snowmobile clubs' designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called "Expertise in Recreation and Tourism" designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: "The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes." At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen's Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that "Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff" is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its "Trial" and monitoring was only instituted after CORD's December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that "Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD." But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn't been any monitoring of Westside, so there are no issues on the record that need to be addressed "to the satisfaction of agency resource managers and members of CORD." That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: "Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails." Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs' request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.
Mark Primack, Berlin, N.H.
Dan Whittet, Berlin, N.H.
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
Susan Percy, New Gloucester, ME
Field Rider, New Gloucester, ME
Margaret and Eric Jones, Trustees of the Legacy Forest Trust
Nancy DeCoursey, Jefferson, N.H.
Michael Phillips, Groveton, N.H.
Pat Kellogg, Littleton, N.H.
Daniel Clarke, Gorham, N.H.
Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
Jody Camille, Dummer, N.H.
Milton Camille, Dummer, N.H.
Bill Joyce, Stark, N.H.
Wayne Moynihan, Dummer, N.H.
Kim Votta, Lancaster, N.H.
Cam Bradshaw, Berlin, N.H.
Roger Doucette, Whitefield, N.H.
George Brown, Shelburne, N.H.
Howie Wemyss, Randolph, N.H.
Representative Judith Spang, Durham, N.H.
Stephanie Kelliher, Whitefield, NH
Beau Etter-Garrette, Whitefield, NH
Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH



November 11, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council of Resources and Development
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

RE: CORD Assessment of ATV/UTV use of Kelsey Notch Trail

Dear Mr. Chicoine and CORD members:

We appreciate the time, attention and diligence you have shown in examining the Kelsey Notch Pilot Trail in the Nash Stream Forest. Our organizations have provided comments to you in the past, both independently as well as together.

We submitted comments on August 20, 2020 regarding the failure of the Kelsey Notch Trail to comply with many of the statutory requirements of RSA 215-A. Further, on September 21, 2020, a memo was provided to CORD by the Appalachian Mountain Club outlining the different legal and regulatory standards applied to snowmobiles and ATVs/UTVs in New Hampshire.

The purpose of this letter is not to reargue points made in our preceding communications. Rather, we would like to take the opportunity to respond to the October 26, 2020 letter from the NH Off Highway Vehicle Association ("the Association") and their conclusion that "CORD's statutory duties require" that the Kelsey Notch Pilot Trail remains open. We also question the Association's statement that "the clear intent of the parties to the Easement is to allow the use of ATVs/UTVs in the Nash Stream Forest."

The clear intent of the Easement is perpetual public use consistent with the traditional uses of the land.

The Association argues that the intent of the parties to the Easement was to allow ATV use in the Nash Stream Forest. This version of events is not supported by the historical record nor the clear and plain language of the Easement.

An important component of conservation easements are the recitals – the rest of the easement flows from them. The recitals or "whereas" clauses set forth background information that helps to frame the legal and factual basis for an easement. In the case of the Nash Stream Forest Conservation Easement, the relevant section states that:

WHEREAS, the parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract

with primary management emphasis being the sustained yield of forest products consistent with traditional uses of the land, including public access, and the conservation of other resource values.

A clear decision was made to continue the management policy of the previous landowner and continue to exclude ATV use, as it was not considered low impact, dispersed, or traditional nor consistent with the Vision for the Forest. The original 1995 Nash Stream Management Plan, which took the many stakeholders involved in the protection of the Nash Stream Forest more than 6 years to complete continued to allow traditional recreational uses of the land and did not allow ATV/UTV access.

If the intent of the parties to the Easement was to include ATV's as a traditional use of the land, either the Easement - which notably does list the traditional recreational uses of the property - or the original management plan would have included their use. ATV use on the property was considered at the time of purchase, as well as during the creation of the first management plan, and was not included as an appropriate use.

If ATV use was "expressly permitted by the terms of the Easement", then it would follow that the founding documents and management plan would have allowed their use. The absence of reference to ATV restrictions does not mean they were intended to be allowed.

CORD's statutory duties

We take issue with the Association's conclusion that CORD's statutory duties require that it keep the Kelsey Notch Trail open. In the case of the Nash Stream Forest, CORD's statutory obligations are quite clearly articulated.

Role of Council of Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands, purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when

¹ <https://www.nh.gov/oep/planning/programs/cord/>

management of these lands is shown to be detrimental to those natural resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Natural and Cultural Resources (DNCR) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DNCR is not properly managing LCIP lands under its control, CORD needs to take corrective action in the interests of the state and the public interest for which the state is holding these lands.

Authority to close trails

CORD clearly has the statutory responsibility to ensure that Nash Stream management is consistent with established state statute, and the original purposes for which the LCIP acquired the land. The citizens of the state of New Hampshire invested more than \$7 million to protect and steward these lands. As the entity with fiduciary responsibility for this investment, CORD must ensure that all trails on Nash Stream are compliant with the law, and if they are not, they should not be open for use.

The State is responsible for managing the Nash State State Forest in accordance with the terms of the Conservation Easement, which is built on a commitment to a primary management emphasis “consistent with the traditional uses of the land”. Public access was intended to be low impact and dispersed, and the State has the right to reasonably restrict and regulate access to ensure prudent resource utilization and protection of all the conservation values of the property.

RSA 215-A:42,II provides that DRED may close trails if:

(a) ATV or trail bike use on the property is not in conformance with this chapter;

CORD has the statutory obligation to maintain public access to LCIP lands, “where appropriate.” Because the Kelsey Notch Trail is not in conformance with the law, as outlined in our August 20, 2020 letter and previous communications, we ask that the Council take immediate action to suspend all ATV use on the Kelsey Notch Trail.

Thank you for your thoughtful consideration of this important issue, and for your continued oversight of the Nash Stream Forest.

Sincerely,

Susan Arnold

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Jim O'Brien

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August 20, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council on Resources and Development
c/o New Hampshire Office of Strategic Initiatives
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

Dear Mr. Chicoine:

Thank you for this opportunity to express our continued opposition to the operation of the Kelsey Notch ATV Trail in Nash Stream State Forest. As you recall, in 2016 the undersigned organizations first raised concerns regarding the process used to establish this trail.

We argued in our May 5, 2016 letter to CORD that the Nash Stream management plan in effect at that time explicitly authorized only the West Side Trail, and also explicitly prohibited any additional ATV trails of any kind. The amendment to the 2002 Management Plan clearly stated this prohibition:

*Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail, the West Side Road, and the Andritz Trail. This is a pass through trail set up as a pilot for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property.**" (page 50)(emphasis added)*

We appreciate the actions CORD took in its December 14, 2016 Findings. Those steps both articulated CORD's responsibilities for the oversight of LCIP-acquired properties and highlighted the importance of properly following applicable state law. Specifically, CORD found that "the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV environmental laws and regulations."

RSA 215-A:42 and 43 establishes the evaluation process for ATV trails on public lands. We have been provided an undated analysis for the Kelsey Notch ATV/UTV Trail conducted by the Department of Natural and Cultural Resources (DNCR) for the requirements enumerated in RSA

215-A: 42 and 43. In reviewing the document, we have identified several areas that raise questions about the environmental impacts of the trail.

First, and perhaps most important, the process outlined in statute was designed to be conducted on a proposed trail PRIOR to construction in order to site the trail with the least possible environmental impact to state lands. In the case of the Kelsey Notch Trail, there is no evidence that such a coarse and fine filter analysis was conducted as required by statute prior to the establishment of the trail. Rather, the analysis we received was conducted after the trail was already constructed and being used for years by ATV riders. The fact that the trail already existed, in violation of the statute, should not mean that the standards set forth in RSA 215-A:43 should be lowered, amended, dismissed or in any way altered to benefit the trail remaining open and operational. The Kelsey Notch Trail should be held to the same legal standard as any other proposed trail.

RSA 215-A:43, II (g) asks if the “proposal is reasonably compatible with existing uses.” In the comments from DNCR, they only reference snowmobile use on the trail in winter and limited summertime trail use. While additional use of the trail is interesting, we are not sure that is what the Legislature meant by the question. There are many existing uses of the Nash Stream Forest that are not articulated in the comments – including the trails compatibility with hiking, wildlife viewing, scientific research, and fishing to name a few. The only existing use referenced in the comments is hunting, and the analysis finds that “conflict during hunting season is anticipated to be limited as ATV use decreases after Labor Day.” While we do not necessarily dispute this general claim, no documentation or data on this point- or any of the other legitimate existing uses has been made available. We believe that the comments provided do not adequately address the impacts of the trail with existing uses as it currently exists, as well as with anticipated future ATV traffic

RSA 215-A:43, II (k) requires that the proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. In the comments, it is stated that in the opinion of a Fish and Game biologist that “should traffic become heavier on the trail in the future, it might preclude some animals from crossing or denning near the trail and could potentially cause avoidance by some wildlife species in the area.” It would be important to understand the current and projected usage of the trail, and the impacts on wildlife of the increased level of traffic – and how that increase would impact existing uses of the property as discussed in the preceding paragraph.

There are additional requirements in RSA 215-A:43, II that the comments do not fully or adequately address including : (n) states that “the proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (o) the proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing,

unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

In the comments for these requirements, DNCR responds that “the ATV trail was located on existing roadways as well as a snowmobile trail that was built the season prior.” However, it is not clear that the Kelsey Notch Trail meets the important environmental standards enumerated in the preceding paragraph. Further, while RSA 215-A:43 does allow that a “surface roadway” can be used “to reduce adverse environmental impacts,” an existing snowmobile trail does not meet that standard. An existing snowmobile trail is not a “surface roadway.” Furthermore, snowmobile trails are not subject to the analysis outlined in RSA 215-A, so it is unacceptable to rely on them as part of an ATV trail without conducting the required analysis for an ATV trail.

RSA 215-A: 43, II (u) requires the proposed trail avoid known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory. Again, the comments by DNCR suggest that disturbances are minimized because the trail was built on a new snowmobile trail – although there is no indication that such an analysis was conducted prior to the snowmobile trail being built, nor that the trail avoids such rare plants. In fact, the analysis itself notes that “an extensive inventory has not been completed.”

We are aware that the 2019 Kelsey Notch Trail Environmental Compliance Report stated the trail was in very good condition and that it appeared to be in compliance with expectations. But it is important to note that the report also stated, “The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good.” In other words, the maintenance that occurred immediately prior to the site visit clearly addressed any erosion or other degradation issues prior to the site visit. It is also important to note that in his 2018 report, Lt. Mark W. Ober, Jr. District One Chief of the Fish and Game Department wrote, “I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified.”

In addition to the fact that the Kelsey Notch Trail does not meet the requirements of RSA 215-A, we continue to have two additional overriding concerns. First, the fact the trail may currently be in good condition immediately following top to bottom maintenance does not negate our position that it should not have been established as a Pilot Trail under the previous management plan. As we noted, the management plan in effect in 2012 did not permit the creation of the trail.

Second, the State of New Hampshire lacks a comprehensive master plan for the ATV system in New Hampshire, especially in the North Country. With the continued marketing and popularity of Ride the Wilds, expanded trail infrastructure, and safety related issues associated with increased use, we believe the Department of Natural and Cultural Resources and the New Hampshire Department of Fish and Game should lead a comprehensive planning process to develop such a master plan. The state should allocate sufficient resources to complete this

comprehensive planning effort. Key goals should include 1) development of criteria needed to determine appropriate areas to build new trails; 2) identification of the resources necessary to maintain NH's ATV trail system and enforce the laws governing ATV use; and 3) documentation of ecologically-sensitive areas that conflict with ATV use.

To be clear, our organizations recognize the growth of OHRV use here over the last decade. We are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. But, unfortunately, this growth has also presented the State and local communities with trail use management challenges.

Despite those challenges, an opportunity exists to balance the benefits of OHRV recreation with the concerns expressed by private property owners and others. Good planning, ongoing and effective communication, increased education of OHRV users, established avenues to resolve specific conflicts when they occur, and visible law enforcement, are all critical ingredients to a successful OHRV program in our state. Furthermore, if the increase in ATV use has provided new economic opportunities, the financial resources needed to achieve those goals should be available. However, that balance will be difficult to achieve if state agencies continue to allow the expansion of the ATV trail system without also having the capacity to manage it.

To summarize, the establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. Because of those facts, coupled with the State's lack of capacity to maintain, manage and enforce the existing OHRV trail system, we would request that CORD close down this trail.

Thank you. We would be happy to answer any questions you may have.

Sincerely,

Jim O'Brien

Director of External Affairs
The Nature Conservancy
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Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
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Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
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January 2, 2022

To Dave Govatski and Will Guinn,

we request a meeting of the Nash Stream Forest Citizens' Committee, and the Department of Forests & Lands and Fish & Game Tech Team members; a meeting in which these groups are prepared to record and respond to the questions and concerns of the public regarding the serious problem of ATVs in Nash Stream State Forest.

RSA 215-A:42 has not been followed. Baseline studies were never done. Despite the fact that DF&L and F&G monitoring repeatedly shows damage, and despite pointed observations and communications to management from DF&L and F&G staff in the field, no ATV trails have been closed. No response has been made to AMC/SPNHF's legal memos disputing the legality of ATV use in Nash Stream. Invasives, likely brought by ATVs or ATV trail maintenance vehicles, have been treated with the carcinogenic glyphosate while the ATV trails remain open, increasing the risk of more invasives. ATVs contribute to global warming, which threatens Nash Stream State Forest.

The NSFCC November 2021 meeting was not the first time these problems were brought to the attention of DNCR/DF&L/BOT, CORD and the NSFCC.

DNCR and NSFCC appear to be taking the position that they can ignore the law and the state of the Forest.

This meeting should take place well before the ATV season.

Sincerely,

Kris Pastoriza, Easton, N.H.

Lucy Wyman, Lancaster, N.H.

Margaret and Eric Jones, Trustees of the [Legacy Forest Trust](#)

Cam Bradshaw, Berlin, N.H.

Abby Evankow, Gorham, N.H.

Monique Petrofsky, Stewartstown, N.H.

Nancy DeCoursey, Jefferson, N.H.

Claudia Damon, Concord, N.H.

Dick Harris, Colebrook, N.H.

Pat Kellogg, Littleton, N.H.

Rick Audy, Shelburne, N.H.

Michael Phillips, Groveton, N.H.

Dave Evankow, Gorham, N.H.

Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, Massachusetts

Campbell McLaren, Easton, N.H.

Susan Percy, New Gloucester, ME

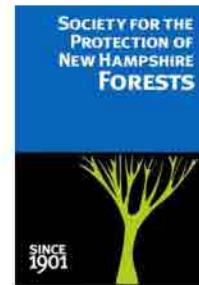
Field Rider, New Gloucester, ME

Gary Robertson, Gilford, N.H.

Nash Stream State Forest, Bordeaux ATV Trail



July 9th, 2019. (DF&L files)



May 5, 2016

Meredith Hatfield
Chair, NH Council on Resources and Development
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301

Dear Director Hatfield and Council members:

Our three organizations are writing to advise you of our deep concern about the legal status of the two existing ATV trails in Nash Stream State Forest. After careful review of the most recent Nash Stream Management Plan, as well as the existing New Hampshire statutes governing ATV trails on state lands, we conclude that the existing trails on the Nash Stream property are not in compliance with state law.

Our organizations are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. However, we remain concerned about current – and the potential for increased - ATV access in Nash Stream State Forest.

Unfortunately, because the state has failed to adhere to the law, our organizations are compelled to raise concerns because these trails may threaten the natural resource values these laws are intended to protect. We request that upon reviewing the requirements of RSA 162-C:6, II & III, the Council determine that the existing ATV trails are not in compliance with the law and take appropriate action.

It is vitally important that CORD provides the management oversight necessary to ensure that all trails in Nash Stream are compliant with statute, and that the establishment of trails follows a transparent and open public process. We urge CORD to take the time necessary to thoroughly examine the history of the Nash Stream acquisition, and the decision making process that has led the state to have ATV trails operating in the State Forest in violation of state statute.

AMC, SPNHF and TNC's interest in Nash Stream

In 1988, the state's Land Conservation Investment Program (LCIP) approved a grant of \$7.65 million in state funding for the purchase of more than 40,000 acres of land, including the self-contained Nash Stream watershed (totaling 39,503 acres in the towns of Stark, Odell, Stratford and Columbia). At the same time, The Nature Conservancy (TNC) and the Society for the Protection of New Hampshire Forests (SPNHF) jointly guaranteed a loan of \$5.1 million to bridge the difference between the LCIP grant and the full purchase price of the Nash Stream watershed.

A closing took place on October 27, 1988 where the state of NH purchased 46,679 acres for \$12.75 million and re-conveyed 4,496 acres to the Forest Service for \$1.175 million. The Forest Service also agreed in principle to share the costs of the Nash Stream acquisition through the purchase of a Conservation Easement on the property. As the terms of the easement were being negotiated, SPNHF and TNC loaned the state \$3.925 million to provide the balance of the purchase price.

Finally, on August 4, 1989, the Conservation Easement on Nash Stream was sold to the United States of America for \$3.95 million and the TNC/SPNHF loan was repaid with appropriate interest. Today, Nash Stream Forest is NH's largest single state forest.

Our three organizations were advocates at the time for state acquisition of the Nash Stream State Forest, and have since been actively engaged in collaborative efforts – including serving on the Nash Stream Citizens Committee - to manage the land for the benefit of the citizens of the State.

The LCIP originally conserved this land for two primary reasons. The first was to protect the entire Nash Stream watershed as an ecologically intact working forest, for the property's natural resource values, including the economic value associated with sustainable management of the timber resources. The second reason was to reserve for the public the traditional recreational uses of what had long been privately owned and managed forest land. It should be noted that ATV use was not a traditional use [previously allowed by private landowners], and the original DRED forest management plan for Nash Stream specifically prohibited ATV use.

Role of Council on Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in the implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands,

¹ <https://www.nh.gov/oep/planning/programs/cord/>

purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when management of these resources is shown to be detrimental to those resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Resources and Economic Development (DRED) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DRED is not properly managing LCIP lands under its control, CORD needs to take corrective action.

Existing Trails in Nash Stream in Clear Violation of RSA 215-A: 42.

Our review of available information suggests DRED did not follow existing state law when establishing ATV trails on the Nash Stream property; the first of which (the West Side Trail) began operation as a pilot in 2002, and an additional trail, the Kelsey Notch trail, was established by DRED as a pilot in 2012.

RSA 215-A: 42 is clear that specific criteria must be met before any ATV trails are established on state owned lands:

No ATV or trail bike trail shall be established after the effective date of this paragraph or subsequently maintained on state-owned property unless all of the following [four] conditions are met:

There is no ambiguity in this language, and the statute is unequivocal that not just some of the conditions (a-d below) of the statute need to be met before trails can be established, but DRED is required to ensure that all conditions explicitly outlined in statute are met.

The four conditions set forth in RSA 215-A:42 are:

(a) The property has been evaluated by the bureau in cooperation with the department of fish and game and the department of resources and economic development, division of forests and lands, and other state agencies that are custodians of the property using the coarse and fine filter criteria, established under RSA 215-A:43, and has passed such criteria as determined by the commissioner of the department of resources and economic development and the executive director of the department of fish and game.

To our knowledge, DRED has never made publicly available any of the “coarse filter” and “fine filter” reviews required for each of the existing ATV trails in Nash Stream. In reviewing CORD’s meeting minutes of last year when this topic came up several times, there is no indication that DRED has informed CORD when and if these reviews have been done. CORD should require DRED to provide to CORD and the public the completed analysis for each trail per the coarse and fine filter requirements set forth in RSA 215-A: 43.

(b) A memorandum of understanding (memorandum) exists between the bureau, the fish and game department, the department of resources and economic development, division of forests and lands, and all other state agencies that are custodians of the property. The memorandum shall include, but not be limited to, the responsibilities that each agency has in monitoring,

maintaining, and enforcing relevant laws relative to the trail and the type of OHRV permitted on approved trails. The bureau shall enter into the memorandum only if it is certain that proper monitoring and maintenance of the trail shall occur, either through its own resources or those of others. The fish and game department shall enter into the memorandum only if it can commit sufficient resources to reasonably monitor for proper ATV or trail bike use on the property and enforce the applicable laws.

According to CORD's public meeting minutes of July 8, 2015, a DRED staff representative replied to an inquiry that he "did not believe" any memorandum of understanding exists for any of the Nash Stream ATV trails. Operating a trail system on state lands without an existing MOU is a major concern because the State's capacity to monitor and enforce ATV laws is already stretched thin. If such a memorandum does exist, it should be immediately transmitted to CORD.

(c) A written agreement is in effect between the bureau and a locally-organized ATV or trail bike club recognized by the bureau that details the club's ongoing responsibilities, including but not limited to, monitoring the use and condition of the trail, erecting signage, educating operators, performing maintenance, and monitoring compliance with laws and regulations. Should the club fail to fulfill some or all of its responsibilities, the bureau or its agent may assume such responsibilities provided sufficient resources are available and committed.

We have been provided with two written agreements for the ATV trails in Nash Stream. One is between DRED and the North Country ATV Club for the West Side Connector Trail, signed in February of 2013 with no expiration date. The second agreement is between the Metallak ATV Club and DRED, covering the Kelsey Notch pilot trail for a three year period, and was signed in May 2013. This agreement expires at the end of May 2016. If CORD has not already done so, it should request that DRED provide all agreements required under this statute for ATV trails in Nash Stream, and ensure that the agreements are up to date and complete and that they are being monitored for compliance with statute.

d) A management plan exists for the property that specifically allows ATV or trail bike use on the property, and the ATV or trail bike trail does not otherwise conflict with the management plan. Any state agency proposing to establish or change a management plan that affects ATV or trail bike use on state property shall publicize such plan and provide the public with the opportunity to comment on the plan before enactment.

While the 2002 management plan for Nash Stream does allow for one trail (the West Side Connector), it specifically prohibits any additional trails being developed on the property. Specifically, amendments were made to the management plan on page 50 to make this point quite clear:

"Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail (aka the Farrer Brook Trail #14 Map 3 page 24), the West Side Road (#52 Map 3), and the Andritz Trail (aka Stratford Mtn Rd #44 Map 3). This is a pass through trail set up as a pilot project for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property."**

In 2012, DRED approved a new “pilot trail” - Kelsey Notch - which is explicitly not permitted by the existing management plan for the Nash Stream State Forest. The language of the management plan is quite clear: the West Side Trail is the only ATV trail allowed in Nash Stream. Without amendments to the Nash Stream management plan, the Kelsey Notch Trail is not permitted. In fact, there appears to be no statutory authority for DRED to establish “pilot” OHRV or ATV trails on lands acquired by the LCIP. There have been no amendments to the Nash Stream Management plan that would allow DRED to establish any additional ATV trails on the property. DRED had no authority to authorize ATV use of the Kelsey Notch Trail.

Conclusion

The core issue we would like CORD to address at this time regarding ATV use of trails in Nash Stream is whether current law is being complied with, and, if not, what the appropriate remedy is. As discussed above, we believe the existing trail network in Nash Stream is not in compliance with RSA 215.

Nash Stream was purchased by the state through the LCIP program using public dollars. CORD has a statutory obligation to administer and manage these lands in keeping with the values and purposes for which the lands were purchased. A key component of the proper management of these lands is ensuring that activities being carried out on them are in compliance with state statute. Unfortunately, in the case of the ATV trails in Nash Stream, it appears that DRED has not followed the letter, or the intent, of the laws governing such trails on state lands. The remedy is for CORD to assure compliance, and to ensure that there is a well-informed and transparent public process when contemplating the continued use, or potential expansion, of ATV trails in Nash Stream.

Thank you for your prompt attention to this matter. We are available to meet and discuss this important issue at your convenience.

Sincerely,

Will Abbott
Vice President Policy
Society for the Protection
of NH Forests

Susan Arnold
Vice President for Conservation
Appalachian Mountain Club

Jim O'Brien
Director of External Affairs
The Nature Conservancy



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
OFFICE OF THE COMMISSIONER

172 Pembroke Road, Concord, New Hampshire 03301

Phone: 271-2411 Fax: 271-2629

TDD ACCESS: Relay NH 1-800-735-2964

Ms. Kris Pastoriza
294 Gibson Rd.
Easton, NH 03580

January 7, 2022

Dear Ms. Pastoriza:

Thank you for your letter of January 3 requesting a meeting of the Nash Stream Forest Citizens Committee (NSFCC), Division of Forests & Lands (DFL) and the Department of Natural & Cultural Resources (DNCR) Technical Team regarding concerns about Off-Highway Recreational Vehicles (OHRV) trails on the Forest.

The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests. The Committee serves in an advisory capacity to the state agencies responsible for managing Nash Stream Forest. In that role, Committee members are responsible for communicating with their respective constituents to bring ideas, concerns or opportunities for improvement to the attention of the state's resource managers.

The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.

Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff. An annual report is filed with Council on Resources & Development (CORD), comprised of twelve state agencies "whose responsibilities include providing a forum for interagency communication and cooperation in assuring consistency with established policies relating to the environment, natural resources, and growth management issues." (www.nh.gov/osi/planning/programs/cord/) Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD. Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.

The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD's satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. See *9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.*

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.

As you can see, a monitoring and review process is in place for OHRV trails on Nash Stream Forest. Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.

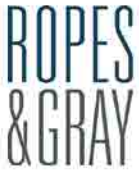
The next meeting of the NSFCC will be in early November 2022 and will include a briefing of the trail monitoring efforts. At the end of the formal agenda, we can plan for additional time for public comment.

Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Sarah Stewart
Commissioner, DNCR



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. Based on my research of relevant New Hampshire law and regulations applicable to snowmobiles, all-terrain vehicles (“ATVs”) and other off-highway recreational vehicles (“OHRVs”), I conclude that the legal opinions set forth in the Opinion regarding the permitted use of use of ATVs on the tract of forest land known as the “Nash Stream Tract” and subject to the Easement Deed are inconsistent with applicable New Hampshire law.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of the same type as the items specifically listed [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ *Conservation Law Found. v. New Hampshire Wetlands Council*, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also *Roberts v. Gen. Motors Corp.*, 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Council

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: *William G. Abbott*
WILLIAM G. ABBOTT

ITS EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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Schedule 2

Opinion

[Attached.]

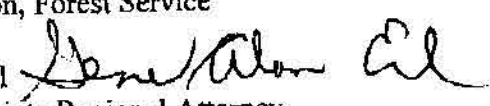


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

Nash Stream

November, 1994

AN OVERVIEW OF THE NASH STREAM FOREST

ACQUISITION

The Nash Stream Forest is a unique parcel of land in Northern New Hampshire. Its acquisition in 1988, through a collaborative effort between the state of New Hampshire, the U.S. Forest Service, The Nature Conservancy, The Trust for New Hampshire Lands, and The Society for the Protection of New Hampshire Forests is equally unique, and serves as a milestone in state, private and federal cooperation.

The diversity of the groups represented in this effort is almost as diverse as the wildlife that exists within the Nash Stream Forest and the topography of the land itself. Yet over an eighteen-month period, representatives from each of these groups worked together, to negotiate an

arrangement which all felt was in the best interest of the land and the people who use it.

MULTIPLE USE STRESSED

All of the groups involved in the purchase and future management of the Nash Stream Forest recognized the importance of protecting the Forest from development, as well as the importance of continuing to use the land in a "multiple-use" manner—for education and research; as a key watershed area; for fish and wildlife; recreation; scenic qualities; and as a sustainable timber resource. These mutual concerns led to the successful purchase of the property, and to a gubernatorially-appointed Advisory Committee to focus public input and provide technical expertise.

THE MANAGEMENT PLAN

Since December, 1989, this Committee has been hard at work, holding public listening sessions to gather input, working with a Technical Committee to review research on the past and present use of the Nash Stream Forest, and developing a working Management Plan. This final Plan will serve as a model of environmentally sound public land stewardship so that future generations may enjoy this unique property.

GATHERING PUBLIC INPUT

As has been done throughout the development of the draft Management Plan, we continue to seek public input from any group or individual interested in the Nash Stream Forest. Your input will help us formulate the final Management Plan, which will ultimately determine the future use of the Nash Stream Forest. For more information about the impact of public input on the Management Plan, see the article on page 6.



Whitcomb Pond, Little Bog (Fourteen and a Half) Pond and Lower Trio Pond in the Nash Stream Forest.

**Nash
Stream NEWS**

is published by
New Hampshire's
Department of Resources and
Economic Development,
Division of Forests and
Lands.

QUESTIONS & ANSWERS About The Nash Stream Forest

WHAT IS THE DIFFERENCE BETWEEN THE NORTHERN FOREST AND THE NASH STREAM FOREST?

The Nash Stream Forest is a 39,601 acre tract owned by the state of New Hampshire, managed by the Department of Resources and Economic Development, with a Conservation Easement held by the United States of America. The tract lies within a four-state region known as the Northern Forest that stretches from the coast of Maine, across northern New Hampshire and Vermont into New York, totaling 26 million acres. The Northern Forest is one of the largest expanses of continuously forested land in the nation with about 85% in private ownership. Forest-based economies, recreation, and environmental diversity are traditional to the area as are clean air and water.

The breakup of Diamond International Co. lands in 1988 led to both state acquisition of the Nash Stream Forest and national concern about the future of the Northern Forest lands. Congress authorized the U.S. Forest Service to study Northern Forest issues in cooperation with a four-state Governors' Task Force. Congress later created the Northern Forest Lands Council in 1990 to continue the work begun by the Task Force. The Council's report was released in the fall of 1994.

WILL THERE BE A FEE TO USE THE NASH STREAM FOREST?

Although allowed by the Conservation Easement, there are no plans to charge a fee for public entry or general use of the Nash Stream Forest.

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

WILL THERE BE A VISITORS' CENTER OR GATE KEEPER AT THE ENTRANCE?

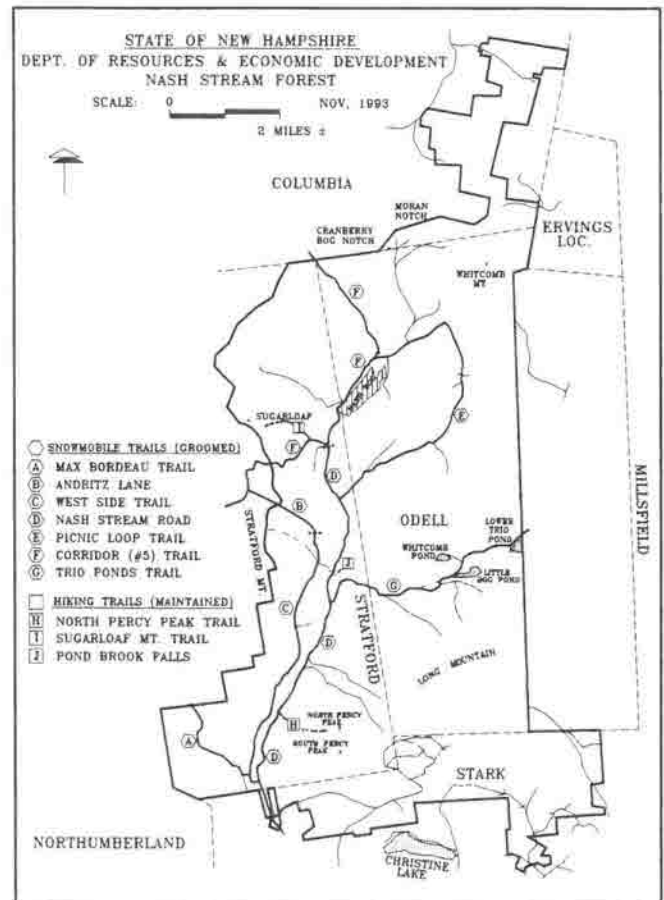
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

WILL THERE BE HANDICAPPED ACCESS?

Reasonable accommodations will be made to provide access to individuals with disabilities. Contact the Regional Forester, North Country Resource Center in Lancaster at (603) 788-4157.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.



WHAT IS THE ROLE OF THE FEDERAL GOVERNMENT?

The Forest Supervisor, White Mountain National Forest (WMNF) is responsible for administering the Conservation Easement on behalf of the United States. The role of the Forest Service is to ensure that the terms and conditions of the Easement are satisfied and does not include active involvement with management. The WMNF staff serve as advisors to the state and provide assistance when needed, primarily with management support and technical advice.

ARE THERE ANY THREATENED OR ENDANGERED SPECIES ON THE PROPERTY?

There are 5 rare plant species identified on the property in as many locations. They are: Black Crowberry, Marsh Horsetail, Three-forked Rush, Broad-lipped Twayblade, and Millet-grass. Four of the five are listed as threatened by the NH Native Plant Protection Act. The other, Three-forked Rush, is relatively rare but is not state-listed. All of these plants occur within designated natural preserve areas.

No federally listed animal species are known to breed on the property. Peregrine Falcons and Bald Eagles nest within 20 miles of the property and may frequent the Forest from time to time. Several state listed animal species occur or potentially occur on the property. Common Loons nest regularly and Northern Harriers have nested in some years. Lynx and Marten may occur as transients if not residents.

WILL HUNTING AND TRAPPING BE ALLOWED?

Yes. Hunting and trapping will be permitted in accordance with state law.

WILL THERE BE ANY NEW (HIKING) TRAILS?

Only modest increases in the trail system are under consideration, such as adding a hiking loop via a short connector between the Percy Peak Trail and an old logging road (north of the Peak) that follows Long Mountain Brook down to Nash Stream. A Nash Stream Trails Advisory Group is recommended in the Management Plan to assess the current trail system, its condition and use, and recommend trail improvements. It is recommended that the Trails Advisory Group consist of representatives of hiking, dog sledding, cross country skiing, bicycling, hiking and snowmobiling to ensure adequate representation of these user groups.

WILL CAMPING BE ALLOWED?

Camping is not currently available. By department policy, camping is not allowed on any state

forest or park where overnight camping facilities are not available. The Management Plan does not recommend development of a campground or camping facilities. However, the Plan leaves open the possibility of future backcountry camping along selected hiking trails, subject to the availability of staff and funds for proper monitoring and maintenance.

ARE THERE PLANS TO STOCK FISH?

Yes. Stocking will occur where natural spawning is poor or non-existent. Lower Trio Pond, Little Bog Pond, and possibly Whitcomb Pond will be stocked annually with brook trout. Until the status of the wild trout population in Nash Stream can be determined, stocking of hatchery brook trout in the mainstem will continue. Nash Stream is unlikely to support a recreation fishery in the near future without an annual stocking program due to a current lack of pool habitat in the stream.

WILL THERE BE A CATCH-AND-RELEASE FISHERIES PROGRAM?

Fisheries management will emphasize natural populations of fish species consistent with habitat capabilities of the ponds and streams. Special fishing regulations such as catch-and-release, minimum fish lengths, and fishing gear restrictions may be implemented to protect spawning stock in order to maintain wild populations of brook trout.

HOW MUCH OF THE FOREST WILL BE NATURAL PRESERVE OR OTHERWISE PROTECTED?

About 46% (18,339 acres) of the Forest is considered ecologically significant, fragile or sensitive and will be preserved or under restricted management. Much of this area coincides with boundaries of areas on which the Conservation Easement prohibits logging (10,665 acres). Protection will be accomplished by several means as follows:

Natural preserves (8,113 acres) are areas of uncommon ecological significance that encompass 9 different natural communities and 1 pond located primarily on the side slopes and mountain tops of Sugarloaf, Whitcomb and Long Mountains and Percy Peaks. There will be no intentional disturbances to these areas.

Preserve buffers (5,115 acres) are lands surrounding natural preserves with soils and topography capable of serving as shock absorbers to protect natural preserves. Management activities will be limited in preserve buffers.

A corridor (515 acres) of pure softwood forest forms a natural drainageway connecting the natural preserves and buffer areas on Whitcomb and Long Mountains. This corridor is located just west of Little Bog Pond.

A 150 foot zone around each pond is protected from logging by the Conservation Easement. These zones total 55 acres.

Other high elevation sites above 2,700 feet elevation where logging is prohibited by the Conservation Easement and not otherwise protected total 49 acres. Other steep slopes of 35% or more where logging is prohibited by the Conservation Easement and not otherwise protected total 925 acres. Other wet, rocky or otherwise fragile soils not otherwise protected total 3,050 acres. And, other fragile mountain tops below 2,700 feet elevation total 516 acres.

<i>Natural Preserves and Other Protected Areas</i>	
DESIGNATION	ACRES
Natural Preserves	8,113
Natural Preserve Buffers	5,116
Corridor	515
150 ft. Pond Buffers	55
Other High Elevation >2,700 ft.	49
Other Mountain Tops <2,700 ft.	516
Other Steep Slopes >35%	925
Other Group II Soils	3,050
TOTAL	18,339

WHAT ARE CONTROL AREAS AND WHY ARE THEY NECESSARY?

One control area will be established in each natural community type under timber management for the purpose of comparing unmanaged (control) areas to ecologically similar areas subjected to logging. This provides a means of assessing the impact of timber management on ecological resources called for in the "Vision".

Although established under different criteria, control areas will also complement natural preserves because they will help preserve, for study, natural communities not represented in natural preserves. In this manner, control areas will help satisfy the "Management Vision" that calls for *"The system of core natural areas will include representatives of the full range of ecological communities..."*.

WHY ARE MOST OF THE NATURAL PRESERVES HIGH ELEVATION ECOSYSTEMS?

High elevation sites, more than any other locations, qualify for natural preserve designation by existing department standards. High elevation sites (above 2,700 feet elevation) remain the least impacted by human activity and contain rare elements or

exemplary natural communities that have retained most, if not all, of their natural character, and/or contain features of scientific and/or educational interest. A total of 8,113 acres of the Forest qualify as natural preserve, of which 8,099 acres are at high elevations on which the Conservation Easement prohibits logging.

HOW DOES THE EASEMENT AFFECT TIMBER MANAGEMENT?

The Conservation Easement protects and conserves resources with a primary emphasis on the sustained yield of forest products. Logging is prohibited on 27% (or 10,665 acres) of the forest which consists of steep slopes (2,462 acres), high elevation (8,148 acres), and buffers (55 acres) around Lower Trio Pond, Whitcomb Pond and Little Bog (Fourteen and a Half) Pond.

The Easement also requires that timber be managed on a sustained yield basis; clearcuts be no larger than 30 acres; clearcuts total less than 15% of the total easement area in any ten year period; logging on areas near streams, ponds and public highways are subject to the provisions of state law; logging shall be conducted in conformance with current federal and state laws and regulations, including use of "best management practices" for erosion control and other activities.

HOW MUCH OF THE FOREST WILL BE MANAGED FOR TIMBER?

More than half (52%) of the Nash Stream Forest will be managed under a multiple-use, sustained yield timber management program. Occasional and restricted timber cutting will be allowed on another 22% of the forest (e.g. buffers, corridors, Group II soils) but only to enhance non-timber values such as wildlife habitat or recreation resources. The remainder of the property is considered ecologically sensitive or protected from logging by the Conservation Easement.

HOW SOON WILL THE FIRST STATE TIMBER HARVEST TAKE PLACE?

It is hoped that the first commercial timber sale will be made within two years of formal adoption of the Management Plan. However, the immediate potential for significant sawlog harvests is low. A 1988 timber cruise identified only 11% (3,140 acres) of forest as sawtimber size (≥ 9.6 inches in diameter) with limited commercial value because it is widely scattered. However, there are significant widespread opportunities for commercial thinning operations over many areas, and since the Forest is restocking through growth, there is a bright future for long-term yield of timber products.

Q & A's (continued)

WILL THERE BE CLEARCUTTING?

Yes. Clearcutting is allowed by the Conservation Easement and the "Management Vision", but with restrictions. The practice will be used only when other cutting methods will not achieve timber and wildlife management goals and forest conditions defined in the "Vision."

WILL THE NASH BOG DAM BE REBUILT?

There were mixed views at the 1990 public listening sessions on whether or not to rebuild the dam. After the dam breached in 1969, a new dam was proposed at a cost of just under \$3.5 million in 1974 dollars. Lack of state and federal funding at the time caused the proposal to be shelved. The conservation easement would allow the dam to be rebuilt, at or in the immediate vicinity of the old Nash Bog Pond Dam, for fish and wildlife and recreation purposes only. However, the Management Plan does not call for rebuilding the dam.

WILL LOCAL COMMUNITIES BE PAID IN LIEU OF TAXES?

Yes. State and federal land reimbursement is authorized by RSA 219:32 which states "...any town in which national forest land and land held by the state for operation and development as state forest land are situated...may apply...for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on said lands...". The

amount of "taxes on said lands" is determined annually by the NH Department of Revenue Administration based on a formula. This amount is then reduced by payments towns receive from federal distributions generated from timber cuttings on the national forest system. Only White Mountain National Forest towns (Stark) receive this payment. For tax years 1990 and 1991, the state's payment, distributed to the towns of Stratford, Columbia, Stark and the unincorporated place of Odell, totaled just under \$110,000. Federal distributions for the same period totaled just under \$26,000.

HOW CAN I VOLUNTEER AS A SUPPORTER OF THE NASH STREAM FOREST?

Volunteers will be encouraged to participate in organized work projects or groups. Individuals and organizations should contact the North Country Resource Center in Lancaster and register their name, affiliation, and area of interest or expertise. Emphasis will be given to focused volunteer work days with logistical support from the department. Work areas for volunteers may include an appointed advisory committee, trail monitoring and maintenance, organized cleanup days, erosion control and restoration projects, natural interpretive programs, and specialized wildlife surveys to name a few. Department efforts will include maintaining a list of appropriate volunteer projects, providing safety and host training for volunteers, keeping a log of volunteer hours and accomplishments, and recognition of outstanding volunteer efforts.

DRAFT PLAN AVAILABLE

Copies of the (draft) Nash Stream Forest Management Plan are available for viewing at the following locations. Written comments on the Plan will be received **UNTIL FEBRUARY 28, 1995**.

- Bedford Public Library
- NH Technical College - Fortier Library and Berlin Public Library (Berlin)
- U.S. Forest Service - Ammonoosuc Ranger Station (Bethlehem)
- Merrimack County Ext. Office (Boscawen)
- Rockingham County Ext. Office (Brentwood)
- Fiske Free Library (Claremont)
- Colebrook Public Library
- NH Law Library and Concord Public Library (Concord)
- Carroll County Ext. Office (Conway)
- Strafford County Ext. Office (Dover)
- UNH - Diamond Library (Durham)
- Franklin Public Library
- U.S. Forest Service - Androscoggin Ranger Station (Gorham)
- Groveton Public Library
- Dartmouth College Library (Hanover)
- New England College - Danforth Library (Henniker)

- Keene State College - Mason Library and Cheshire County Ext. Office (Keene)
- Belknap County Ext. Office and Laconia Public Library (Laconia)
- Weeks Memorial Library and North Country Resource Center (Lancaster)
- Littleton Public Library
- Manchester City Library, St. Anselm College - Geisel Library, and NH College - Shapiro Library (Manchester)
- Hillsborough County Extension Office (Milford)
- Nashua Public Library
- Sullivan County Ext. Office (Newport)
- Peterborough Town Library
- Plymouth State College - Lamson Library (Plymouth)
- Portsmouth Public Library
- Stark Public Library
- North Country Office - NH State Library (Twin Mountain)
- Grafton County Ext. Office (Woodsville)

If you have comments or questions, please call the Division of Forests and Lands in Concord, NH (603) 271-3456, or write to:

Department of Resources and Economic Development
ATTN: Nash Stream Forest
Box 1856
Concord, NH 03302-1856

DRED
Division of Forests and Lands
P.O. Box 1856
Concord, NH 03302-1856

HOW THE MANAGEMENT PLAN ADDRESSES PUBLIC CONCERNS

Two earlier public listening sessions were held in Groveton and Concord. The key points which emerged from these public sessions were:

- Maintaining local influence;
- Keeping the Nash Stream Forest tract undeveloped;
- Eliminating the gravel mining rights of Rancourt Associates;
- Providing for multiple recreation uses;
- Restoring tax yield to local towns; and
- Stressing sound forestry management practices.

This input was factored into the development of a "Vision" statement, and Management Goals and Objectives for the Nash Stream Forest's Management Plan.

Following are some examples which show how specific concerns raised at these listening sessions were addressed and implemented in the draft Management Plan. These are just two of many examples showing how public concerns have been integrated into the Management Plan.

EXAMPLE #1

PUBLIC COMMENT: *"More local input into Forest (Tract) Management."*

MANAGEMENT PLAN RESPONSE: "A Citizen Advisory Group will be appointed and scheduled to meet regularly to serve as a focused source of public input and assistance. Public notification will be made for significant proposed management activities such as timber harvests, major recreation developments, and emergency closures. Local municipalities will be notified of any actions within its boundaries that directly affects that municipality."

EXAMPLE #2

PUBLIC COMMENT: *"Maintain and protect existing roads; no new roads or trails."*

MANAGEMENT PLAN RESPONSE: "The network of existing roads will be maintained. No new permanent roads are planned. Traditional public access by conventional motor vehicle will be continued on the Main Road and Little Bog (Fourteen and a Half) Road. All other interior roads will be gated and maintained for controlled access in order to provide for public safety and prudent resource utilization and protection."

Additional public input is being sought through written comments on the draft Nash Stream Forest Management Plan. These additional comments will be factored into the final Management Plan to be completed this winter.



United States
Department of
Agriculture

Forest
Service

White Mountain
National Forest

719 N. Main Street
Laconia, NH 03246
Comm (603) 528-8721
TDD (603) 528-8722

File Code: 5440
Route To:

Date: September 25, 2001

Subject: Nash Stream Easement

To: Paul Stockinger

Enclosed is a request from the State of New Hampshire for a Forest Service legal interpretation of the Nash Stream Forest Conservation Easement relative to the recreational use of all terrain vehicles (ATV's) in the Nash Stream Forest. The State is currently looking at the possibility of revising their management plan and wants to be able to consider the possibility of this use in the update of their plan in response to public requests.

I have reviewed the easement, which was signed on August 4, 1989, and would like to have you and the Office of General Counsel review my findings prior to me providing the State with a Forest Service position on this matter. My review noted the following items, which appear to pertain to the issue of recreation use and access:

Introductory Statements (Whereas)

I found nothing in the introductory statements that indicated to me that the State's consideration of ATV use through their management plan would be inconsistent with the purposes of the easement.

II. Use of the Easement Area

Under C.1, the State has expressly reserved public recreation uses in order to construct, operate and maintain campsites, trails, internal access roads, picnic roads, boat launches, trailhead parking areas, visitors center and ranger station. The reserved right specifically highlights cross-country ski trails and snowmobile trails, but based on the way it is written it does not appear to preclude other kind of trails such as hiking and ATV trails or internal access roads.

Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and Forest Service involvement would only be required on roads that provide "through travel." I see nothing in this provision that would preclude the State from considering internal access roads for ATV use.

Under C.4, the State is required to manage the property for multiple uses consistent with the purposes and provisions of the easement. The instrument goes on to define multiple use as the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output. The State redeems their responsibility for this provision



through the preparation and administration of the Nash Stream Forest Management Plan and subsequent revisions of this plan.

Under Section E.1, I find no prohibited or unreserved uses that apply to the possible management of ATV's on the Nash Stream Forest relative to trail and internal road use.

Under Section F.1 and F.2, I believe the State is considering a public access and use request and has the authority under the easement to reasonably restrict and regulate access.

III. General Provisions

Under Section D, it would be my opinion as the Forest Supervisor that the State has the discretion to consider ATV use on the Nash Stream Forest during the revision of their Forest Management Plan. The decisions on use of ATV's in the plan would need to consider the purposes of the easement (public use and protection), Natural Resource Management (Section II.4) and the New Hampshire Forest Management Initiatives Act (III.E).

I would appreciate a review of my conclusions, so I can get back to Director Phil Bryce with a Forest Service position on his request for a legal interpretation. Please give me a call if you have any questions.



THOMAS G. WAGNER
Forest Supervisor

Enclosure

Cc: George Pozzuto, District Ranger

Kelsey Notch ATV Connector Trail
Nash Stream Forest– Columbia Component

Response to CORD Management Concerns
Pursuant to RSA 162-C:6

Concern: Thanks for the information you provided for CORD’s April 11 meeting on the Nash Stream State Forest ATV trail proposal. Meredith Hatfield, Tracey Boisvert and I have reviewed it and we think CORD members need additional information in order to make an informed, well reasoned decision, and fulfill our statutory obligations.

Response: It remains unsure as to the role of CORD regarding LCIP-fund purchased properties. Can CORD stop a project after an agency has spent months sifting it through various levels of review?, or advise where a ‘loose end” may need further attention without delay. We intend to have staff from the Trails Bureau, as well as a representative of the local club at the CORD meeting. They can further elaborate on items if CORD members have questions.

Concern: We think the proposal should address the factors mentioned in RSA 162-C:6, II and III, which is the legal basis for CORD’s oversight of LCIP properties, and how the proposed ATV trail relates to maintaining natural beauty, protecting natural resources, maintaining public access, and is in the best interests of conservation and protection of the values listed in that statute.

Response: Nash Stream Forest (the Forest) might today be 40,000 acres of private camp lots and homes with snow machines, ATV, dirt bikes, golf carts and the like running amuck across the entire landscape, or poor forest management practices being used to decimate the forest. Fortunately, today the Forest is a well managed special public holding where the balance between maintaining natural beauty and protecting natural resources and the harvesting of forest products and providing for public outdoor recreation is evaluated on a daily basis by DRED and its partners – F&G, USFS and others. As presented to CORD on March 14th, ATV use was established in 2002 along the 8-mile (approximately 29 acres of 30’-wide corridor) “West Side” trail in the Stratford component of the Forest. The subject request for public ATV use is for a 2.5 mile (approximately 9 acres) trail connector across the northern tip of the Forest. Both OHRV corridors occur at the outer fringe of the Forest and directly impact only 0.1% of the Forest acreage (39,169 total acres).

Concern: We also think the proposal should explain how the proposed ATV trail fits, or does not fit, within the context of the amended Nash Stream Master Plan, as well as to the evaluation process required by RSA 215-A:43 through 45. Some description of how the proposed trail complies with the coarse and fine filter criteria listed in that statute

would be helpful. Some of this explanation may also help to frame your request in the context of CORD's statute (RSA 162-C:6).

Response: Through staff review and from public hearings, the "pilot" West Side Trail was established and documented in the 2002 Revised Management Plan, and became a permanent trail for public ATV use by Commissioner decree in 2007. The subject request has followed that same path, and currently DRED is seeking a 3-year "pilot agreement" for additional ATV use in the Forest, known as "Kelsey Notch Connector Trail". DRED believes that all requirements of RSA 215-A:43 have been met and note that DRED, F&G and DES staff have been directly involved in siting the proposed trail corridor in light of the coarse and fine filter criteria. The proposal was part of a publicly noticed meeting of the Nash Stream Citizens Committee and the proposal was in the media.

Concern: One of the questions raised at the last CORD meeting was how the proposal relates to an overall plan for ATV trails both in the Nash Stream State Forest and the larger North Country area. Are there plans for additional trails? How does this segment relate to the larger proposed ATV trail network? The proposal should address these questions.

Response: No overall written plan has been completed. A plan of the entire North Country "Ride the Wild" OHRV trail system will be made part of the presentation at the April 11th CORD meeting. The Bureau of Trails has been using the 2004-2008 Plan for Developing NH's Statewide System for ATVs and Trail Bikes and the Jericho Mountain State Park Master Development Plan as guiding documents for these interconnected trail system; both documents note the need for linking existing trails together.

Concern: Another question raised at the last meeting, which the proposal should also address, involved whether the necessary resources are available to manage and enforce proper use of the ATV trails. This issue is also included in RSA 215-A.

Response: Enforcement of our public roads, water and trails is a never-ending concern. DRED's forest ranger staff and F&G's conservation officer staff are attentive to the need for adequate law enforcement of the new trail system. Safe and lawful use of the trail system by the public will help determine if the pilot trail across the Forest will continue.

Concern: We think the proposal should also explain in more detail the two Kelsey Notch options. What issues are presented by the two options? Is there a preferred option? Will existing roads be utilized, or will new trail be constructed? Are there natural resource protection issues raised by the different options? When will DRED know which option it will pursue?

Response: First priority; DRED requests CORD's acquiescence to the "Kelsey Notch Connector Trail", which depends on private landowner permission to the east and

northwest of the Forest corridor. Second priority is CORD's acquiescence to the "spur" leading from Kelsey Notch Connector Trail to the terminus of Kelsey Notch Road (Class VI), in the event that said private land owner permission is lost. Use of Kelsey Notch Road is dependant upon approval by the Columbia Board of Selectmen for public ATV use on specific Class V roads. DRED is actively pursuing the Kelsey Notch Connector Trail option. The local club is actively working with the Town of Columbia for the designation of Kelsey Notch Road as an OHRV route at this time also. If successful they will request the 500' of existing road from the Kelsey Notch Connector to Kelsey Notch Road (priority 2). The spur to Kelsey Notch Road would be needed to complete the loop trail to the south.

Concern: The maps you provided reference Sheets 1, 2 and 3. It looks as if Sheet 3 involves the Stark Connection (southern route), which you have withdrawn from consideration. Perhaps Sheet 2 can be eliminated, while Sheet 1 can be used to illustrate your overall plan (including future trail proposals) and Sheet 3 can be renumbered and used to illustrate the two Kelsey Notch options.

Response: Yes, DRED requests that the "Stark Connector" be withdrawn from the table while DRED continues to process this segment of the "Ride the Wild" system. The Stark Connector will be discussed later this year when the agency starts the update process of its management plan. Plan numbers have been revised as requested for clarity purposes.

Concern: Also, we think it would be helpful for the proposal to provide some information about the ways in which the public and other state agencies have had input into the discussions of the various trail proposals, what concerns were raised and how they've been addressed.

Response: The OHRV trail proposal has been walked through and/or reviewed by staff from the following public agencies:

Bureau of Forest Management, Division of Forests & Lands
Bureau of Trails, Division of Parks & Recreation
Division of Wildlife, Fish & Game Department
Wetlands Bureau, Department of Environmental Services
Natural Heritage Bureau, Division of Forests and Lands
Division of Historical Resources
Office of Energy and Planning

As presented to CORD at the last meeting, the proposal has been reviewed, and approved, by the Nash Stream Citizens Advisory Committee, DRED Land Management Team (DLMT), State Lands Management Team (SLMT), and the Cooperative Lands Administrators Committee (CLAC). The Nash Stream Citizens Advisory Committee meeting was open to the public and the agenda of the meeting was duly noticed in local and statewide media. Comments are on file at DRED.

Concern: Do you think this additional information can be provided to us to distribute to CORD members no later than April 8, or would it be better to reschedule the meeting to later in April to give you more time to develop the information? We recognize that there is some urgency in obtaining CORD's review of this proposal, but want to avoid having CORD delay a decision on April 11 for lack of all the information members may feel they need to carry out their oversight responsibilities.

Response: Please conduct the April 11th meeting. When DRED staff left the meeting they were tasked with providing the information that CORD wanted at that time. This new request is well beyond what members of CORD asked for and we believe we have followed the process required by statute and policy to date. It is our belief that CORD members have the information they need to make a decision, if a decision is warranted. During the CORD meeting members asked Chris Gamache what he wanted from CORD for action; when he asked what CORD's role was in this matter members could not agree on what it was. If CORD approval is needed we ask that the group meet on the 11th and take whichever action CORD has been advised is appropriate.

Concern: We want to be as accommodating to DRED's timing issues as we can be, but also want to avoid the need for additional CORD meetings to reach a decision for lack of information. I think we share the common goal of a well-reasoned CORD decision based on the proper criteria.

Response: DRED is still unsure of the role that CORD plays in land management decisions and unsure of what "the proper criteria" is. This proposal was scheduled for CORD review as an Information Item, then became an item that "might" need a vote and just prior to our presenting this project it was decided that it might need a vote but no one is sure. DRED has been managing this property, and many others purchased through LCIP funds, for decades and has followed all existing land management practices, policies and statutes. For CORD to request the duplication of previous meetings and information is counter to the public process currently followed by land management agencies. It is our understanding that during a discussion with Counsel it was recommended that CORD not micromanage the land management agencies and the processes they currently follow.

With that being said; CORD's role is still unclear but if CORD is now part of the land management approval process we would request this project be supported by CORD at the special April 11th meeting.

From: Kris pastoriza
Sent: Fri, 4 Feb 2022 08:44:54 -0500
To: lbarguen, Derek -FS
Subject: [External Email]Nash Stream Easement

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Dear Derek,

thanks for acknowledging my submission/questions re. Nash Stream.

Kris

From: Kris pastoriza
Sent: Mon, 14 Feb 2022 10:27:31 -0500
To: Ibarguen, Derek -FS; Brown, Brooke - FS
Cc: Stewart, Sarah; Chuck_Henderson@shaheen.senate.gov; Kenney, Joseph;

(b)(6)



Subject: [External Email]Nash Stream State Forest
Attachments: 1-14-22 response to DNCR.pdf, DNCR Response to K. Pastoriza 1.7.2022.pdf, 11-11-20 AMC Memo.pdf, Request for meeting re. Nash Stream altered.pdf, 9-20-20_AMC_ATV Trails Memorandum.pdf, Letter to FS re Nash Stream February 2022.pdf, AMC,TNC SPNHF NSF letter 2020.pdf

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January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, "Traditional, dispersed, non-motorized recreationists" for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The 'Snowmobile clubs' designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called "Expertise in Recreation and Tourism" designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: "The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes." At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen's Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that "Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff" is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its "Trial" and monitoring was only instituted after CORD's December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that "Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD." But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn't been any monitoring of Westside, so there are no issues on the record that need to be addressed "to the satisfaction of agency resource managers and members of CORD." That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: "Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails." Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs' request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.
Mark Primack, Berlin, N.H.
Dan Whittet, Berlin, N.H.
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
Susan Percy, New Gloucester, ME
Field Rider, New Gloucester, ME
Margaret and Eric Jones, Trustees of the Legacy Forest Trust
Nancy DeCoursey, Jefferson, N.H.
Michael Phillips, Groveton, N.H.
Pat Kellogg, Littleton, N.H.
Daniel Clarke, Gorham, N.H.
Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
Jody Camille, Dummer, N.H.
Milton Camille, Dummer, N.H.
Bill Joyce, Stark, N.H.
Wayne Moynihan, Dummer, N.H.
Kim Votta, Lancaster, N.H.
Cam Bradshaw, Berlin, N.H.
Roger Doucette, Whitefield, N.H.
George Brown, Shelburne, N.H.
Howie Wemyss, Randolph, N.H.
Representative Judith Spang, Durham, N.H.
Stephanie Kelliher, Whitefield, NH
Beau Etter-Garrette, Whitefield, NH
Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
OFFICE OF THE COMMISSIONER

172 Pembroke Road, Concord, New Hampshire 03301
Phone: 271-2411 Fax: 271-2629
TDD ACCESS: Relay NH 1-800-735-2964

Ms. Kris Pastoriza
294 Gibson Rd.
Easton, NH 03580

January 7, 2022

Dear Ms. Pastoriza:

Thank you for your letter of January 3 requesting a meeting of the Nash Stream Forest Citizens Committee (NSFCC), Division of Forests & Lands (DFL) and the Department of Natural & Cultural Resources (DNCR) Technical Team regarding concerns about Off-Highway Recreational Vehicles (OHRV) trails on the Forest.

The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests. The Committee serves in an advisory capacity to the state agencies responsible for managing Nash Stream Forest. In that role, Committee members are responsible for communicating with their respective constituents to bring ideas, concerns or opportunities for improvement to the attention of the state's resource managers.

The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.

Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff. An annual report is filed with Council on Resources & Development (CORD), comprised of twelve state agencies "whose responsibilities include providing a forum for interagency communication and cooperation in assuring consistency with established policies relating to the environment, natural resources, and growth management issues." (www.nh.gov/osi/planning/programs/cord/) Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD. Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.

The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD's satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. See *9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.*

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.

As you can see, a monitoring and review process is in place for OHRV trails on Nash Stream Forest. Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.

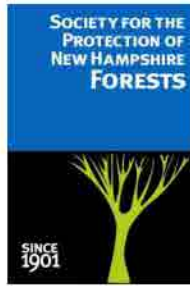
The next meeting of the NSFCC will be in early November 2022 and will include a briefing of the trail monitoring efforts. At the end of the formal agenda, we can plan for additional time for public comment.

Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Sarah Stewart
Commissioner, DNCR



November 11, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council of Resources and Development
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

RE: CORD Assessment of ATV/UTV use of Kelsey Notch Trail

Dear Mr. Chicoine and CORD members:

We appreciate the time, attention and diligence you have shown in examining the Kelsey Notch Pilot Trail in the Nash Stream Forest. Our organizations have provided comments to you in the past, both independently as well as together.

We submitted comments on August 20, 2020 regarding the failure of the Kelsey Notch Trail to comply with many of the statutory requirements of RSA 215-A. Further, on September 21, 2020, a memo was provided to CORD by the Appalachian Mountain Club outlining the different legal and regulatory standards applied to snowmobiles and ATVs/UTVs in New Hampshire.

The purpose of this letter is not to reargue points made in our preceding communications. Rather, we would like to take the opportunity to respond to the October 26, 2020 letter from the NH Off Highway Vehicle Association ("the Association") and their conclusion that "CORD's statutory duties require" that the Kelsey Notch Pilot Trail remains open. We also question the Association's statement that "the clear intent of the parties to the Easement is to allow the use of ATVs/UTVs in the Nash Stream Forest."

The clear intent of the Easement is perpetual public use consistent with the traditional uses of the land.

The Association argues that the intent of the parties to the Easement was to allow ATV use in the Nash Stream Forest. This version of events is not supported by the historical record nor the clear and plain language of the Easement.

An important component of conservation easements are the recitals – the rest of the easement flows from them. The recitals or "whereas" clauses set forth background information that helps to frame the legal and factual basis for an easement. In the case of the Nash Stream Forest Conservation Easement, the relevant section states that:

WHEREAS, the parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract

with primary management emphasis being the sustained yield of forest products consistent with traditional uses of the land, including public access, and the conservation of other resource values.

A clear decision was made to continue the management policy of the previous landowner and continue to exclude ATV use, as it was not considered low impact, dispersed, or traditional nor consistent with the Vision for the Forest. The original 1995 Nash Stream Management Plan, which took the many stakeholders involved in the protection of the Nash Stream Forest more than 6 years to complete continued to allow traditional recreational uses of the land and did not allow ATV/UTV access.

If the intent of the parties to the Easement was to include ATV's as a traditional use of the land, either the Easement - which notably does list the traditional recreational uses of the property - or the original management plan would have included their use. ATV use on the property was considered at the time of purchase, as well as during the creation of the first management plan, and was not included as an appropriate use.

If ATV use was "expressly permitted by the terms of the Easement", then it would follow that the founding documents and management plan would have allowed their use. The absence of reference to ATV restrictions does not mean they were intended to be allowed.

CORD's statutory duties

We take issue with the Association's conclusion that CORD's statutory duties require that it keep the Kelsey Notch Trail open. In the case of the Nash Stream Forest, CORD's statutory obligations are quite clearly articulated.

Role of Council of Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands, purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when

¹ <https://www.nh.gov/oep/planning/programs/cord/>

management of these lands is shown to be detrimental to those natural resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Natural and Cultural Resources (DNCR) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DNCR is not properly managing LCIP lands under its control, CORD needs to take corrective action in the interests of the state and the public interest for which the state is holding these lands.

Authority to close trails

CORD clearly has the statutory responsibility to ensure that Nash Stream management is consistent with established state statute, and the original purposes for which the LCIP acquired the land. The citizens of the state of New Hampshire invested more than \$7 million to protect and steward these lands. As the entity with fiduciary responsibility for this investment, CORD must ensure that all trails on Nash Stream are compliant with the law, and if they are not, they should not be open for use.

The State is responsible for managing the Nash State State Forest in accordance with the terms of the Conservation Easement, which is built on a commitment to a primary management emphasis “consistent with the traditional uses of the land”. Public access was intended to be low impact and dispersed, and the State has the right to reasonably restrict and regulate access to ensure prudent resource utilization and protection of all the conservation values of the property.

RSA 215-A:42,II provides that DRED may close trails if:

(a) ATV or trail bike use on the property is not in conformance with this chapter;

CORD has the statutory obligation to maintain public access to LCIP lands, “where appropriate.” Because the Kelsey Notch Trail is not in conformance with the law, as outlined in our August 20, 2020 letter and previous communications, we ask that the Council take immediate action to suspend all ATV use on the Kelsey Notch Trail.

Thank you for your thoughtful consideration of this important issue, and for your continued oversight of the Nash Stream Forest.

Sincerely,

Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
sarnold@outdoors.org

Jim O'Brien

Director of External Affairs
The Nature Conservancy in NH
jim_obrien@tnc.org

Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
mleahy@forestsociety.org

January 3, 2022

To Commissioner Stewart and Director Hackley,

we request a meeting of the Nash Stream Forest Citizens' Committee, and the Department of Forests & Lands and Fish & Game Tech Team members; a meeting in which these groups are prepared to record and respond to the questions and concerns of the public regarding the serious problem of ATVs in Nash Stream State Forest.

RSA 215-A:42 has not been followed. Baseline studies were never done. Despite the fact that DF&L and F&G monitoring repeatedly shows damage, and despite pointed observations and communications to management from DF&L and F&G staff in the field, no ATV trails have been closed. No response has been made to AMC/SPNHF's legal memos disputing the legality of ATV use in Nash Stream. Invasives, likely brought by ATVs or ATV trail maintenance vehicles, have been treated with the carcinogenic glyphosate while the ATV trails remain open, increasing the risk of more invasives. ATVs contribute to global warming, which threatens Nash Stream State Forest.

The NSFCC November 2021 meeting was not the first time these problems were brought to the attention of DNCR/DF&L/BOT, CORD and the NSFCC.

DNCR and NSFCC appear to be taking the position that they can ignore the law and the state of the Forest.

This meeting should take place well before the ATV season.

Sincerely,

Kris Pastoriza, Easton, N.H.

Lucy Wyman, Lancaster, N.H.

Margaret and Eric Jones, Trustees of the [Legacy Forest Trust](#)

Cam Bradshaw, Berlin, N.H.

Abby Evankow, Gorham, N.H.

Monique Petrofsky, Stewartstown, N.H.

Nancy DeCoursey, Jefferson, N.H.

Claudia Damon, Concord, N.H.

Dick Harris, Colebrook, N.H.

Pat Kellogg, Littleton, N.H.

Rick Audy, Shelburne, N.H.

Michael Phillips, Groveton, N.H.

Dave Evankow, Gorham, N.H.

Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, Massachusetts

Campbell McLaren, Easton, N.H.

Susan Percy, New Gloucester, ME

Field Rider, New Gloucester, ME

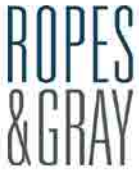
Gary Robertson, Gilford, N.H.

Will DeCoursey, Jefferson, N.H.

Nash Stream State Forest, Bordeaux ATV Trail



July 9th, 2019. (DF&L files)



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. Based on my research of relevant New Hampshire law and regulations applicable to snowmobiles, all-terrain vehicles (“ATVs”) and other off-highway recreational vehicles (“OHRVs”), I conclude that the legal opinions set forth in the Opinion regarding the permitted use of use of ATVs on the tract of forest land known as the “Nash Stream Tract” and subject to the Easement Deed are inconsistent with applicable New Hampshire law.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of the same type as the items specifically listed [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ *Conservation Law Found. v. New Hampshire Wetlands Council*, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also *Roberts v. Gen. Motors Corp.*, 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Council

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: *William G. Abbott*
WILLIAM G. ABBOTT

ITS EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

D.R.E.D.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

D.R.E.D.

AUG 16 1985

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

D.R.E.D.

AUG 16 1989

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Schedule 2

Opinion

[Attached.]

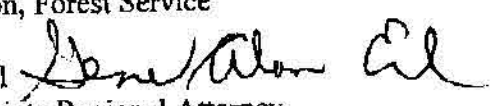


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

February 14, 2022

Dear Forest Supervisor Ibarguen,

in response to a recent query about USFS responsibilities as an easement holder for Nash Stream State Forest, you stated:

“The United States’ role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal’s consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the ‘Forest Service’ should or should not have been checked off on the State’s trail proposal form.”

Paragraph III-D of the Nash Stream State Forest Easement states:

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

"The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State."

ATV use was not reserved by the State. Snowmobiles are not ATVs. DNCR acknowledges this when it states that it assists in maintenance of “6,800 miles of snowmobile trail and over 700 miles of wheeled OHRV trails”. A snowmobile is now technically defined as an “Over Snow Vehicle (OSV.)

The Ropes and Gray Memorandum states: "The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A."

If the Forest Service asserts that the Nash Stream Easement permits ATV use; “The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved

by the state. The Forest Supervisor, WMNF, shall administer this easement...Any Forest Service concurrences required under this easement shall be in writing..."

Tom Wagner, former WMNF employee, when queried in 2001 about the legality of permitting ATV use in Nash Stream discussed II-C.1 and II-C.2 but was curiously silent on II-C, "Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. He stated:

"Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and Forest Service involvement would only be required on roads that provide "through travel."

Permission to install, operate and maintain roads does not alter the non-permitted status of ATVs. And, all the ATV trails in Nash Stream provide "through travel:"

Phil Bryce, Director of Forest & Lands, touched on this in a 2001 letter to Representative Alger: "Are requests for connecting trails across state lands handled differently than self-contained trail systems?"

In 2002 the Nash Stream ATV Study Subcommittee made a verbal report to the Nash Stream Citizen's Committee. The ATV Study Committee rejected the "interior trail" and recommended a "connecting trail" providing the through travel that would require Forest Service permission.

Thus, the Forest Service is still left with the fact that the four ATV Trails in Nash Stream S.F. are all through trails, and lack the required "concurrence in writing", a concurrence DRED, and its successor DNCR, never requested.

In conclusion:

- Please state whether the USFS concurs with the Ropes and Gray memorandum.
- If the USFS does not concur with the Ropes and Gray Memorandum, please provide it's interpretation of the easement as it relates to ATV use, and specifically its interpretation of section II-C.
- If the USFS does not concur with the Ropes and Gray memorandum, please state whether the USFS denies responsibility for its concurrence (III-D) on the siting of through trails.

Sincerely,

Kris Pastoriza
Easton, N.H.
February 14, 2022
krispastoriza@gmail.com



1. Snowmobile Trail



2. Bordeaux ATV Trail



3. *Westside ATV Trail*



Figure 1, 2 and 3- Shows the broken boards on the bridges and the eroding approaches.

4. *Kelsey Notch ATV Trail*

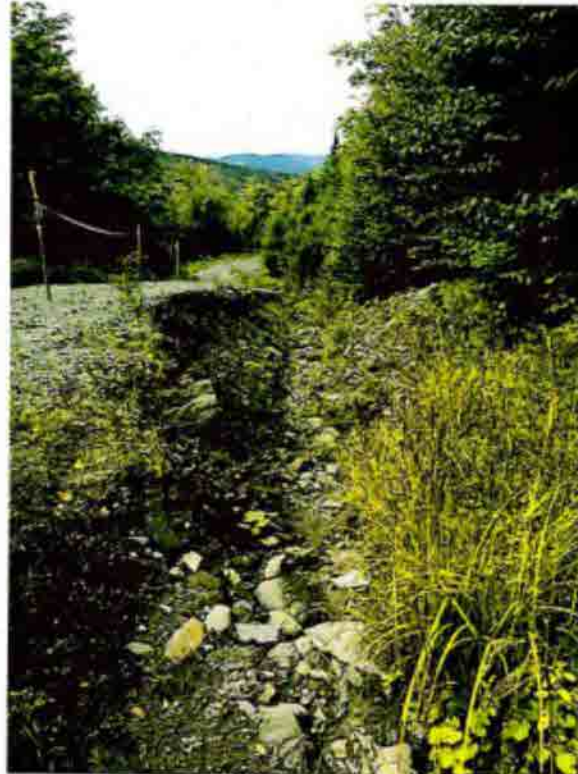


Figure 6 and 7- Depicts the washout along the trail.

5. *Kelsey Notch ATV Trail*

1. *Snowmobile trail, Stark, N.H. 2021*
2. *Bordeau Trail, July, 2019; DF&L files*
3. *Westside Trail, July, 2019; DF&L files*
4. [Kelsey Notch Monitoring Report 2018.](#)
5. *Kelsey Notch Monitoring Report 2018*



August 20, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council on Resources and Development
c/o New Hampshire Office of Strategic Initiatives
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

Dear Mr. Chicoine:

Thank you for this opportunity to express our continued opposition to the operation of the Kelsey Notch ATV Trail in Nash Stream State Forest. As you recall, in 2016 the undersigned organizations first raised concerns regarding the process used to establish this trail.

We argued in our May 5, 2016 letter to CORD that the Nash Stream management plan in effect at that time explicitly authorized only the West Side Trail, and also explicitly prohibited any additional ATV trails of any kind. The amendment to the 2002 Management Plan clearly stated this prohibition:

*Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail, the West Side Road, and the Andritz Trail. This is a pass through trail set up as a pilot for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property.**" (page 50)(emphasis added)*

We appreciate the actions CORD took in its December 14, 2016 Findings. Those steps both articulated CORD's responsibilities for the oversight of LCIP-acquired properties and highlighted the importance of properly following applicable state law. Specifically, CORD found that "the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV environmental laws and regulations."

RSA 215-A:42 and 43 establishes the evaluation process for ATV trails on public lands. We have been provided an undated analysis for the Kelsey Notch ATV/UTV Trail conducted by the Department of Natural and Cultural Resources (DNCR) for the requirements enumerated in RSA

215-A: 42 and 43. In reviewing the document, we have identified several areas that raise questions about the environmental impacts of the trail.

First, and perhaps most important, the process outlined in statute was designed to be conducted on a proposed trail PRIOR to construction in order to site the trail with the least possible environmental impact to state lands. In the case of the Kelsey Notch Trail, there is no evidence that such a coarse and fine filter analysis was conducted as required by statute prior to the establishment of the trail. Rather, the analysis we received was conducted after the trail was already constructed and being used for years by ATV riders. The fact that the trail already existed, in violation of the statute, should not mean that the standards set forth in RSA 215-A:43 should be lowered, amended, dismissed or in any way altered to benefit the trail remaining open and operational. The Kelsey Notch Trail should be held to the same legal standard as any other proposed trail.

RSA 215-A:43, II (g) asks if the “proposal is reasonably compatible with existing uses.” In the comments from DNCR, they only reference snowmobile use on the trail in winter and limited summertime trail use. While additional use of the trail is interesting, we are not sure that is what the Legislature meant by the question. There are many existing uses of the Nash Stream Forest that are not articulated in the comments – including the trails compatibility with hiking, wildlife viewing, scientific research, and fishing to name a few. The only existing use referenced in the comments is hunting, and the analysis finds that “conflict during hunting season is anticipated to be limited as ATV use decreases after Labor Day.” While we do not necessarily dispute this general claim, no documentation or data on this point- or any of the other legitimate existing uses has been made available. We believe that the comments provided do not adequately address the impacts of the trail with existing uses as it currently exists, as well as with anticipated future ATV traffic

RSA 215-A:43, II (k) requires that the proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. In the comments, it is stated that in the opinion of a Fish and Game biologist that “should traffic become heavier on the trail in the future, it might preclude some animals from crossing or denning near the trail and could potentially cause avoidance by some wildlife species in the area.” It would be important to understand the current and projected usage of the trail, and the impacts on wildlife of the increased level of traffic – and how that increase would impact existing uses of the property as discussed in the preceding paragraph.

There are additional requirements in RSA 215-A:43, II that the comments do not fully or adequately address including : (n) states that “the proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (o) the proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing,

unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

In the comments for these requirements, DNCR responds that “the ATV trail was located on existing roadways as well as a snowmobile trail that was built the season prior.” However, it is not clear that the Kelsey Notch Trail meets the important environmental standards enumerated in the preceding paragraph. Further, while RSA 215-A:43 does allow that a “surface roadway” can be used “to reduce adverse environmental impacts,” an existing snowmobile trail does not meet that standard. An existing snowmobile trail is not a “surface roadway.” Furthermore, snowmobile trails are not subject to the analysis outlined in RSA 215-A, so it is unacceptable to rely on them as part of an ATV trail without conducting the required analysis for an ATV trail.

RSA 215-A: 43, II (u) requires the proposed trail avoid known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory. Again, the comments by DNCR suggest that disturbances are minimized because the trail was built on a new snowmobile trail – although there is no indication that such an analysis was conducted prior to the snowmobile trail being built, nor that the trail avoids such rare plants. In fact, the analysis itself notes that “an extensive inventory has not been completed.”

We are aware that the 2019 Kelsey Notch Trail Environmental Compliance Report stated the trail was in very good condition and that it appeared to be in compliance with expectations. But it is important to note that the report also stated, “The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good.” In other words, the maintenance that occurred immediately prior to the site visit clearly addressed any erosion or other degradation issues prior to the site visit. It is also important to note that in his 2018 report, Lt. Mark W. Ober, Jr. District One Chief of the Fish and Game Department wrote, “I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified.”

In addition to the fact that the Kelsey Notch Trail does not meet the requirements of RSA 215-A, we continue to have two additional overriding concerns. First, the fact the trail may currently be in good condition immediately following top to bottom maintenance does not negate our position that it should not have been established as a Pilot Trail under the previous management plan. As we noted, the management plan in effect in 2012 did not permit the creation of the trail.

Second, the State of New Hampshire lacks a comprehensive master plan for the ATV system in New Hampshire, especially in the North Country. With the continued marketing and popularity of Ride the Wilds, expanded trail infrastructure, and safety related issues associated with increased use, we believe the Department of Natural and Cultural Resources and the New Hampshire Department of Fish and Game should lead a comprehensive planning process to develop such a master plan. The state should allocate sufficient resources to complete this

comprehensive planning effort. Key goals should include 1) development of criteria needed to determine appropriate areas to build new trails; 2) identification of the resources necessary to maintain NH's ATV trail system and enforce the laws governing ATV use; and 3) documentation of ecologically-sensitive areas that conflict with ATV use.

To be clear, our organizations recognize the growth of OHRV use here over the last decade. We are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. But, unfortunately, this growth has also presented the State and local communities with trail use management challenges.

Despite those challenges, an opportunity exists to balance the benefits of OHRV recreation with the concerns expressed by private property owners and others. Good planning, ongoing and effective communication, increased education of OHRV users, established avenues to resolve specific conflicts when they occur, and visible law enforcement, are all critical ingredients to a successful OHRV program in our state. Furthermore, if the increase in ATV use has provided new economic opportunities, the financial resources needed to achieve those goals should be available. However, that balance will be difficult to achieve if state agencies continue to allow the expansion of the ATV trail system without also having the capacity to manage it.

To summarize, the establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. Because of those facts, coupled with the State's lack of capacity to maintain, manage and enforce the existing OHRV trail system, we would request that CORD close down this trail.

Thank you. We would be happy to answer any questions you may have.

Sincerely,

Jim O'Brien

Director of External Affairs
The Nature Conservancy
jim_obrien@tnc.org

Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
sarnold@outdoors.org

Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
mleahy@forestsociety.org

From: Kris pastoriza
Sent: Thu, 20 Jan 2022 14:03:12 -0500
To: Ibarguen, Derek -FS; Brown, Brooke - FS
Cc: Stewart, Sarah; sarnold@outdoors.org; Matt Leahy; jim_obrien@tnc.org; Charlotte.Harris@mail.house.gov; Ben_Belanger@hassan.senate.gov
Subject: [External Email]Nash Stream State Forest
Attachments: 1-14-22 response to DNCR.pdf, AMC,TNC SPNHF NSF letter 2020.pdf, AMC,TNC,SPNHF NSF letter 2016.pdf, 9-20-20_AMC_ATV Trails Memorandum.pdf, DNCR Response to K. Pastoriza 1.7.2022.pdf, nash-stream-easement.pdf, DRED 1994 Nash Stream Overview.pdf, 11-11-20 AMC Memo.pdf

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January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, "Traditional, dispersed, non-motorized recreationists" for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The 'Snowmobile clubs' designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called "Expertise in Recreation and Tourism" designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: "The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes." At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen's Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that "Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff" is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its "Trial" and monitoring was only instituted after CORD's December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that "Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD." But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn't been any monitoring of Westside, so there are no issues on the record that need to be addressed "to the satisfaction of agency resource managers and members of CORD." That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: "Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails." Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs' request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.
Mark Primack, Berlin, N.H.
Dan Whittet, Berlin, N.H.
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
Susan Percy, New Gloucester, ME
Field Rider, New Gloucester, ME
Margaret and Eric Jones, Trustees of the Legacy Forest Trust
Nancy DeCoursey, Jefferson, N.H.
Michael Phillips, Groveton, N.H.
Pat Kellogg, Littleton, N.H.
Daniel Clarke, Gorham, N.H.
Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
Jody Camille, Dummer, N.H.
Milton Camille, Dummer, N.H.
Bill Joyce, Stark, N.H.
Wayne Moynihan, Dummer, N.H.
Kim Votta, Lancaster, N.H.
Cam Bradshaw, Berlin, N.H.
Roger Doucette, Whitefield, N.H.
George Brown, Shelburne, N.H.
Howie Wemyss, Randolph, N.H.
Representative Judith Spang, Durham, N.H.
Stephanie Kelliher, Whitefield, NH
Beau Etter-Garrette, Whitefield, NH
Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH



August 20, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council on Resources and Development
c/o New Hampshire Office of Strategic Initiatives
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

Dear Mr. Chicoine:

Thank you for this opportunity to express our continued opposition to the operation of the Kelsey Notch ATV Trail in Nash Stream State Forest. As you recall, in 2016 the undersigned organizations first raised concerns regarding the process used to establish this trail.

We argued in our May 5, 2016 letter to CORD that the Nash Stream management plan in effect at that time explicitly authorized only the West Side Trail, and also explicitly prohibited any additional ATV trails of any kind. The amendment to the 2002 Management Plan clearly stated this prohibition:

*Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail, the West Side Road, and the Andritz Trail. This is a pass through trail set up as a pilot for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property.**" (page 50)(emphasis added)*

We appreciate the actions CORD took in its December 14, 2016 Findings. Those steps both articulated CORD's responsibilities for the oversight of LCIP-acquired properties and highlighted the importance of properly following applicable state law. Specifically, CORD found that "the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV environmental laws and regulations."

RSA 215-A:42 and 43 establishes the evaluation process for ATV trails on public lands. We have been provided an undated analysis for the Kelsey Notch ATV/UTV Trail conducted by the Department of Natural and Cultural Resources (DNCR) for the requirements enumerated in RSA

215-A: 42 and 43. In reviewing the document, we have identified several areas that raise questions about the environmental impacts of the trail.

First, and perhaps most important, the process outlined in statute was designed to be conducted on a proposed trail PRIOR to construction in order to site the trail with the least possible environmental impact to state lands. In the case of the Kelsey Notch Trail, there is no evidence that such a coarse and fine filter analysis was conducted as required by statute prior to the establishment of the trail. Rather, the analysis we received was conducted after the trail was already constructed and being used for years by ATV riders. The fact that the trail already existed, in violation of the statute, should not mean that the standards set forth in RSA 215-A:43 should be lowered, amended, dismissed or in any way altered to benefit the trail remaining open and operational. The Kelsey Notch Trail should be held to the same legal standard as any other proposed trail.

RSA 215-A:43, II (g) asks if the “proposal is reasonably compatible with existing uses.” In the comments from DNCR, they only reference snowmobile use on the trail in winter and limited summertime trail use. While additional use of the trail is interesting, we are not sure that is what the Legislature meant by the question. There are many existing uses of the Nash Stream Forest that are not articulated in the comments – including the trails compatibility with hiking, wildlife viewing, scientific research, and fishing to name a few. The only existing use referenced in the comments is hunting, and the analysis finds that “conflict during hunting season is anticipated to be limited as ATV use decreases after Labor Day.” While we do not necessarily dispute this general claim, no documentation or data on this point- or any of the other legitimate existing uses has been made available. We believe that the comments provided do not adequately address the impacts of the trail with existing uses as it currently exists, as well as with anticipated future ATV traffic

RSA 215-A:43, II (k) requires that the proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. In the comments, it is stated that in the opinion of a Fish and Game biologist that “should traffic become heavier on the trail in the future, it might preclude some animals from crossing or denning near the trail and could potentially cause avoidance by some wildlife species in the area.” It would be important to understand the current and projected usage of the trail, and the impacts on wildlife of the increased level of traffic – and how that increase would impact existing uses of the property as discussed in the preceding paragraph.

There are additional requirements in RSA 215-A:43, II that the comments do not fully or adequately address including : (n) states that “the proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (o) the proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing,

unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

In the comments for these requirements, DNCR responds that “the ATV trail was located on existing roadways as well as a snowmobile trail that was built the season prior.” However, it is not clear that the Kelsey Notch Trail meets the important environmental standards enumerated in the preceding paragraph. Further, while RSA 215-A:43 does allow that a “surface roadway” can be used “to reduce adverse environmental impacts,” an existing snowmobile trail does not meet that standard. An existing snowmobile trail is not a “surface roadway.” Furthermore, snowmobile trails are not subject to the analysis outlined in RSA 215-A, so it is unacceptable to rely on them as part of an ATV trail without conducting the required analysis for an ATV trail.

RSA 215-A: 43, II (u) requires the proposed trail avoid known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory. Again, the comments by DNCR suggest that disturbances are minimized because the trail was built on a new snowmobile trail – although there is no indication that such an analysis was conducted prior to the snowmobile trail being built, nor that the trail avoids such rare plants. In fact, the analysis itself notes that “an extensive inventory has not been completed.”

We are aware that the 2019 Kelsey Notch Trail Environmental Compliance Report stated the trail was in very good condition and that it appeared to be in compliance with expectations. But it is important to note that the report also stated, “The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good.” In other words, the maintenance that occurred immediately prior to the site visit clearly addressed any erosion or other degradation issues prior to the site visit. It is also important to note that in his 2018 report, Lt. Mark W. Ober, Jr. District One Chief of the Fish and Game Department wrote, “I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified.”

In addition to the fact that the Kelsey Notch Trail does not meet the requirements of RSA 215-A, we continue to have two additional overriding concerns. First, the fact the trail may currently be in good condition immediately following top to bottom maintenance does not negate our position that it should not have been established as a Pilot Trail under the previous management plan. As we noted, the management plan in effect in 2012 did not permit the creation of the trail.

Second, the State of New Hampshire lacks a comprehensive master plan for the ATV system in New Hampshire, especially in the North Country. With the continued marketing and popularity of Ride the Wilds, expanded trail infrastructure, and safety related issues associated with increased use, we believe the Department of Natural and Cultural Resources and the New Hampshire Department of Fish and Game should lead a comprehensive planning process to develop such a master plan. The state should allocate sufficient resources to complete this

comprehensive planning effort. Key goals should include 1) development of criteria needed to determine appropriate areas to build new trails; 2) identification of the resources necessary to maintain NH's ATV trail system and enforce the laws governing ATV use; and 3) documentation of ecologically-sensitive areas that conflict with ATV use.

To be clear, our organizations recognize the growth of OHRV use here over the last decade. We are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. But, unfortunately, this growth has also presented the State and local communities with trail use management challenges.

Despite those challenges, an opportunity exists to balance the benefits of OHRV recreation with the concerns expressed by private property owners and others. Good planning, ongoing and effective communication, increased education of OHRV users, established avenues to resolve specific conflicts when they occur, and visible law enforcement, are all critical ingredients to a successful OHRV program in our state. Furthermore, if the increase in ATV use has provided new economic opportunities, the financial resources needed to achieve those goals should be available. However, that balance will be difficult to achieve if state agencies continue to allow the expansion of the ATV trail system without also having the capacity to manage it.

To summarize, the establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. Because of those facts, coupled with the State's lack of capacity to maintain, manage and enforce the existing OHRV trail system, we would request that CORD close down this trail.

Thank you. We would be happy to answer any questions you may have.

Sincerely,

Jim O'Brien

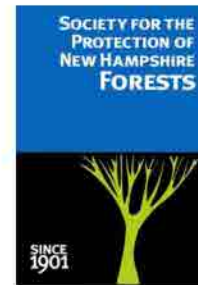
Director of External Affairs
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Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
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Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
mleahy@forestsociety.org



May 5, 2016

Meredith Hatfield
Chair, NH Council on Resources and Development
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301

Dear Director Hatfield and Council members:

Our three organizations are writing to advise you of our deep concern about the legal status of the two existing ATV trails in Nash Stream State Forest. After careful review of the most recent Nash Stream Management Plan, as well as the existing New Hampshire statutes governing ATV trails on state lands, we conclude that the existing trails on the Nash Stream property are not in compliance with state law.

Our organizations are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. However, we remain concerned about current – and the potential for increased - ATV access in Nash Stream State Forest.

Unfortunately, because the state has failed to adhere to the law, our organizations are compelled to raise concerns because these trails may threaten the natural resource values these laws are intended to protect. We request that upon reviewing the requirements of RSA 162-C:6, II & III, the Council determine that the existing ATV trails are not in compliance with the law and take appropriate action.

It is vitally important that CORD provides the management oversight necessary to ensure that all trails in Nash Stream are compliant with statute, and that the establishment of trails follows a transparent and open public process. We urge CORD to take the time necessary to thoroughly examine the history of the Nash Stream acquisition, and the decision making process that has led the state to have ATV trails operating in the State Forest in violation of state statute.

AMC, SPNHF and TNC's interest in Nash Stream

In 1988, the state's Land Conservation Investment Program (LCIP) approved a grant of \$7.65 million in state funding for the purchase of more than 40,000 acres of land, including the self-contained Nash Stream watershed (totaling 39,503 acres in the towns of Stark, Odell, Stratford and Columbia). At the same time, The Nature Conservancy (TNC) and the Society for the Protection of New Hampshire Forests (SPNHF) jointly guaranteed a loan of \$5.1 million to bridge the difference between the LCIP grant and the full purchase price of the Nash Stream watershed.

A closing took place on October 27, 1988 where the state of NH purchased 46,679 acres for \$12.75 million and re-conveyed 4,496 acres to the Forest Service for \$1.175 million. The Forest Service also agreed in principle to share the costs of the Nash Stream acquisition through the purchase of a Conservation Easement on the property. As the terms of the easement were being negotiated, SPNH and TNC loaned the state \$3.925 million to provide the balance of the purchase price.

Finally, on August 4, 1989, the Conservation Easement on Nash Stream was sold to the United States of America for \$3.95 million and the TNC/SPNH loan was repaid with appropriate interest. Today, Nash Stream Forest is NH's largest single state forest.

Our three organizations were advocates at the time for state acquisition of the Nash Stream State Forest, and have since been actively engaged in collaborative efforts – including serving on the Nash Stream Citizens Committee - to manage the land for the benefit of the citizens of the State.

The LCIP originally conserved this land for two primary reasons. The first was to protect the entire Nash Stream watershed as an ecologically intact working forest, for the property's natural resource values, including the economic value associated with sustainable management of the timber resources. The second reason was to reserve for the public the traditional recreational uses of what had long been privately owned and managed forest land. It should be noted that ATV use was not a traditional use [previously allowed by private landowners], and the original DRED forest management plan for Nash Stream specifically prohibited ATV use.

Role of Council on Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in the implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands,

¹ <https://www.nh.gov/oep/planning/programs/cord/>

purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when management of these resources is shown to be detrimental to those resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Resources and Economic Development (DRED) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DRED is not properly managing LCIP lands under its control, CORD needs to take corrective action.

Existing Trails in Nash Stream in Clear Violation of RSA 215-A: 42.

Our review of available information suggests DRED did not follow existing state law when establishing ATV trails on the Nash Stream property; the first of which (the West Side Trail) began operation as a pilot in 2002, and an additional trail, the Kelsey Notch trail, was established by DRED as a pilot in 2012.

RSA 215-A: 42 is clear that specific criteria must be met before any ATV trails are established on state owned lands:

No ATV or trail bike trail shall be established after the effective date of this paragraph or subsequently maintained on state-owned property unless all of the following [four] conditions are met:

There is no ambiguity in this language, and the statute is unequivocal that not just some of the conditions (a-d below) of the statute need to be met before trails can be established, but DRED is required to ensure that all conditions explicitly outlined in statute are met.

The four conditions set forth in RSA 215-A:42 are:

(a) The property has been evaluated by the bureau in cooperation with the department of fish and game and the department of resources and economic development, division of forests and lands, and other state agencies that are custodians of the property using the coarse and fine filter criteria, established under RSA 215-A:43, and has passed such criteria as determined by the commissioner of the department of resources and economic development and the executive director of the department of fish and game.

To our knowledge, DRED has never made publicly available any of the “coarse filter” and “fine filter” reviews required for each of the existing ATV trails in Nash Stream. In reviewing CORD’s meeting minutes of last year when this topic came up several times, there is no indication that DRED has informed CORD when and if these reviews have been done. CORD should require DRED to provide to CORD and the public the completed analysis for each trail per the coarse and fine filter requirements set forth in RSA 215-A: 43.

(b) A memorandum of understanding (memorandum) exists between the bureau, the fish and game department, the department of resources and economic development, division of forests and lands, and all other state agencies that are custodians of the property. The memorandum shall include, but not be limited to, the responsibilities that each agency has in monitoring,

maintaining, and enforcing relevant laws relative to the trail and the type of OHRV permitted on approved trails. The bureau shall enter into the memorandum only if it is certain that proper monitoring and maintenance of the trail shall occur, either through its own resources or those of others. The fish and game department shall enter into the memorandum only if it can commit sufficient resources to reasonably monitor for proper ATV or trail bike use on the property and enforce the applicable laws.

According to CORD's public meeting minutes of July 8, 2015, a DRED staff representative replied to an inquiry that he "did not believe" any memorandum of understanding exists for any of the Nash Stream ATV trails. Operating a trail system on state lands without an existing MOU is a major concern because the State's capacity to monitor and enforce ATV laws is already stretched thin. If such a memorandum does exist, it should be immediately transmitted to CORD.

(c) A written agreement is in effect between the bureau and a locally-organized ATV or trail bike club recognized by the bureau that details the club's ongoing responsibilities, including but not limited to, monitoring the use and condition of the trail, erecting signage, educating operators, performing maintenance, and monitoring compliance with laws and regulations. Should the club fail to fulfill some or all of its responsibilities, the bureau or its agent may assume such responsibilities provided sufficient resources are available and committed.

We have been provided with two written agreements for the ATV trails in Nash Stream. One is between DRED and the North Country ATV Club for the West Side Connector Trail, signed in February of 2013 with no expiration date. The second agreement is between the Metallak ATV Club and DRED, covering the Kelsey Notch pilot trail for a three year period, and was signed in May 2013. This agreement expires at the end of May 2016. If CORD has not already done so, it should request that DRED provide all agreements required under this statute for ATV trails in Nash Stream, and ensure that the agreements are up to date and complete and that they are being monitored for compliance with statute.

d) A management plan exists for the property that specifically allows ATV or trail bike use on the property, and the ATV or trail bike trail does not otherwise conflict with the management plan. Any state agency proposing to establish or change a management plan that affects ATV or trail bike use on state property shall publicize such plan and provide the public with the opportunity to comment on the plan before enactment.

While the 2002 management plan for Nash Stream does allow for one trail (the West Side Connector), it specifically prohibits any additional trails being developed on the property. Specifically, amendments were made to the management plan on page 50 to make this point quite clear:

"Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail (aka the Farrer Brook Trail #14 Map 3 page 24), the West Side Road (#52 Map 3), and the Andritz Trail (aka Stratford Mtn Rd #44 Map 3). This is a pass through trail set up as a pilot project for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property."**

In 2012, DRED approved a new “pilot trail” - Kelsey Notch - which is explicitly not permitted by the existing management plan for the Nash Stream State Forest. The language of the management plan is quite clear: the West Side Trail is the only ATV trail allowed in Nash Stream. Without amendments to the Nash Stream management plan, the Kelsey Notch Trail is not permitted. In fact, there appears to be no statutory authority for DRED to establish “pilot” OHRV or ATV trails on lands acquired by the LCIP. There have been no amendments to the Nash Stream Management plan that would allow DRED to establish any additional ATV trails on the property. DRED had no authority to authorize ATV use of the Kelsey Notch Trail.

Conclusion

The core issue we would like CORD to address at this time regarding ATV use of trails in Nash Stream is whether current law is being complied with, and, if not, what the appropriate remedy is. As discussed above, we believe the existing trail network in Nash Stream is not in compliance with RSA 215.

Nash Stream was purchased by the state through the LCIP program using public dollars. CORD has a statutory obligation to administer and manage these lands in keeping with the values and purposes for which the lands were purchased. A key component of the proper management of these lands is ensuring that activities being carried out on them are in compliance with state statute. Unfortunately, in the case of the ATV trails in Nash Stream, it appears that DRED has not followed the letter, or the intent, of the laws governing such trails on state lands. The remedy is for CORD to assure compliance, and to ensure that there is a well-informed and transparent public process when contemplating the continued use, or potential expansion, of ATV trails in Nash Stream.

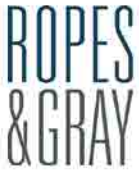
Thank you for your prompt attention to this matter. We are available to meet and discuss this important issue at your convenience.

Sincerely,

Will Abbott
Vice President Policy
Society for the Protection
of NH Forests

Susan Arnold
Vice President for Conservation
Appalachian Mountain Club

Jim O'Brien
Director of External Affairs
The Nature Conservancy



ROPES & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPESGRAY.COM

MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. Based on my research of relevant New Hampshire law and regulations applicable to snowmobiles, all-terrain vehicles (“ATVs”) and other off-highway recreational vehicles (“OHRVs”), I conclude that the legal opinions set forth in the Opinion regarding the permitted use of use of ATVs on the tract of forest land known as the “Nash Stream Tract” and subject to the Easement Deed are inconsistent with applicable New Hampshire law.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of the same type as the items specifically listed [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ *Conservation Law Found. v. New Hampshire Wetlands Council*, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also *Roberts v. Gen. Motors Corp.*, 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Council

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: *William G. Abbott*
WILLIAM G. ABBOTT

ITS EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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Schedule 2

Opinion

[Attached.]

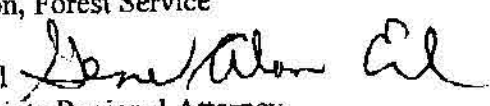


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
OFFICE OF THE COMMISSIONER

172 Pembroke Road, Concord, New Hampshire 03301

Phone: 271-2411 Fax: 271-2629

TDD ACCESS: Relay NH 1-800-735-2964

Ms. Kris Pastoriza

(b)(6)

January 7, 2022

Dear Ms. Pastoriza:

Thank you for your letter of January 3 requesting a meeting of the Nash Stream Forest Citizens Committee (NSFCC), Division of Forests & Lands (DFL) and the Department of Natural & Cultural Resources (DNCR) Technical Team regarding concerns about Off-Highway Recreational Vehicles (OHRV) trails on the Forest.

The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests. The Committee serves in an advisory capacity to the state agencies responsible for managing Nash Stream Forest. In that role, Committee members are responsible for communicating with their respective constituents to bring ideas, concerns or opportunities for improvement to the attention of the state's resource managers.

The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.

Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff. An annual report is filed with Council on Resources & Development (CORD), comprised of twelve state agencies "whose responsibilities include providing a forum for interagency communication and cooperation in assuring consistency with established policies relating to the environment, natural resources, and growth management issues." (www.nh.gov/osi/planning/programs/cord/) Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD. Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.

The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD's satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. See *9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.*

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.

As you can see, a monitoring and review process is in place for OHRV trails on Nash Stream Forest. Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.

The next meeting of the NSFCC will be in early November 2022 and will include a briefing of the trail monitoring efforts. At the end of the formal agenda, we can plan for additional time for public comment.

Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Sarah Stewart
Commissioner, DNCR

STATE LAND RECORD

TRACT NASH STREAM FOREST # 3

GRANTOR State of NH

DATE OF DEED 8/4/89

DATE OF RECORD 8/7/89

GRANTEE
US Forest Service
Dept. of Agriculture
Washington, DC 20250

COUNTY Coos

BOOK 752 PAGE 252

CONSIDERATION \$3,950,000. — 100/AC

CHARACTER Conservation Easement

ACRES

TREAS. BOOK PAGE

TOWN

DESCRIPTION

CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

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WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

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B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE

By: *William G. Abbott*
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
 12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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Nash Stream

November, 1994

AN OVERVIEW OF THE NASH STREAM FOREST

ACQUISITION

The Nash Stream Forest is a unique parcel of land in Northern New Hampshire. Its acquisition in 1988, through a collaborative effort between the state of New Hampshire, the U.S. Forest Service, The Nature Conservancy, The Trust for New Hampshire Lands, and The Society for the Protection of New Hampshire Forests is equally unique, and serves as a milestone in state, private and federal cooperation.

The diversity of the groups represented in this effort is almost as diverse as the wildlife that exists within the Nash Stream Forest and the topography of the land itself. Yet over an eighteen-month period, representatives from each of these groups worked together, to negotiate an

arrangement which all felt was in the best interest of the land and the people who use it.

MULTIPLE USE STRESSED

All of the groups involved in the purchase and future management of the Nash Stream Forest recognized the importance of protecting the Forest from development, as well as the importance of continuing to use the land in a "multiple-use" manner—for education and research; as a key watershed area; for fish and wildlife; recreation; scenic qualities; and as a sustainable timber resource. These mutual concerns led to the successful purchase of the property, and to a gubernatorially-appointed Advisory Committee to focus public input and provide technical expertise.

THE MANAGEMENT PLAN

Since December, 1989, this Committee has been hard at work, holding public listening sessions to gather input, working with a Technical Committee to review research on the past and present use of the Nash Stream Forest, and developing a working Management Plan. This final Plan will serve as a model of environmentally sound public land stewardship so that future generations may enjoy this unique property.

GATHERING PUBLIC INPUT

As has been done throughout the development of the draft Management Plan, we continue to seek public input from any group or individual interested in the Nash Stream Forest. Your input will help us formulate the final Management Plan, which will ultimately determine the future use of the Nash Stream Forest. For more information about the impact of public input on the Management Plan, see the article on page 6.



Whitcomb Pond, Little Bog (Fourteen and a Half) Pond and Lower Trio Pond in the Nash Stream Forest.

**Nash
Stream NEWS**

is published by
New Hampshire's
Department of Resources and
Economic Development,
Division of Forests and
Lands.

QUESTIONS & ANSWERS About The Nash Stream Forest

WHAT IS THE DIFFERENCE BETWEEN THE NORTHERN FOREST AND THE NASH STREAM FOREST?

The Nash Stream Forest is a 39,601 acre tract owned by the state of New Hampshire, managed by the Department of Resources and Economic Development, with a Conservation Easement held by the United States of America. The tract lies within a four-state region known as the Northern Forest that stretches from the coast of Maine, across northern New Hampshire and Vermont into New York, totaling 26 million acres. The Northern Forest is one of the largest expanses of continuously forested land in the nation with about 85% in private ownership. Forest-based economies, recreation, and environmental diversity are traditional to the area as are clean air and water.

The breakup of Diamond International Co. lands in 1988 led to both state acquisition of the Nash Stream Forest and national concern about the future of the Northern Forest lands. Congress authorized the U.S. Forest Service to study Northern Forest issues in cooperation with a four-state Governors' Task Force. Congress later created the Northern Forest Lands Council in 1990 to continue the work begun by the Task Force. The Council's report was released in the fall of 1994.

WILL THERE BE A FEE TO USE THE NASH STREAM FOREST?

Although allowed by the Conservation Easement, there are no plans to charge a fee for public entry or general use of the Nash Stream Forest.

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

WILL THERE BE A VISITORS' CENTER OR GATE KEEPER AT THE ENTRANCE?

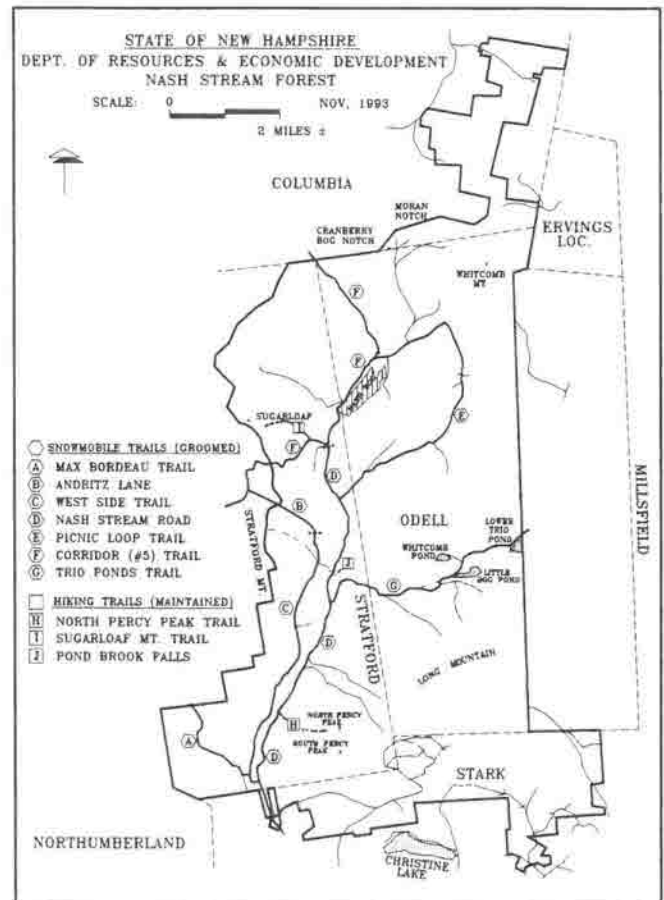
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

WILL THERE BE HANDICAPPED ACCESS?

Reasonable accommodations will be made to provide access to individuals with disabilities. Contact the Regional Forester, North Country Resource Center in Lancaster at (603) 788-4157.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.



WHAT IS THE ROLE OF THE FEDERAL GOVERNMENT?

The Forest Supervisor, White Mountain National Forest (WMNF) is responsible for administering the Conservation Easement on behalf of the United States. The role of the Forest Service is to ensure that the terms and conditions of the Easement are satisfied and does not include active involvement with management. The WMNF staff serve as advisors to the state and provide assistance when needed, primarily with management support and technical advice.

ARE THERE ANY THREATENED OR ENDANGERED SPECIES ON THE PROPERTY?

There are 5 rare plant species identified on the property in as many locations. They are: Black Crowberry, Marsh Horsetail, Three-forked Rush, Broad-lipped Twayblade, and Millet-grass. Four of the five are listed as threatened by the NH Native Plant Protection Act. The other, Three-forked Rush, is relatively rare but is not state-listed. All of these plants occur within designated natural preserve areas.

No federally listed animal species are known to breed on the property. Peregrine Falcons and Bald Eagles nest within 20 miles of the property and may frequent the Forest from time to time. Several state listed animal species occur or potentially occur on the property. Common Loons nest regularly and Northern Harriers have nested in some years. Lynx and Marten may occur as transients if not residents.

WILL HUNTING AND TRAPPING BE ALLOWED?

Yes. Hunting and trapping will be permitted in accordance with state law.

WILL THERE BE ANY NEW (HIKING) TRAILS?

Only modest increases in the trail system are under consideration, such as adding a hiking loop via a short connector between the Percy Peak Trail and an old logging road (north of the Peak) that follows Long Mountain Brook down to Nash Stream. A Nash Stream Trails Advisory Group is recommended in the Management Plan to assess the current trail system, its condition and use, and recommend trail improvements. It is recommended that the Trails Advisory Group consist of representatives of hiking, dog sledding, cross country skiing, bicycling, hiking and snowmobiling to ensure adequate representation of these user groups.

WILL CAMPING BE ALLOWED?

Camping is not currently available. By department policy, camping is not allowed on any state

forest or park where overnight camping facilities are not available. The Management Plan does not recommend development of a campground or camping facilities. However, the Plan leaves open the possibility of future backcountry camping along selected hiking trails, subject to the availability of staff and funds for proper monitoring and maintenance.

ARE THERE PLANS TO STOCK FISH?

Yes. Stocking will occur where natural spawning is poor or non-existent. Lower Trio Pond, Little Bog Pond, and possibly Whitcomb Pond will be stocked annually with brook trout. Until the status of the wild trout population in Nash Stream can be determined, stocking of hatchery brook trout in the mainstem will continue. Nash Stream is unlikely to support a recreation fishery in the near future without an annual stocking program due to a current lack of pool habitat in the stream.

WILL THERE BE A CATCH-AND-RELEASE FISHERIES PROGRAM?

Fisheries management will emphasize natural populations of fish species consistent with habitat capabilities of the ponds and streams. Special fishing regulations such as catch-and-release, minimum fish lengths, and fishing gear restrictions may be implemented to protect spawning stock in order to maintain wild populations of brook trout.

HOW MUCH OF THE FOREST WILL BE NATURAL PRESERVE OR OTHERWISE PROTECTED?

About 46% (18,339 acres) of the Forest is considered ecologically significant, fragile or sensitive and will be preserved or under restricted management. Much of this area coincides with boundaries of areas on which the Conservation Easement prohibits logging (10,665 acres). Protection will be accomplished by several means as follows:

Natural preserves (8,113 acres) are areas of uncommon ecological significance that encompass 9 different natural communities and 1 pond located primarily on the side slopes and mountain tops of Sugarloaf, Whitcomb and Long Mountains and Percy Peaks. There will be no intentional disturbances to these areas.

Preserve buffers (5,115 acres) are lands surrounding natural preserves with soils and topography capable of serving as shock absorbers to protect natural preserves. Management activities will be limited in preserve buffers.

A corridor (515 acres) of pure softwood forest forms a natural drainageway connecting the natural preserves and buffer areas on Whitcomb and Long Mountains. This corridor is located just west of Little Bog Pond.

A 150 foot zone around each pond is protected from logging by the Conservation Easement. These zones total 55 acres.

Other high elevation sites above 2,700 feet elevation where logging is prohibited by the Conservation Easement and not otherwise protected total 49 acres. Other steep slopes of 35% or more where logging is prohibited by the Conservation Easement and not otherwise protected total 925 acres. Other wet, rocky or otherwise fragile soils not otherwise protected total 3,050 acres. And, other fragile mountain tops below 2,700 feet elevation total 516 acres.

<i>Natural Preserves and Other Protected Areas</i>	
DESIGNATION	ACRES
Natural Preserves	8,113
Natural Preserve Buffers	5,116
Corridor	515
150 ft. Pond Buffers	55
Other High Elevation >2,700 ft.	49
Other Mountain Tops <2,700 ft.	516
Other Steep Slopes >35%	925
Other Group II Soils	3,050
TOTAL	18,339

WHAT ARE CONTROL AREAS AND WHY ARE THEY NECESSARY?

One control area will be established in each natural community type under timber management for the purpose of comparing unmanaged (control) areas to ecologically similar areas subjected to logging. This provides a means of assessing the impact of timber management on ecological resources called for in the "Vision".

Although established under different criteria, control areas will also complement natural preserves because they will help preserve, for study, natural communities not represented in natural preserves. In this manner, control areas will help satisfy the "Management Vision" that calls for *"The system of core natural areas will include representatives of the full range of ecological communities..."*.

WHY ARE MOST OF THE NATURAL PRESERVES HIGH ELEVATION ECOSYSTEMS?

High elevation sites, more than any other locations, qualify for natural preserve designation by existing department standards. High elevation sites (above 2,700 feet elevation) remain the least impacted by human activity and contain rare elements or

exemplary natural communities that have retained most, if not all, of their natural character, and/or contain features of scientific and/or educational interest. A total of 8,113 acres of the Forest qualify as natural preserve, of which 8,099 acres are at high elevations on which the Conservation Easement prohibits logging.

HOW DOES THE EASEMENT AFFECT TIMBER MANAGEMENT?

The Conservation Easement protects and conserves resources with a primary emphasis on the sustained yield of forest products. Logging is prohibited on 27% (or 10,665 acres) of the forest which consists of steep slopes (2,462 acres), high elevation (8,148 acres), and buffers (55 acres) around Lower Trio Pond, Whitcomb Pond and Little Bog (Fourteen and a Half) Pond.

The Easement also requires that timber be managed on a sustained yield basis; clearcuts be no larger than 30 acres; clearcuts total less than 15% of the total easement area in any ten year period; logging on areas near streams, ponds and public highways are subject to the provisions of state law; logging shall be conducted in conformance with current federal and state laws and regulations, including use of "best management practices" for erosion control and other activities.

HOW MUCH OF THE FOREST WILL BE MANAGED FOR TIMBER?

More than half (52%) of the Nash Stream Forest will be managed under a multiple-use, sustained yield timber management program. Occasional and restricted timber cutting will be allowed on another 22% of the forest (e.g. buffers, corridors, Group II soils) but only to enhance non-timber values such as wildlife habitat or recreation resources. The remainder of the property is considered ecologically sensitive or protected from logging by the Conservation Easement.

HOW SOON WILL THE FIRST STATE TIMBER HARVEST TAKE PLACE?

It is hoped that the first commercial timber sale will be made within two years of formal adoption of the Management Plan. However, the immediate potential for significant sawlog harvests is low. A 1988 timber cruise identified only 11% (3,140 acres) of forest as sawtimber size (≥ 9.6 inches in diameter) with limited commercial value because it is widely scattered. However, there are significant widespread opportunities for commercial thinning operations over many areas, and since the Forest is restocking through growth, there is a bright future for long-term yield of timber products.

Q & A's (continued)

WILL THERE BE CLEARCUTTING?

Yes. Clearcutting is allowed by the Conservation Easement and the "Management Vision", but with restrictions. The practice will be used only when other cutting methods will not achieve timber and wildlife management goals and forest conditions defined in the "Vision."

WILL THE NASH BOG DAM BE REBUILT?

There were mixed views at the 1990 public listening sessions on whether or not to rebuild the dam. After the dam breached in 1969, a new dam was proposed at a cost of just under \$3.5 million in 1974 dollars. Lack of state and federal funding at the time caused the proposal to be shelved. The conservation easement would allow the dam to be rebuilt, at or in the immediate vicinity of the old Nash Bog Pond Dam, for fish and wildlife and recreation purposes only. However, the Management Plan does not call for rebuilding the dam.

WILL LOCAL COMMUNITIES BE PAID IN LIEU OF TAXES?

Yes. State and federal land reimbursement is authorized by RSA 219:32 which states "...any town in which national forest land and land held by the state for operation and development as state forest land are situated...may apply...for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on said lands...". The

amount of "taxes on said lands" is determined annually by the NH Department of Revenue Administration based on a formula. This amount is then reduced by payments towns receive from federal distributions generated from timber cuttings on the national forest system. Only White Mountain National Forest towns (Stark) receive this payment. For tax years 1990 and 1991, the state's payment, distributed to the towns of Stratford, Columbia, Stark and the unincorporated place of Odell, totaled just under \$110,000. Federal distributions for the same period totaled just under \$26,000.

HOW CAN I VOLUNTEER AS A SUPPORTER OF THE NASH STREAM FOREST?

Volunteers will be encouraged to participate in organized work projects or groups. Individuals and organizations should contact the North Country Resource Center in Lancaster and register their name, affiliation, and area of interest or expertise. Emphasis will be given to focused volunteer work days with logistical support from the department. Work areas for volunteers may include an appointed advisory committee, trail monitoring and maintenance, organized cleanup days, erosion control and restoration projects, natural interpretive programs, and specialized wildlife surveys to name a few. Department efforts will include maintaining a list of appropriate volunteer projects, providing safety and host training for volunteers, keeping a log of volunteer hours and accomplishments, and recognition of outstanding volunteer efforts.

DRAFT PLAN AVAILABLE

Copies of the (draft) Nash Stream Forest Management Plan are available for viewing at the following locations. Written comments on the Plan will be received **UNTIL FEBRUARY 28, 1995**.

- Bedford Public Library
- NH Technical College - Fortier Library and Berlin Public Library (Berlin)
- U.S. Forest Service - Ammonoosuc Ranger Station (Bethlehem)
- Merrimack County Ext. Office (Boscawen)
- Rockingham County Ext. Office (Brentwood)
- Fiske Free Library (Claremont)
- Colebrook Public Library
- NH Law Library and Concord Public Library (Concord)
- Carroll County Ext. Office (Conway)
- Strafford County Ext. Office (Dover)
- UNH - Diamond Library (Durham)
- Franklin Public Library
- U.S. Forest Service - Androscoggin Ranger Station (Gorham)
- Groveton Public Library
- Dartmouth College Library (Hanover)
- New England College - Danforth Library (Henniker)

- Keene State College - Mason Library and Cheshire County Ext. Office (Keene)
 - Belknap County Ext. Office and Laconia Public Library (Laconia)
 - Weeks Memorial Library and North Country Resource Center (Lancaster)
 - Littleton Public Library
 - Manchester City Library, St. Anselm College - Geisel Library, and NH College - Shapiro Library (Manchester)
 - Hillsborough County Extension Office (Milford)
 - Nashua Public Library
 - Sullivan County Ext. Office (Newport)
 - Peterborough Town Library
 - Plymouth State College - Lamson Library (Plymouth)
 - Portsmouth Public Library
 - Stark Public Library
 - North Country Office - NH State Library (Twin Mountain)
 - Grafton County Ext. Office (Woodsville)
- If you have comments or questions, please call the Division of Forests and Lands in Concord, NH (603) 271-3456, or write to:
- Department of Resources and Economic Development
ATTN: Nash Stream Forest
Box 1856
Concord, NH 03302-1856

DRED
Division of Forests and Lands
P.O. Box 1856
Concord, NH 03302-1856

HOW THE MANAGEMENT PLAN ADDRESSES PUBLIC CONCERNS

Two earlier public listening sessions were held in Groveton and Concord. The key points which emerged from these public sessions were:

- Maintaining local influence;
- Keeping the Nash Stream Forest tract undeveloped;
- Eliminating the gravel mining rights of Rancourt Associates;
- Providing for multiple recreation uses;
- Restoring tax yield to local towns; and
- Stressing sound forestry management practices.

This input was factored into the development of a "Vision" statement, and Management Goals and Objectives for the Nash Stream Forest's Management Plan.

Following are some examples which show how specific concerns raised at these listening sessions were addressed and implemented in the draft Management Plan. These are just two of many examples showing how public concerns have been integrated into the Management Plan.

EXAMPLE #1

PUBLIC COMMENT: *"More local input into Forest (Tract) Management."*

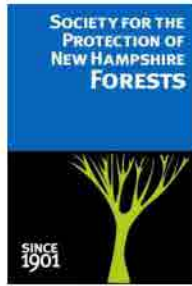
MANAGEMENT PLAN RESPONSE: "A Citizen Advisory Group will be appointed and scheduled to meet regularly to serve as a focused source of public input and assistance. Public notification will be made for significant proposed management activities such as timber harvests, major recreation developments, and emergency closures. Local municipalities will be notified of any actions within its boundaries that directly affects that municipality."

EXAMPLE #2

PUBLIC COMMENT: *"Maintain and protect existing roads; no new roads or trails."*

MANAGEMENT PLAN RESPONSE: "The network of existing roads will be maintained. No new permanent roads are planned. Traditional public access by conventional motor vehicle will be continued on the Main Road and Little Bog (Fourteen and a Half) Road. All other interior roads will be gated and maintained for controlled access in order to provide for public safety and prudent resource utilization and protection."

Additional public input is being sought through written comments on the draft Nash Stream Forest Management Plan. These additional comments will be factored into the final Management Plan to be completed this winter.



November 11, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council of Resources and Development
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

RE: CORD Assessment of ATV/UTV use of Kelsey Notch Trail

Dear Mr. Chicoine and CORD members:

We appreciate the time, attention and diligence you have shown in examining the Kelsey Notch Pilot Trail in the Nash Stream Forest. Our organizations have provided comments to you in the past, both independently as well as together.

We submitted comments on August 20, 2020 regarding the failure of the Kelsey Notch Trail to comply with many of the statutory requirements of RSA 215-A. Further, on September 21, 2020, a memo was provided to CORD by the Appalachian Mountain Club outlining the different legal and regulatory standards applied to snowmobiles and ATVs/UTVs in New Hampshire.

The purpose of this letter is not to reargue points made in our preceding communications. Rather, we would like to take the opportunity to respond to the October 26, 2020 letter from the NH Off Highway Vehicle Association ("the Association") and their conclusion that "CORD's statutory duties require" that the Kelsey Notch Pilot Trail remains open. We also question the Association's statement that "the clear intent of the parties to the Easement is to allow the use of ATVs/UTVs in the Nash Stream Forest."

The clear intent of the Easement is perpetual public use consistent with the traditional uses of the land.

The Association argues that the intent of the parties to the Easement was to allow ATV use in the Nash Stream Forest. This version of events is not supported by the historical record nor the clear and plain language of the Easement.

An important component of conservation easements are the recitals – the rest of the easement flows from them. The recitals or "whereas" clauses set forth background information that helps to frame the legal and factual basis for an easement. In the case of the Nash Stream Forest Conservation Easement, the relevant section states that:

WHEREAS, the parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract

with primary management emphasis being the sustained yield of forest products consistent with traditional uses of the land, including public access, and the conservation of other resource values.

A clear decision was made to continue the management policy of the previous landowner and continue to exclude ATV use, as it was not considered low impact, dispersed, or traditional nor consistent with the Vision for the Forest. The original 1995 Nash Stream Management Plan, which took the many stakeholders involved in the protection of the Nash Stream Forest more than 6 years to complete continued to allow traditional recreational uses of the land and did not allow ATV/UTV access.

If the intent of the parties to the Easement was to include ATV's as a traditional use of the land, either the Easement - which notably does list the traditional recreational uses of the property - or the original management plan would have included their use. ATV use on the property was considered at the time of purchase, as well as during the creation of the first management plan, and was not included as an appropriate use.

If ATV use was "expressly permitted by the terms of the Easement", then it would follow that the founding documents and management plan would have allowed their use. The absence of reference to ATV restrictions does not mean they were intended to be allowed.

CORD's statutory duties

We take issue with the Association's conclusion that CORD's statutory duties require that it keep the Kelsey Notch Trail open. In the case of the Nash Stream Forest, CORD's statutory obligations are quite clearly articulated.

Role of Council of Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands, purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when

¹ <https://www.nh.gov/oep/planning/programs/cord/>

management of these lands is shown to be detrimental to those natural resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Natural and Cultural Resources (DNCR) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DNCR is not properly managing LCIP lands under its control, CORD needs to take corrective action in the interests of the state and the public interest for which the state is holding these lands.

Authority to close trails

CORD clearly has the statutory responsibility to ensure that Nash Stream management is consistent with established state statute, and the original purposes for which the LCIP acquired the land. The citizens of the state of New Hampshire invested more than \$7 million to protect and steward these lands. As the entity with fiduciary responsibility for this investment, CORD must ensure that all trails on Nash Stream are compliant with the law, and if they are not, they should not be open for use.

The State is responsible for managing the Nash State State Forest in accordance with the terms of the Conservation Easement, which is built on a commitment to a primary management emphasis “consistent with the traditional uses of the land”. Public access was intended to be low impact and dispersed, and the State has the right to reasonably restrict and regulate access to ensure prudent resource utilization and protection of all the conservation values of the property.

RSA 215-A:42,II provides that DRED may close trails if:

(a) ATV or trail bike use on the property is not in conformance with this chapter;

CORD has the statutory obligation to maintain public access to LCIP lands, “where appropriate.” Because the Kelsey Notch Trail is not in conformance with the law, as outlined in our August 20, 2020 letter and previous communications, we ask that the Council take immediate action to suspend all ATV use on the Kelsey Notch Trail.

Thank you for your thoughtful consideration of this important issue, and for your continued oversight of the Nash Stream Forest.

Sincerely,

Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
sarnold@outdoors.org

Jim O'Brien

Director of External Affairs
The Nature Conservancy in NH
jim_obrien@tnc.org

Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
mleahy@forestsociety.org

From: Kris pastoriza
Sent: Sat, 5 Mar 2022 09:24:25 -0500
To: Boisvert, Tracey; Taylor Caswell; shawn.n.jasper@agr.nh.gov; adam.smith@dot.nh.gov; John.Martin@dhhs.nh.gov; marta.modigliani@dos.nh.gov; FGC: Director; jruderman@nhhfa.org; Stephen.McLocklin@das.nh.gov; stephanie.n.verdile@livefree.nh.gov; Matt Leahy; Megan Latour; sarnold@outdoors.org; Sarah; Rennie, Craig; Tim.Egan@leg.state.nh.us; Suzanne Smith; Judith Spang; Erin Hennessey; Andy Renzullo; Ibarguen, Derek -FS
Subject: [External Email]Re: Submission re Nash Stream, for March 10 2022 CORD meeting
Attachments: DNCR Response to K. Pastoriza 1.7.2022.pdf, Request for meeting re. Nash Stream altered.pdf, Letter to FS re Nash Stream February 2022.pdf, 1-14-22 response to DNCR.pdf, DRED 1994 Nash Stream Overview.pdf

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**; Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Summary:

In 1994 DRED said ATVs were not permitted in Nash Stream S.F.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.

In 1996 DRED/BOT informed F&G that OHRVs/ATVs were not allowed on TE (Transportation Enhancement) funded rail trails because they were not snowmobiles, the only permitted motorized use of these trails.

In 2002 DRED accepted USFS's statement that OHRVs/ATVs were snowmobiles thus, according to the easement, could be permitted in Nash Stream S.F.

In 2007, when informed by FHWA that OHRVs/ATVs were not snowmobiles thus not allowed on TE-funded rail trails, DRED/BOT and DOT resisted, then capitulated, and many rail trails returned to being quiet, bicycle and pedestrian friendly places.

DRED/BOT did not inform USFS of this federal interpretation though it talked to itself about changes in the state definition of snowmobiles.

In 2020, when given a legal memo by AMC (Ropes and Gray) stating that NH law did not define OHRVs/ATVs as snowmobiles and that OHRVs/ATVs were thus not a permitted use in Nash Stream S.F. DNCR did nothing. CORD didn't even mention this at their meetings and went on to approve, for yet another year, the Kelsey Notch ATV Trails in Nash Stream State Park.

When reminded on 1/3/2022 and 1/14/2022 of the easement problem in Nash Stream S.F. DNCR made no meaningful response.

<https://indepthnh.org/2021/11/15/op-ed-a-distillation-of-kris-pastorizas-requests-for-agency-documents-pertaining-to-atvs-in-nash-stream-role-of-public-lands/>

On Fri, Mar 4, 2022 at 9:31 AM Kris pastoriza <(b)(6)> wrote:



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
OFFICE OF THE COMMISSIONER

172 Pembroke Road, Concord, New Hampshire 03301

Phone: 271-2411 Fax: 271-2629

TDD ACCESS: Relay NH 1-800-735-2964

Ms. Kris Pastoriza

(b)(6)

January 7, 2022

Dear Ms. Pastoriza:

Thank you for your letter of January 3 requesting a meeting of the Nash Stream Forest Citizens Committee (NSFCC), Division of Forests & Lands (DFL) and the Department of Natural & Cultural Resources (DNCR) Technical Team regarding concerns about Off-Highway Recreational Vehicles (OHRV) trails on the Forest.

The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests. The Committee serves in an advisory capacity to the state agencies responsible for managing Nash Stream Forest. In that role, Committee members are responsible for communicating with their respective constituents to bring ideas, concerns or opportunities for improvement to the attention of the state's resource managers.

The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.

Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff. An annual report is filed with Council on Resources & Development (CORD), comprised of twelve state agencies "whose responsibilities include providing a forum for interagency communication and cooperation in assuring consistency with established policies relating to the environment, natural resources, and growth management issues." (www.nh.gov/osi/planning/programs/cord/) Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD. Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.

The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD's satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. See *9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.*

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.

As you can see, a monitoring and review process is in place for OHRV trails on Nash Stream Forest. Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.

The next meeting of the NSFCC will be in early November 2022 and will include a briefing of the trail monitoring efforts. At the end of the formal agenda, we can plan for additional time for public comment.

Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Sarah Stewart
Commissioner, DNCR

January 3, 2022

To Commissioner Stewart and Director Hackley,

we request a meeting of the Nash Stream Forest Citizens' Committee, and the Department of Forests & Lands and Fish & Game Tech Team members; a meeting in which these groups are prepared to record and respond to the questions and concerns of the public regarding the serious problem of ATVs in Nash Stream State Forest.

RSA 215-A:42 has not been followed. Baseline studies were never done. Despite the fact that DF&L and F&G monitoring repeatedly shows damage, and despite pointed observations and communications to management from DF&L and F&G staff in the field, no ATV trails have been closed. No response has been made to AMC/SPNHF's legal memos disputing the legality of ATV use in Nash Stream. Invasives, likely brought by ATVs or ATV trail maintenance vehicles, have been treated with the carcinogenic glyphosate while the ATV trails remain open, increasing the risk of more invasives. ATVs contribute to global warming, which threatens Nash Stream State Forest.

The NSFCC November 2021 meeting was not the first time these problems were brought to the attention of DNCR/DF&L/BOT, CORD and the NSFCC.

DNCR and NSFCC appear to be taking the position that they can ignore the law and the state of the Forest.

This meeting should take place well before the ATV season.

Sincerely,

Kris Pastoriza, Easton, N.H.

Lucy Wyman, Lancaster, N.H.

Margaret and Eric Jones, Trustees of the [Legacy Forest Trust](#)

Cam Bradshaw, Berlin, N.H.

Abby Evankow, Gorham, N.H.

Monique Petrofsky, Stewartstown, N.H.

Nancy DeCoursey, Jefferson, N.H.

Claudia Damon, Concord, N.H.

Dick Harris, Colebrook, N.H.

Pat Kellogg, Littleton, N.H.

Rick Audy, Shelburne, N.H.

Michael Phillips, Groveton, N.H.

Dave Evankow, Gorham, N.H.

Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, Massachusetts

Campbell McLaren, Easton, N.H.

Susan Percy, New Gloucester, ME

Field Rider, New Gloucester, ME

Gary Robertson, Gilford, N.H.

Will DeCoursey, Jefferson, N.H.

Nash Stream State Forest, Bordeaux ATV Trail



July 9th, 2019. (DF&L files)

February 14, 2022

Dear Forest Supervisor Ibarguen,

in response to a recent query about USFS responsibilities as an easement holder for Nash Stream State Forest, you stated:

“The United States’ role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal’s consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the ‘Forest Service’ should or should not have been checked off on the State’s trail proposal form.”

Paragraph III-D of the Nash Stream State Forest Easement states:

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

"The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State."

ATV use was not reserved by the State. Snowmobiles are not ATVs. DNCR acknowledges this when it states that it assists in maintenance of “6,800 miles of snowmobile trail and over 700 miles of wheeled OHRV trails”. A snowmobile is now technically defined as an “Over Snow Vehicle (OSV.)

The Ropes and Gray Memorandum states: "The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A."

If the Forest Service asserts that the Nash Stream Easement permits ATV use; “The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved

by the state. The Forest Supervisor, WMNF, shall administer this easement...Any Forest Service concurrences required under this easement shall be in writing..."

Tom Wagner, former WMNF employee, when queried in 2001 about the legality of permitting ATV use in Nash Stream discussed II-C.1 and II-C.2 but was curiously silent on II-C, "Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. He stated:

"Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and Forest Service involvement would only be required on roads that provide "through travel."

Permission to install, operate and maintain roads does not alter the non-permitted status of ATVs. And, all the ATV trails in Nash Stream provide "through travel:"

Phil Bryce, Director of Forest & Lands, touched on this in a 2001 letter to Representative Alger: "Are requests for connecting trails across state lands handled differently than self-contained trail systems?"

In 2002 the Nash Stream ATV Study Subcommittee made a verbal report to the Nash Stream Citizen's Committee. The ATV Study Committee rejected the "interior trail" and recommended a "connecting trail" providing the through travel that would require Forest Service permission.

Thus, the Forest Service is still left with the fact that the four ATV Trails in Nash Steam S.F. are all through trails, and lack the required "concurrence in writing", a concurrence DRED, and its successor DNCR, never requested.

In conclusion:

- Please state whether the USFS concurs with the Ropes and Gray memorandum.
- If the USFS does not concur with the Ropes and Gray Memorandum, please provide it's interpretation of the easement as it relates to ATV use, and specifically its interpretation of section II-C.
- If the USFS does not concur with the Ropes and Gray memorandum, please state whether the USFS denies responsibility for its concurrence (III-D) on the siting of through trails.

Sincerely,

Kris Pastoriza
Easton, N.H.
February 14, 2022
krispastoriza@gmail.com



1. Snowmobile Trail



2. Bordeau ATV Trail



3. *Westside ATV Trail*



Figure 1, 2 and 3- Shows the broken boards on the bridges and the eroding approaches.

4. *Kelsey Notch ATV Trail*

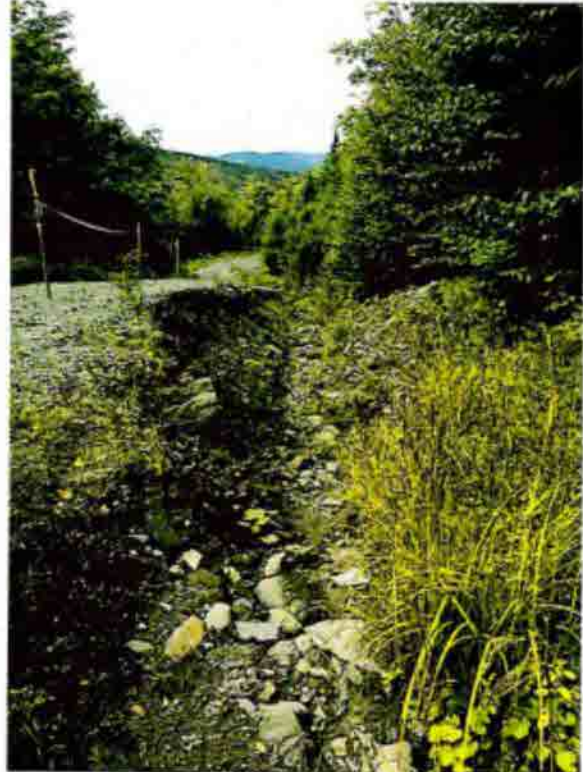


Figure 6 and 7- Depicts the washout along the trail.

5. *Kelsey Notch ATV Trail*

1. *Snowmobile trail, Stark, N.H. 2021*
2. *Bordeau Trail, July, 2019; DF&L files*
3. *Westside Trail, July, 2019; DF&L files*
4. [Kelsey Notch Monitoring Report 2018.](#)
5. *Kelsey Notch Monitoring Report 2018*

January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, "Traditional, dispersed, non-motorized recreationists" for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The 'Snowmobile clubs' designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called "Expertise in Recreation and Tourism" designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: "The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes." At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen's Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that "Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff" is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its "Trial" and monitoring was only instituted after CORD's December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that "Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD." But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn't been any monitoring of Westside, so there are no issues on the record that need to be addressed "to the satisfaction of agency resource managers and members of CORD." That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: "Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails." Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs' request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.
Mark Primack, Berlin, N.H.
Dan Whittet, Berlin, N.H.
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
Susan Percy, New Gloucester, ME
Field Rider, New Gloucester, ME
Margaret and Eric Jones, Trustees of the Legacy Forest Trust
Nancy DeCoursey, Jefferson, N.H.
Michael Phillips, Groveton, N.H.
Pat Kellogg, Littleton, N.H.
Daniel Clarke, Gorham, N.H.
Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
Jody Camille, Dummer, N.H.
Milton Camille, Dummer, N.H.
Bill Joyce, Stark, N.H.
Wayne Moynihan, Dummer, N.H.
Kim Votta, Lancaster, N.H.
Cam Bradshaw, Berlin, N.H.
Roger Doucette, Whitefield, N.H.
George Brown, Shelburne, N.H.
Howie Wemyss, Randolph, N.H.
Representative Judith Spang, Durham, N.H.
Stephanie Kelliher, Whitefield, NH
Beau Etter-Garrette, Whitefield, NH
Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH

Nash Stream

November, 1994

AN OVERVIEW OF THE NASH STREAM FOREST

ACQUISITION

The Nash Stream Forest is a unique parcel of land in Northern New Hampshire. Its acquisition in 1988, through a collaborative effort between the state of New Hampshire, the U.S. Forest Service, The Nature Conservancy, The Trust for New Hampshire Lands, and The Society for the Protection of New Hampshire Forests is equally unique, and serves as a milestone in state, private and federal cooperation.

The diversity of the groups represented in this effort is almost as diverse as the wildlife that exists within the Nash Stream Forest and the topography of the land itself. Yet over an eighteen-month period, representatives from each of these groups worked together, to negotiate an

arrangement which all felt was in the best interest of the land and the people who use it.

MULTIPLE USE STRESSED

All of the groups involved in the purchase and future management of the Nash Stream Forest recognized the importance of protecting the Forest from development, as well as the importance of continuing to use the land in a "multiple-use" manner—for education and research; as a key watershed area; for fish and wildlife; recreation; scenic qualities; and as a sustainable timber resource. These mutual concerns led to the successful purchase of the property, and to a gubernatorially-appointed Advisory Committee to focus public input and provide technical expertise.

THE MANAGEMENT PLAN

Since December, 1989, this Committee has been hard at work, holding public listening sessions to gather input, working with a Technical Committee to review research on the past and present use of the Nash Stream Forest, and developing a working Management Plan. This final Plan will serve as a model of environmentally sound public land stewardship so that future generations may enjoy this unique property.

GATHERING PUBLIC INPUT

As has been done throughout the development of the draft Management Plan, we continue to seek public input from any group or individual interested in the Nash Stream Forest. Your input will help us formulate the final Management Plan, which will ultimately determine the future use of the Nash Stream Forest. For more information about the impact of public input on the Management Plan, see the article on page 6.



Whitcomb Pond, Little Bog (Fourteen and a Half) Pond and Lower Trio Pond in the Nash Stream Forest.

**Nash
Stream NEWS**

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Division of Forests and
Lands.

QUESTIONS & ANSWERS About The Nash Stream Forest

WHAT IS THE DIFFERENCE BETWEEN THE NORTHERN FOREST AND THE NASH STREAM FOREST?

The Nash Stream Forest is a 39,601 acre tract owned by the state of New Hampshire, managed by the Department of Resources and Economic Development, with a Conservation Easement held by the United States of America. The tract lies within a four-state region known as the Northern Forest that stretches from the coast of Maine, across northern New Hampshire and Vermont into New York, totaling 26 million acres. The Northern Forest is one of the largest expanses of continuously forested land in the nation with about 85% in private ownership. Forest-based economies, recreation, and environmental diversity are traditional to the area as are clean air and water.

The breakup of Diamond International Co. lands in 1988 led to both state acquisition of the Nash Stream Forest and national concern about the future of the Northern Forest lands. Congress authorized the U.S. Forest Service to study Northern Forest issues in cooperation with a four-state Governors' Task Force. Congress later created the Northern Forest Lands Council in 1990 to continue the work begun by the Task Force. The Council's report was released in the fall of 1994.

WILL THERE BE A FEE TO USE THE NASH STREAM FOREST?

Although allowed by the Conservation Easement, there are no plans to charge a fee for public entry or general use of the Nash Stream Forest.

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

WILL THERE BE A VISITORS' CENTER OR GATE KEEPER AT THE ENTRANCE?

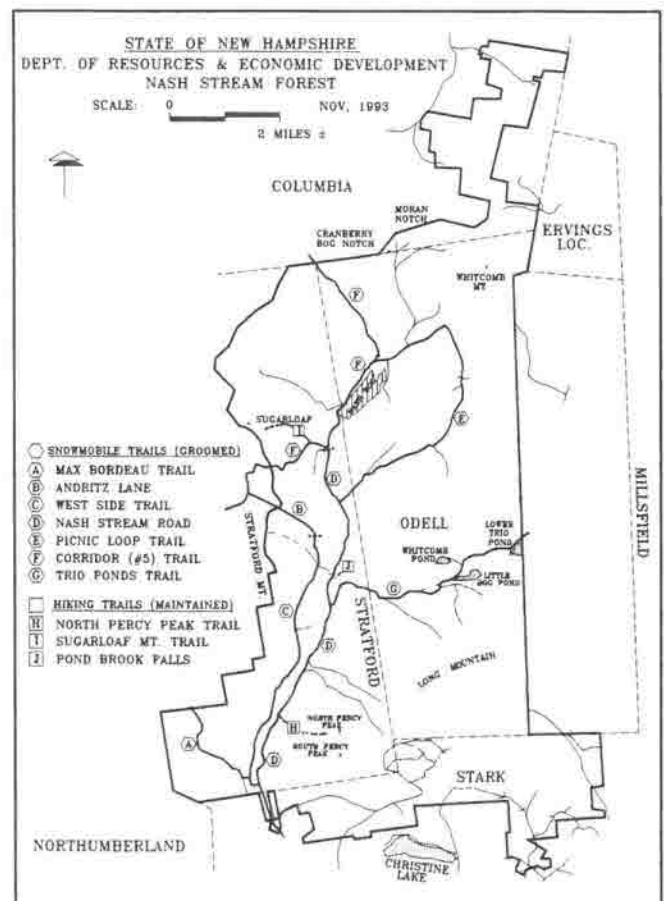
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

WILL THERE BE HANDICAPPED ACCESS?

Reasonable accommodations will be made to provide access to individuals with disabilities. Contact the Regional Forester, North Country Resource Center in Lancaster at (603) 788-4157.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.



WHAT IS THE ROLE OF THE FEDERAL GOVERNMENT?

The Forest Supervisor, White Mountain National Forest (WMNF) is responsible for administering the Conservation Easement on behalf of the United States. The role of the Forest Service is to ensure that the terms and conditions of the Easement are satisfied and does not include active involvement with management. The WMNF staff serve as advisors to the state and provide assistance when needed, primarily with management support and technical advice.

ARE THERE ANY THREATENED OR ENDANGERED SPECIES ON THE PROPERTY?

There are 5 rare plant species identified on the property in as many locations. They are: Black Crowberry, Marsh Horsetail, Three-forked Rush, Broad-lipped Twayblade, and Millet-grass. Four of the five are listed as threatened by the NH Native Plant Protection Act. The other, Three-forked Rush, is relatively rare but is not state-listed. All of these plants occur within designated natural preserve areas.

No federally listed animal species are known to breed on the property. Peregrine Falcons and Bald Eagles nest within 20 miles of the property and may frequent the Forest from time to time. Several state listed animal species occur or potentially occur on the property. Common Loons nest regularly and Northern Harriers have nested in some years. Lynx and Marten may occur as transients if not residents.

WILL HUNTING AND TRAPPING BE ALLOWED?

Yes. Hunting and trapping will be permitted in accordance with state law.

WILL THERE BE ANY NEW (HIKING) TRAILS?

Only modest increases in the trail system are under consideration, such as adding a hiking loop via a short connector between the Percy Peak Trail and an old logging road (north of the Peak) that follows Long Mountain Brook down to Nash Stream. A Nash Stream Trails Advisory Group is recommended in the Management Plan to assess the current trail system, its condition and use, and recommend trail improvements. It is recommended that the Trails Advisory Group consist of representatives of hiking, dog sledding, cross country skiing, bicycling, hiking and snowmobiling to ensure adequate representation of these user groups.

WILL CAMPING BE ALLOWED?

Camping is not currently available. By department policy, camping is not allowed on any state

forest or park where overnight camping facilities are not available. The Management Plan does not recommend development of a campground or camping facilities. However, the Plan leaves open the possibility of future backcountry camping along selected hiking trails, subject to the availability of staff and funds for proper monitoring and maintenance.

ARE THERE PLANS TO STOCK FISH?

Yes. Stocking will occur where natural spawning is poor or non-existent. Lower Trio Pond, Little Bog Pond, and possibly Whitcomb Pond will be stocked annually with brook trout. Until the status of the wild trout population in Nash Stream can be determined, stocking of hatchery brook trout in the mainstem will continue. Nash Stream is unlikely to support a recreation fishery in the near future without an annual stocking program due to a current lack of pool habitat in the stream.

WILL THERE BE A CATCH-AND-RELEASE FISHERIES PROGRAM?

Fisheries management will emphasize natural populations of fish species consistent with habitat capabilities of the ponds and streams. Special fishing regulations such as catch-and-release, minimum fish lengths, and fishing gear restrictions may be implemented to protect spawning stock in order to maintain wild populations of brook trout.

HOW MUCH OF THE FOREST WILL BE NATURAL PRESERVE OR OTHERWISE PROTECTED?

About 46% (18,339 acres) of the Forest is considered ecologically significant, fragile or sensitive and will be preserved or under restricted management. Much of this area coincides with boundaries of areas on which the Conservation Easement prohibits logging (10,665 acres). Protection will be accomplished by several means as follows:

Natural preserves (8,113 acres) are areas of uncommon ecological significance that encompass 9 different natural communities and 1 pond located primarily on the side slopes and mountain tops of Sugarloaf, Whitcomb and Long Mountains and Percy Peaks. There will be no intentional disturbances to these areas.

Preserve buffers (5,115 acres) are lands surrounding natural preserves with soils and topography capable of serving as shock absorbers to protect natural preserves. Management activities will be limited in preserve buffers.

A corridor (515 acres) of pure softwood forest forms a natural drainageway connecting the natural preserves and buffer areas on Whitcomb and Long Mountains. This corridor is located just west of Little Bog Pond.

A 150 foot zone around each pond is protected from logging by the Conservation Easement. These zones total 55 acres.

Other high elevation sites above 2,700 feet elevation where logging is prohibited by the Conservation Easement and not otherwise protected total 49 acres. Other steep slopes of 35% or more where logging is prohibited by the Conservation Easement and not otherwise protected total 925 acres. Other wet, rocky or otherwise fragile soils not otherwise protected total 3,050 acres. And, other fragile mountain tops below 2,700 feet elevation total 516 acres.

<i>Natural Preserves and Other Protected Areas</i>	
DESIGNATION	ACRES
Natural Preserves	8,113
Natural Preserve Buffers	5,116
Corridor	515
150 ft. Pond Buffers	55
Other High Elevation >2,700 ft.	49
Other Mountain Tops <2,700 ft.	516
Other Steep Slopes >35%	925
Other Group II Soils	3,050
TOTAL	18,339

WHAT ARE CONTROL AREAS AND WHY ARE THEY NECESSARY?

One control area will be established in each natural community type under timber management for the purpose of comparing unmanaged (control) areas to ecologically similar areas subjected to logging. This provides a means of assessing the impact of timber management on ecological resources called for in the "Vision".

Although established under different criteria, control areas will also complement natural preserves because they will help preserve, for study, natural communities not represented in natural preserves. In this manner, control areas will help satisfy the "Management Vision" that calls for *"The system of core natural areas will include representatives of the full range of ecological communities..."*.

WHY ARE MOST OF THE NATURAL PRESERVES HIGH ELEVATION ECOSYSTEMS?

High elevation sites, more than any other locations, qualify for natural preserve designation by existing department standards. High elevation sites (above 2,700 feet elevation) remain the least impacted by human activity and contain rare elements or

exemplary natural communities that have retained most, if not all, of their natural character, and/or contain features of scientific and/or educational interest. A total of 8,113 acres of the Forest qualify as natural preserve, of which 8,099 acres are at high elevations on which the Conservation Easement prohibits logging.

HOW DOES THE EASEMENT AFFECT TIMBER MANAGEMENT?

The Conservation Easement protects and conserves resources with a primary emphasis on the sustained yield of forest products. Logging is prohibited on 27% (or 10,665 acres) of the forest which consists of steep slopes (2,462 acres), high elevation (8,148 acres), and buffers (55 acres) around Lower Trio Pond, Whitcomb Pond and Little Bog (Fourteen and a Half) Pond.

The Easement also requires that timber be managed on a sustained yield basis; clearcuts be no larger than 30 acres; clearcuts total less than 15% of the total easement area in any ten year period; logging on areas near streams, ponds and public highways are subject to the provisions of state law; logging shall be conducted in conformance with current federal and state laws and regulations, including use of "best management practices" for erosion control and other activities.

HOW MUCH OF THE FOREST WILL BE MANAGED FOR TIMBER?

More than half (52%) of the Nash Stream Forest will be managed under a multiple-use, sustained yield timber management program. Occasional and restricted timber cutting will be allowed on another 22% of the forest (e.g. buffers, corridors, Group II soils) but only to enhance non-timber values such as wildlife habitat or recreation resources. The remainder of the property is considered ecologically sensitive or protected from logging by the Conservation Easement.

HOW SOON WILL THE FIRST STATE TIMBER HARVEST TAKE PLACE?

It is hoped that the first commercial timber sale will be made within two years of formal adoption of the Management Plan. However, the immediate potential for significant sawlog harvests is low. A 1988 timber cruise identified only 11% (3,140 acres) of forest as sawtimber size (≥ 9.6 inches in diameter) with limited commercial value because it is widely scattered. However, there are significant widespread opportunities for commercial thinning operations over many areas, and since the Forest is restocking through growth, there is a bright future for long-term yield of timber products.

Q & A's (continued)

WILL THERE BE CLEARCUTTING?

Yes. Clearcutting is allowed by the Conservation Easement and the "Management Vision", but with restrictions. The practice will be used only when other cutting methods will not achieve timber and wildlife management goals and forest conditions defined in the "Vision."

WILL THE NASH BOG DAM BE REBUILT?

There were mixed views at the 1990 public listening sessions on whether or not to rebuild the dam. After the dam breached in 1969, a new dam was proposed at a cost of just under \$3.5 million in 1974 dollars. Lack of state and federal funding at the time caused the proposal to be shelved. The conservation easement would allow the dam to be rebuilt, at or in the immediate vicinity of the old Nash Bog Pond Dam, for fish and wildlife and recreation purposes only. However, the Management Plan does not call for rebuilding the dam.

WILL LOCAL COMMUNITIES BE PAID IN LIEU OF TAXES?

Yes. State and federal land reimbursement is authorized by RSA 219:32 which states "...any town in which national forest land and land held by the state for operation and development as state forest land are situated...may apply...for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on said lands...". The

amount of "taxes on said lands" is determined annually by the NH Department of Revenue Administration based on a formula. This amount is then reduced by payments towns receive from federal distributions generated from timber cuttings on the national forest system. Only White Mountain National Forest towns (Stark) receive this payment. For tax years 1990 and 1991, the state's payment, distributed to the towns of Stratford, Columbia, Stark and the unincorporated place of Odell, totaled just under \$110,000. Federal distributions for the same period totaled just under \$26,000.

HOW CAN I VOLUNTEER AS A SUPPORTER OF THE NASH STREAM FOREST?

Volunteers will be encouraged to participate in organized work projects or groups. Individuals and organizations should contact the North Country Resource Center in Lancaster and register their name, affiliation, and area of interest or expertise. Emphasis will be given to focused volunteer work days with logistical support from the department. Work areas for volunteers may include an appointed advisory committee, trail monitoring and maintenance, organized cleanup days, erosion control and restoration projects, natural interpretive programs, and specialized wildlife surveys to name a few. Department efforts will include maintaining a list of appropriate volunteer projects, providing safety and host training for volunteers, keeping a log of volunteer hours and accomplishments, and recognition of outstanding volunteer efforts.

DRAFT PLAN AVAILABLE

Copies of the (draft) Nash Stream Forest Management Plan are available for viewing at the following locations. Written comments on the Plan will be received **UNTIL FEBRUARY 28, 1995**.

- Bedford Public Library
- NH Technical College - Fortier Library and Berlin Public Library (Berlin)
- U.S. Forest Service - Ammonoosuc Ranger Station (Bethlehem)
- Merrimack County Ext. Office (Boscawen)
- Rockingham County Ext. Office (Brentwood)
- Fiske Free Library (Claremont)
- Colebrook Public Library
- NH Law Library and Concord Public Library (Concord)
- Carroll County Ext. Office (Conway)
- Strafford County Ext. Office (Dover)
- UNH - Diamond Library (Durham)
- Franklin Public Library
- U.S. Forest Service - Androscoggin Ranger Station (Gorham)
- Groveton Public Library
- Dartmouth College Library (Hanover)
- New England College - Danforth Library (Henniker)

- Keene State College - Mason Library and Cheshire County Ext. Office (Keene)
 - Belknap County Ext. Office and Laconia Public Library (Laconia)
 - Weeks Memorial Library and North Country Resource Center (Lancaster)
 - Littleton Public Library
 - Manchester City Library, St. Anselm College - Geisel Library, and NH College - Shapiro Library (Manchester)
 - Hillsborough County Extension Office (Milford)
 - Nashua Public Library
 - Sullivan County Ext. Office (Newport)
 - Peterborough Town Library
 - Plymouth State College - Lamson Library (Plymouth)
 - Portsmouth Public Library
 - Stark Public Library
 - North Country Office - NH State Library (Twin Mountain)
 - Grafton County Ext. Office (Woodsville)
- If you have comments or questions, please call the Division of Forests and Lands in Concord, NH (603) 271-3456, or write to:
- Department of Resources and Economic Development
ATTN: Nash Stream Forest
Box 1856
Concord, NH 03302-1856

DRED
Division of Forests and Lands
P.O. Box 1856
Concord, NH 03302-1856

HOW THE MANAGEMENT PLAN ADDRESSES PUBLIC CONCERNS

Two earlier public listening sessions were held in Groveton and Concord. The key points which emerged from these public sessions were:

- Maintaining local influence;
- Keeping the Nash Stream Forest tract undeveloped;
- Eliminating the gravel mining rights of Rancourt Associates;
- Providing for multiple recreation uses;
- Restoring tax yield to local towns; and
- Stressing sound forestry management practices.

This input was factored into the development of a "Vision" statement, and Management Goals and Objectives for the Nash Stream Forest's Management Plan.

Following are some examples which show how specific concerns raised at these listening sessions were addressed and implemented in the draft Management Plan. These are just two of many examples showing how public concerns have been integrated into the Management Plan.

EXAMPLE #1

PUBLIC COMMENT: *"More local input into Forest (Tract) Management."*

MANAGEMENT PLAN RESPONSE: "A Citizen Advisory Group will be appointed and scheduled to meet regularly to serve as a focused source of public input and assistance. Public notification will be made for significant proposed management activities such as timber harvests, major recreation developments, and emergency closures. Local municipalities will be notified of any actions within its boundaries that directly affects that municipality."

EXAMPLE #2

PUBLIC COMMENT: *"Maintain and protect existing roads; no new roads or trails."*

MANAGEMENT PLAN RESPONSE: "The network of existing roads will be maintained. No new permanent roads are planned. Traditional public access by conventional motor vehicle will be continued on the Main Road and Little Bog (Fourteen and a Half) Road. All other interior roads will be gated and maintained for controlled access in order to provide for public safety and prudent resource utilization and protection."

Additional public input is being sought through written comments on the draft Nash Stream Forest Management Plan. These additional comments will be factored into the final Management Plan to be completed this winter.

DEPARTMENT OF TRANSPORTATION
MEMORANDUM

From <u>Bill Cass</u> Office	
To <u>Jim Moore</u>	At

As anyone proposing legislative 2/13/07 20
to remedy this? & assume allowing or not allowing ATV's will
cause very passionate discussions from either side!
FHWA sent this draft letter over for our "heads-up"
re: ATV use on TE Funded trails. Ram
Says its been a running issue that may be
coming to a head at this watch groups
prompting. There has been general agreement
in the past that ATV use in winter, as
a "snow traveling vehicle", has been considered
analogous to snowmobile use for all intents
and purposes. I've suggested to FHWA they
temper the draft letter to focus on clarification
of the above interpretation as a pre-cursor
to requesting ATV use cease. This would
affect approx. 200 miles of trail bought/built
with TE Funds.

File Under (u)

Chris Gamache

From: Chris Gamache
Sent: Wednesday, June 20, 2007 2:21 PM
To: Allison McLean
Subject: Rail Trail issue

Allison;

The email issue being stirred up by ATV Watch is not accurately being portrayed at all. This is not a surprise from him. The issue stems from a letter Andrew Walters sent to Federal Highway regarding winter ATV use of certain rail corridors.

His assertion was that since the change in NH statutes last July which separated ATV and Snowmobile laws, winter ATV use is now illegal on rail corridors bought with Federal Transportation Enhancement funds. In the past however they were considered an appropriate winter use.

We have been working with DOT and the AG's office on the response to federal highway and we have been actively been involved with discussions over the past several weeks.

Some of the primary points here are that:

- 1) we are not talking about summer use of ATV on these rail corridors;
- 2) we are not looking to change anything to allow ATV use on rail corridors and
- 3) we are not actively violating any federal provisions of the funding program
- 4) this issue has arisen as an unanticipated result of NH statutory changes which took effect in 2006

The change in NH statutes has caused a potential, unanticipated ramification, which we are asking Federal highway to rule in our favor on. We actually are hoping to ask Federal highway to allow our continued management of these corridors for winter motorized use, as we have appropriately done for almost a decade now.

Unfortunately, Mr. Walters is using scare tactics to drum up support and incite others to action using incorrect information again.

Let me know if you need other follow-up on this. Chris

Chris Gamache, Chief
NH Bureau of Trails
DRED-Division of Parks & Recreation
PO Box 1856
Concord, NH 03302-1856
603-271-3254
cgamache@dred.state.nh.us

6/20/2007

years ago, DRED has allowed ATV use with snow cover. Thus, DRED is not requesting FHWA approve a new policy. Rather, DRED is requesting that the Secretary confirm that DRED's long-standing policy is "appropriate."

The Definition of Snowmobile Under New Hampshire Law

Part of the reason for DRED's policy of allowing ATV use with snow cover lies in the history of the definition of "snowmobile" under New Hampshire law. Under section 23 U.S.C. § 217, snowmobiles are permitted on TE-funded corridors. The Federal law does not define "snowmobile." Therefore, we understand that FHWA looks to the states' definitions of that term.

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Request for Determination That ATV Use With Snow Cover Is Appropriate

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Thus, the State made, and continues to make, a major investment in these corridors. As such, it is appropriate to allow the State to manage the corridors in a manner that reflects the unique character and needs of the State while protecting the transportation interests in these corridors.

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GEORGE M. BALD
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411
FAX: 603-271-2629
E-MAIL: gbald@dred.state.nh.us

July 17, 2007

Charles P. O'Leary, Jr.
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

RECEIVED
COMMISSIONERS OFFICE

JUL 18 2007

THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

Subject: Snowmobile and All terrain Vehicle (ATV) use of Transportation
Enhancement (TE)-funded corridors in New Hampshire

Dear Commissioner O'Leary:

This is in response to the February 13, 2007 letter from Federal Highway Administration (FHWA) requesting a definition of "snowmobile" under New Hampshire law and documentation supporting the winter use of all terrain vehicles (ATVs) on New Hampshire corridors purchased with Transportation Enhancement (TE) funds.

Additionally, the Department of Resources and Economic Development (DRED) requests that New Hampshire Department of Transportation (NHDOT) ask the Secretary of Transportation (Secretary) to deem DRED's long-standing policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

The following are the corridors at issue in this request. TE funds provided about eighty percent of the acquisition costs for these corridors:

Ashuelot, 21 miles long, acquired in 1995, project # 12133C
Cheshire, 42 miles long, acquired in 1995, project # 12133B
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DRED maintains the TE-funded corridors pursuant to maintenance agreements with NHDOT. As a preliminary matter, since acquiring these corridors, most more than 10

unreasonably limit the ability to restore rail service. RSA 228:60-a. DRED has managed the corridors appropriately in accordance with this mandate.

Additionally, winter ATV use does not cause environmental impacts beyond those caused by snowmobiles. There is no damage to the surface of the corridor as there is an intermediate surface of snow cover existing between the ATVs and the surface. Allowing continued use of ATVs with snow cover would not cause increased impact to other users of the corridors as ATVs have been using these corridors for 10 years.

Instituting a new policy prohibiting ATV use would certainly be disruptive to the current users of the corridors. It will also cause increased expenses for notifications, signage, and management responsibilities. Preventing ATVs in the winter will also pose an increased burden on law enforcement agencies as they would be required to enforce such a restriction.

For the foregoing reasons, DRED requests that the Secretary deem it appropriate for DRED to continue managing these corridors as it has since their acquisition to allow ATV use with snow cover.

We thank you for your consideration of our request. Please feel free to contact Bill Gegas (603-271-3254) at DRED or me if you have any questions or need additional information.

Sincerely,



George M. Baid
Commissioner

GMB:CG:lc
Enclosures

cc: His Excellency, John H. Lynch, Governor
Mark Hodgdon, Attorney General's Office
Anne M. Edwards, Attorney General's Office
Allison McLean, Director, Division of Parks and Recreation
Chris Gamache, NHDRED, Trails Bureau
Jim Moore, NHDOT
Christopher Morgan, NHDOT,
Ram Maddali, NHDOT

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Based on documentation FHWA has seen so far, it would appear under New Hampshire policy ("*No person shall operate an OHRV other than an ATV, trail bike or snowmobile on bureau snowmobile trails. No person shall operate a conventional motor vehicle on a bureau snowmobile trail.*"), that an ATV is considered a distinct vehicle from a snowmobile, and, therefore, does not meet the State's definition of "snowmobile."

Consistent with Mr. Walters' request of FHWA, and TE program requirements, we request that you provide us with any appropriate State or local statutory or regulatory documentation that:


1. Provides the legal definition of "snowmobile" in New Hampshire.
2. Supports the use of snowmobiles on New Hampshire's TE funded corridors.

If there is no State legislation or regulation defining a snowmobile in a manner that includes ATVs, then ATVs must be prohibited from trails and pedestrian walkways that use Federal-aid highway program funds under 23 U.S.C. 217.

Exceptions: You will see that 23 U.S.C. 217(h)(5) allows an exception for "such other circumstances as the Secretary deems appropriate." The State may request an exception under this provision. We are working with our Washington Headquarters office on the process that may be required to allow exceptions.

In summary, please provide the appropriate documentation as requested above.

Sincerely,



Kathleen O. Laffey
Division Administrator

Enclosure

LL/caj

cc: Andrew Walters, Concerned Citizen and Director, ATV Watch
James A. Moore, P.E. NHDOT
Ram Madali, NHDOT
Chris Gamache, New Hampshire Department of Resources and Economic Development

File: 250.550 + file
250,200 " "

RECEIVED
DEPARTMENT OF
TRANSPORTATION
FEB 15 2007

B. PROFFER
Planning and Community Assistance



US Department
of Transportation
**Federal Highway
Administration**

New Hampshire Division

February 13, 2007

19 Chenell Drive
Suite One
Concord, NH 03301

Bill ~~Pell~~ Nancy ✓

Copy of the letter from
FHWA and DRED response
on the ATV usage
issue. I am drafting
a response.
Ran

Ms. Carol Murray, Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03301

Dear Ms. Murray:

Subject: Snowmobile and All Terrain Vehicle (ATV) u
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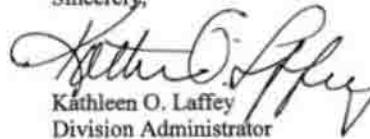
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File: 250.550 + file
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DEPARTMENT OF
TRANSPORTATION
FEB 15 2007

BUSINESS
Planning and Community Assistance

From: Kris pastoriza
Sent: Fri, 4 Mar 2022 09:31:54 -0500
To: Boisvert, Tracey; Taylor Caswell; Amy.C.Clark@doe.nh;
shawn.n.jasper@agr.nh.gov; adam.smith@dot.nh.gov; John.Martin@dhhs.nh.gov;

marta.modigliani@dos.nh.gov; FGC: Director; jruderma@nhhfa.org; Stephen.McLocklin@das.nh.gov; stephanie.n.verdile@livefree.nh.gov; Matt Leahy; Megan Latour; sarnold@outdoors.org; Sarah; Rennie, Craig; Tim.Egan@leg.state.nh.us; Suzanne Smith; Judith Spang; Erin Hennessey; Andy Renzullo; Ibarguen, Derek -FS

Subject: [External Email]Submission re Nash Stream, for March 10 2022 CORD meeting

Attachments: 2007 DOT interoffice memo Cass to Jim Moore 200 miles TE funded trail.jpg, BOT concurs with FHWA re snowmobile def.jpg, BOT does not concur with FHWA re snowmobile def.jpg, DRED to DOT p. 2.jpg, DRED to DOT p 1.jpg, DRED to DOT p.3.jpg, FHWA to DOT 2.jpg, FHWA to DOT.jpg, FHWA to DOT 2_1.jpg, 1996 BOT to F&G ATVs not snowmobiles.pdf, 2007-07-30_Letter_from_NHDOT_to_FHWA re TE funded rail corridors and OHRVs.pdf, March 2022 letter to CORD re. Nash Stream SF easement terms.pdf

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;

Use caution before clicking links or opening attachments.

Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

DEPARTMENT OF TRANSPORTATION
MEMORANDUM

From Bill Cass Office

To
Jim Moore

At

Is anyone proposing legislation 2/13/07 20
to remedy this? I assume allowing or not allowing ATV's will
cause very passionate discussions from either side.
FHWA sent this draft letter over for our "heads-up"
re: ATV use on TE Funded trails. Ram
says its been a running issue that may be
coming to a head at this watch groups
prompting. There has been general agreement
in the past that ATV use in winter, as
a "snow traveling vehicle", has been considered
analogous to snowmobile use for all intents
and purposes. I've suggested to FHWA they
temper the draft letter to focus on clarification
of the above interpretation as a pre-cursor
to requesting ATV use cease. This would
affect approx. 200 miles of trail bought/built
with TE Funds.

File Under (up)

DEPARTMENT OF TRANSPORTATION
MEMORANDUM

From Jeff Smith Office

To Ram Meddali

At

..... 9/20/07 20

Ram : Please prepare a response to Mr Walters latest e-mail. I spoke w/ Chris Gramache of DRED on 9/19/07.

_____ He agreed that given FHWA's interpretation, ATV's probably need to be banned from TE funded trails, and that DRED would re-sign such trails, banning ATV use if directed by the DOT by letter.

File Under

Ram
J.S.M.

Chris Gamache

From: Chris Gamache
Sent: Wednesday, June 20, 2007 2:21 PM
To: Allison McLean
Subject: Rail Trail issue

Allison,

The email issue being stirred up by ATV Watch is not accurately being portrayed at all. This is not a surprise from him. The issue stems from a letter Andrew Walters sent to Federal Highway regarding winter ATV use of certain rail corridors.

His assertion was that since the change in NH statutes last July which separated ATV and Snowmobile laws, winter ATV use is now illegal on rail corridors bought with Federal Transportation Enhancement funds. In the past however they were considered an appropriate winter use.

We have been working with DOT and the AG's office on the response to federal highway and we have been actively been involved with discussions over the past several weeks.

Some of the primary points here are that:

- 1) we are not talking about summer use of ATV on these rail corridors;
- 2) we are not looking to change anything to allow ATV use on rail corridors and
- 3) we are not actively violating any federal provisions of the funding program
- 4) this issue has arisen as an unanticipated result of NH statutory changes which took effect in 2006

The change in NH statutes has caused a potential, unanticipated ramification, which we are asking Federal highway to rule in our favor on. We actually are hoping to ask Federal highway to allow our continued management of these corridors for winter motorized use, as we have appropriately done for almost a decade now.

Unfortunately, Mr. Walters is using scare tactics to drum up support and incite others to action using incorrect information again.

Let me know if you need other follow-up on this. Chris

Chris Gamache, Chief

NH Bureau of Trails
DRED-Division of Parks & Recreation
PO Box 1856
Concord, NH 03302-1856
603-271-3254
cgamache@dred.state.nh.us

6/20/2007

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DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
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GEORGE M. BALD
Commissioner

603-271-2411
FAX: 603-271-2629
E-MAIL: gbold@dred.state.nh.us

July 17, 2007

RECEIVED
COMMISSIONERS OFFICE

JUL 18 2007

THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

Charles P. O'Leary, Jr.
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

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George M. Bald
Commissioner

GMB:CG:lc
Enclosures

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Anne M. Edwards, Attorney General's Office
Allison McLean, Director, Division of Parks and Recreation
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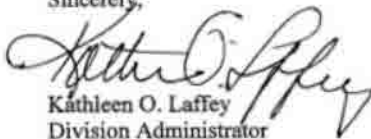
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Division Administrator

Enclosure

LL/caj

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File: 250.550 + file
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DEPARTMENT OF
TRANSPORTATION
FEB 15 2007

Planning and Community Assistance



U.S. Department
of Transportation
**Federal Highway
Administration**

New Hampshire Division

February 13, 2007

19 Chenell Drive
Suite One
Concord, NH 03301

Ms. Carol Murray, Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03301

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Ran

**MOVING THE
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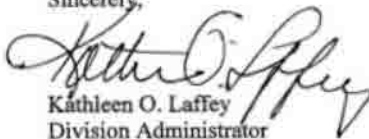
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TRANSPORTATION
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Planning and Community Assistance

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856



S. BARTLETT, JR.
Commissioner

603-271-3255
FAX: 603-271-2629

March 21, 1996

RICHARD MCLEOD
Acting Director
603 271-3255

Parks Bureau
603 271-3556

Trails Bureau
603 271-3254

Information
and Education
603 271-3556

Technical and
Community
Assistance
603 271-3627

REGIONS:

Northern
603 788-3155

Central
603 323-2087

Southwest
603 547-3373

Southeast
603 485-2651

Seacoast
603 436-1552

Chris Berg, Conservation Officer
NH Department of Fish and Game
Region 4
25 State Route 9
Keene, NH 03431

Dear Chris,

It has been brought to my attention that you are looking for information regarding the use of ATVs and motorcycles on the newly acquired rail corridors in your district. The federal funds that were used by DOT, Bureau of Railroads and Public Transportation to purchase the corridors specifies they cannot be used for motorized recreation with the exception of snowmobiles.

The Bureau of Trails has an agreement with DOT to operate the corridors as trails, but we are held to the above constraint. I have enclosed a copy of the agreement and pertinent DRED rules (Res 8500 & Res 8300) that address the use of OHRVs on DRED properties. More specifically, Res 8501.01(a) states "no person shall operate an OHRV on DRED properties except in areas or trails established by the bureau for OHRV use", and Res 8503.01(c) states "no person shall operate a trail bike or ATV off established bureau trails on DRED properties as listed in Res 8300". These corridors have not been established as OHRV trails and therefore anyone riding on them is operating illegally and should be prosecuted. Our statutory authority is found in RSA 215-A, and in RSA 216-F.

If you need more information or input, feel free to call so we can continue to protect this important state resource.

Sincerely,

E. Paul Gray
Trails Bureau Chief

EPG/BS/s



TDD ACCESS: RELAY NH 1-800-735-2964



DIVISION OF PARKS AND RECREATION 603-271-3255



THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION



CHARLES P. O'LEARY, JR. COMMISSIONER

JEFF BRILLHART, P.E. ASSISTANT COMMISSIONER

July 30, 2007

Ms. Kathy Laffey
Division Administrator
Federal Highway Administration
19 Chenell Drive, Suite One
Concord, NH 03301

OPTIONAL FORM 98 (7-90) FAX TRANSMITTAL
To: Andrew Walters
From: Leigh Leanne
Phone #: 228-3057, 111
Fax #: 283-0301
GENERAL SERVICES ADMINISTRATION

Dear Ms. Laffey:

Enclosed is a letter dated July 17 from the Commissioner of the NH Department of Resources and Economic Development (NHDRED) requesting FHWA and the US Department of Transportation's concurrence regarding the definition of "snowmobile" and the use of all terrain vehicles (ATVs) on trails purchased or enhanced with federal Transportation Enhancement funding.

As you are aware there is interest from the public on both sides of the issue of ATV use on recreational trails. Your prompt attention to this matter is very much appreciated. Please call if you have questions.

Sincerely,

Charles P. O'Leary, Jr.
Commissioner

CPO:bpr
Attachment

- cc: The Honorable John H. Lynch, Governor
George M. Bald, Commissioner, NHDRED
Mark Hodgdon, Attorney General's Office
Anne Edwards, Attorney General's Office
Jeff Brillhart, NHDOT



GEORGE M. BALD
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411
FAX: 603-271-2629
E-MAIL: gbold@dred.state.nh.us

July 17, 2007

Charles P. O'Leary, Jr.
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

RECEIVED
COMMISSIONERS OFFICE

JUL 18 2007

THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

**Subject: Snowmobile and All terrain Vehicle (ATV) use of Transportation
Enhancement (TE)-funded corridors in New Hampshire**

Dear Commissioner O'Leary:

This is in response to the February 13, 2007 letter from Federal Highway Administration (FHWA) requesting a definition of "snowmobile" under New Hampshire law and documentation supporting the winter use of all terrain vehicles (ATVs) on New Hampshire corridors purchased with Transportation Enhancement (TE) funds.

Additionally, the Department of Resources and Economic Development (DRED) requests that New Hampshire Department of Transportation (NHDOT) ask the Secretary of Transportation (Secretary) to deem DRED's long-standing policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

The following are the corridors at issue in this request. TE funds provided about eighty percent of the acquisition costs for these corridors:

Ashuelot, 21 miles long, acquired in 1995, project # 12133C
Cheshire, 42 miles long, acquired in 1995, project # 12133B
Conway, 13 miles long, acquired in 2001, project # 12632
Farmington, 7 miles long, acquired in 1997, project # 12631
Fort Hill, 9 miles long, acquired in 1994, project # 11896
Jefferson-Whitefield, 2 miles long, acquired in 2000, project # 12638
Monadnock, 9 miles long, acquired in 1999, project # 12706
Northern, 59 miles long, acquired in 1995, project # 12133A

DRED maintains the TE-funded corridors pursuant to maintenance agreements with NHDOT. As a preliminary matter, since acquiring these corridors, most more than 10

years ago, DRED has allowed ATV use with snow cover. Thus, DRED is not requesting FHWA approve a new policy. Rather, DRED is requesting that the Secretary confirm that DRED's long-standing policy is "appropriate."

The Definition of Snowmobile Under New Hampshire Law

Part of the reason for DRED's policy of allowing ATV use with snow cover lies in the history of the definition of "snowmobile" under New Hampshire law. Under section 23 U.S.C. § 217, snowmobiles are permitted on TE-funded corridors. The Federal law does not define "snowmobile." Therefore, we understand that FHWA looks to the states' definitions of that term.

Prior to July 1, 2006, RSA Chapter 215-A, the applicable New Hampshire law, did not have a definition of "snowmobile." Rather, the law used the term "snow traveling vehicles," which were defined to include ATVs as a type of off highway recreational vehicle (OHRV). For this reason, DRED's policy of allowing ATV use historically complied with Federal law.

As of July 1, 2006, the term "snow traveling vehicle" was removed from RSA 215-A. At that time, the term "snowmobile" was added to the law and it does not include ATVs. RSA 215-A:1, XIII. Accordingly, ATVs no longer fall within the general definition of snow traveling vehicles but are still included in the definition of OHRVs which recognizes they can travel on surfaces "covered by ice or snow." RSA 215-A:1, VI. For the following reasons, however, DRED requests that the Secretary deem DRED's policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

Request for Determination That ATV Use With Snow Cover Is Appropriate

TE funds constituted about eighty percent of the aggregate acquisition costs for these corridors. The remaining twenty percent was funded through State and local funds. Moreover, the yearly maintenance of these corridors is funded almost entirely with State funds. More specifically, since the State acquired the corridors, TE funds have not been used for improvements, however TE funded projects are planned for 2.5 miles of the Ashuelot in FY 2008 and 8.3 miles of the Northern in FY 2010.

Thus, the State made, and continues to make, a major investment in these corridors. As such, it is appropriate to allow the State to manage the corridors in a manner that reflects the unique character and needs of the State while protecting the transportation interests in these corridors.

Since the State acquired the corridors, they have been successfully managed for multiple uses, while also preserving their function as transportation corridors. These corridors provide connectivity between communities. Under New Hampshire law, these rail corridors must also be operated and maintained in such a way that would not

unreasonably limit the ability to restore rail service. RSA 228:60-a. DRED has managed the corridors appropriately in accordance with this mandate.

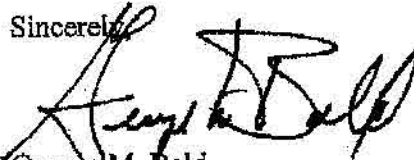
Additionally, winter ATV use does not cause environmental impacts beyond those caused by snowmobiles. There is no damage to the surface of the corridor as there is an intermediate surface of snow cover existing between the ATVs and the surface. Allowing continued use of ATVs with snow cover would not cause increased impact to other users of the corridors as ATVs have been using these corridors for 10 years.

Instituting a new policy prohibiting ATV use would certainly be disruptive to the current users of the corridors. It will also cause increased expenses for notifications, signage, and management responsibilities. Preventing ATVs in the winter will also pose an increased burden on law enforcement agencies as they would be required to enforce such a restriction.

For the foregoing reasons, DRED requests that the Secretary deem it appropriate for DRED to continue managing these corridors as it has since their acquisition to allow ATV use with snow cover.

We thank you for your consideration of our request. Please feel free to contact Bill Gegas (603-271-3254) at DRED or me if you have any questions or need additional information.

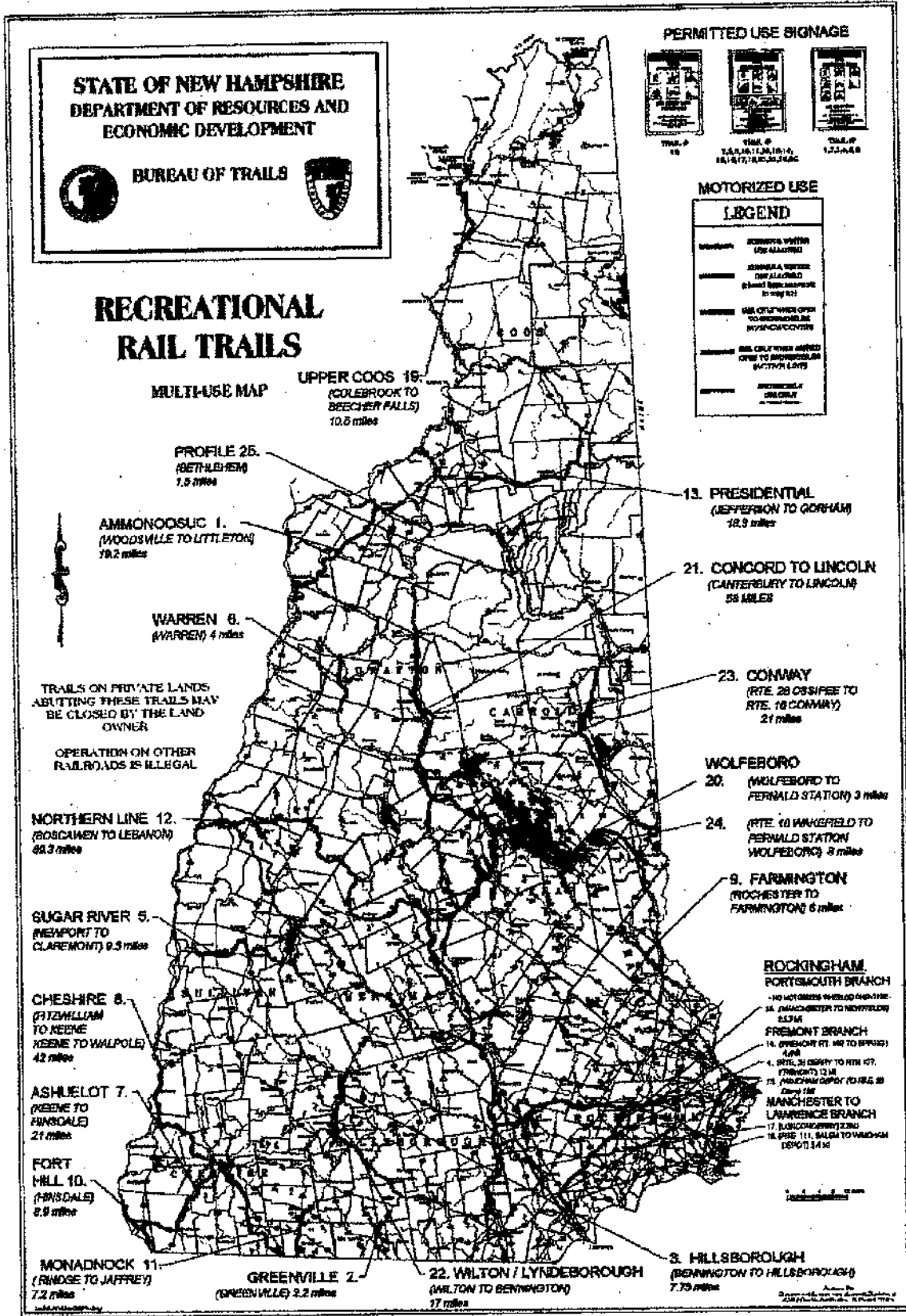
Sincerely,



George M. Bald
Commissioner

GMB:CG:lc
Enclosures

cc: His Excellency, John H. Lynch, Governor
Mark Hodgdon, Attorney General's Office
Anne M. Edwards, Attorney General's Office
Allison McLean, Director, Division of Parks and Recreation
Chris Gamache, NHDRED, Trails Bureau
Jim Moore, NHDOT
Christopher Morgan, NHDOT,
Ram Maddali, NHDOT



OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages

To <u>Andrew Walters</u>	From <u>Leigh Levine</u>
Dept./Agency	Phone # <u>228-3057, 111</u>
Fax # <u>283-0301</u>	Fax # <u>(last page)</u>

NSN 7540-01-817-7368

5088-101

GENERAL SERVICES ADMINISTRATION

TRAIL PERMITTED USES



**WINTER USE
ONLY WITH
SNOW COVER**

ALL OTHER USES

PROHIBITED

RSA 215-A:3V & RSA 216-F:2 III

STATE OF NEW HAMPSHIRE

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

DIVISION OF PARKS AND RECREATION

BUREAU OF TRAILS

March 4, 2022

To CORD,

with this letter are eleven (11) documents relevant to the Nash Stream easement issues raised by AMC on 9/21/2020 which you avoided as shown in the minutes of your meeting of [November 12, 2020](#):

“... CORD is now tasked with determining whether: additional information is necessary; or if use of ATV/UTV on Kelsey Notch Trail is consistent with **RSA 162-C:6**; or if use of ATV/UTV on Kelsey Notch Trail is not consistent with **RSA 162-C:6** and the trail should cease to be open for AV/UTV use. Chairman Chicoine also noted that CORD met with its attorneys since the last public meeting to address certain legal questions.

Chairman Chicoine referenced the specific language contained in RSA 162-C:6, II and III and said that **CORD has received three legal memos to date, including one received the day before (which was a state holiday), disagreeing on what the Kelsey Notch easement allows as pertains to Section II of RSA 162-C:6.** Chairman Chicoine **suggested members focus discussion on Section III** of the statute based on the additional data contained in the three-year assessment.”

- The AMC legal [memo](#) does not mention [RSA 162-C:6](#).
- The AMC legal memo addresses the USFS [Wagner](#) and [Erl](#) 2001 interpretations of the Nash Stream S.F. easement terms and the definition of snowmobile, issues which CORD failed to address or even mention.
- The easement covers the whole of Nash Stream S.F., not just Kelsey Notch.

CORD again failed to address the easement terms at its meeting of [January 14, 2021](#), again focusing attention instead on RSA 162-C:6:

“ CORD is now tasked with determining whether: additional information is necessary; or if use of ATV/UTV on Kelsey Notch Trail is consistent with RSA 162-C:6; or if use of ATV/UTV on Kelsey Notch Trail is not consistent with **RSA 162-C:6** and the trail should cease to be open for ATV/UTV use.

Chair Chicoine suggested CORD focus its discussion on specific language contained in **RSA 162-C:6, III**, “The council shall manage the lands acquired under the former **RSA 221-A** so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.”

In [1996](#) DNCR/BOT acknowledged that OHRVs were not snowmobiles.

In [2007](#) DNCR concurred with [FHWA's](#) statement that OHRVs were not snowmobiles thus not allowed on TE- funded rail trails.

CORD needs to acknowledge that ATVs are not a permitted use in Nash Stream and order DNCR to close the Kelsey Notch and West Side Trails in Nash Stream State Forest to ATV use.

Kris Pastoriza
Easton, N.H.

(b)(6)





From: Kris pastoriza
Sent: Sat, 5 Feb 2022 05:24:18 -0500
To: Iburguen, Derek -FS; Brown, Brooke - FS
Subject: [EXTERNAL: Suspicious Link]Re: Nash Stream 2
Attachments: Aerial pic of West Side Road erosion site looking south.JPG, West Side Road erosion site pic looking north.JPG, Kelsey Notch Monitoring Report 2021.pdf

CAUTION: This message triggered warnings of **potentially** malicious web content. Consider whether you are expecting the message, along with inspection for suspicious links, prior to clicking. Any concerns with known senders, use a good contact method to verify.

Send Questions or Suspicious messages to: Spam.Abuse@usda.gov

" Yes, natural resources were affected by ATV traffic. At all seven locations, some portion of the previously unused trail transitioned from a low to medium disturbance class in 20 to 40 passes. Medium-disturbance occurred when two of the following three conditions were present: sixty percent loss of original ground cover, trail-width expansion to 72 inches, or wheel ruts up to 6 inches deep. At each location some portion of the trail transitioned from medium to high disturbance in 40 to 120 passes. High disturbance occurred when two of the following three conditions were present: more than 60-percent loss of original ground cover, trail width exceeding 72 inches, or wheel ruts deeper than 6

inches." <https://www.fs.fed.us/eng/pubs/pdf/ATV/TOContents.pdf>

Trail Counters*

The trail was open from May 28, 2021 to October 11, 2021. There were 3 trail counters deployed from May 27, 2021 to October 15, 2021. Two of the counters had some malfunction during the season. The one on Corridor C (Figure 1) reported only 375 counts and clearly was not operating correctly. This was due to the counter being moved on August 13th after it was realized it had been tipped over and not working, and not reset properly. The other was on Corridor-C South, near the bridge over the East Branch of Simms Stream, but recorded counts (4,845) only from May 27 to September 11, 2021 at which time the battery failed. The counter on Corridor B worked properly the entire time and reported 12,293 counts. It is expected that this counter would have the most trips due to its location because it is where two trails intersect. As a reference, the trail counters were not deployed in 2020, and only one was deployed in 2019 on Corridor C-South (same location as 2021).

Kelsey Notch Trail – Corridor B: 12,293 trail counts
Date range: 5/28/21 to 10/15/21

Kelsey Notch Trail – Corridor C North: 375 trail counts
Date range: 5/28/21 to 5/29/21 (unit fell off mount and stop recording)

Kelsey Notch Trail – Corridor C South: 4,845 trail counts
Date range: 5/28/21 to 9/11/21 (battery died at end date)

Above from Kelsey Notch Monitoring Report 2021.

Kelsey Notch October 18, 2016, after yearly repairs



https://nhconservation.org/doku.php?id=photos_of_kelsey_notch_trails



https://nhconservation.org/doku.php?id=department_of_forest_and_lands_photos
West Side and Bordeau ATV Trails, Nash Stream S.F.

If you are not permitted to open links I can send the photos via google drive and if that isn't acceptable, I can figure out how to reduce the size of the files or make a zip file.
Kris

On Fri, Feb 4, 2022 at 1:44 PM Kris pastoriza <krispastoriza@gmail.com> wrote:
Document 040813: "...today the Forest is a well managed special public holding...evaluated on a daily basis by DRED and its partners-- F&G, USFS and others."





Kelsey Notch Trail Environmental Compliance Report 2021

Date Reviewed: October 15, 2021

In attendance: Jake DeBow (NHFG-Regional Wildlife Biologist), John Magee (NHFG-Fisheries Habitat Biologist), Clint Savage (NH Trails Bureau-Regional Supervisor), and Maggie Machinist (NH Forests and Lands-Regional Forester)

Overview- The Department of Natural and Cultural Resources is required to submit an environmental compliance report to CORP annually. This report is a requirement of the conditional approval, dated March 29, 2021, for the Kelsey Notch Trail.

Recommendations from the 2020 Report

- Treat the invasive species (*Phragmites australis*) with herbicide to minimize the spread. Flag those areas so that future road work and trail maintenance does not disturb those areas and spread the *Phragmites australis*.
- Continue to monitor the amount of washing on the edge of the bridge.
- Continue to monitor and clean out the rubber water diversion devices.

Worked completed in 2021

Trail Counters*

The trail was open from May 28, 2021 to October 11, 2021. There were 3 trail counters deployed from May 27, 2021 to October 15, 2021. Two of the counters had some malfunction during the season. The one on Corridor C (Figure 1) reported only 375 counts and clearly was not operating correctly. This was due to the counter being moved on August 13th after it was realized it had been tipped over and not working, and not reset properly. The other was on Corridor-C South, near the bridge over the East Branch of Simms Stream, but recorded counts (4,845) only from May 27 to September 11, 2021 at which time the battery failed. The counter on Corridor B worked properly the entire time and reported 12,293 counts. It is expected that this counter would have the most trips due to its location because it is where two trails intersect. As a reference, the trail counters were not deployed in 2020, and only one was deployed in 2019 on Corridor C-South (same location as 2021).

Kelsey Notch Trail – Corridor B: 12,293 trail counts
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Date range: 5/28/21 to 5/29/21 (unit fell off mount and stop recording)

Kelsey Notch Trail – Corridor C South: 4,845 trail counts
Date range: 5/28/21 to 9/11/21 (battery died at end date)

*There was a previous report submitted that had different counter information. It was realized after submission that the reported values were the hours the counters had been functioning for the season, not the accurate trail count data. The amended report has the corrected values.

The trail was graded in July as part of annual maintenance. In the 2020 report, there was a note about sediment washing next to a corner of the bridge, this was repaired in 2021.

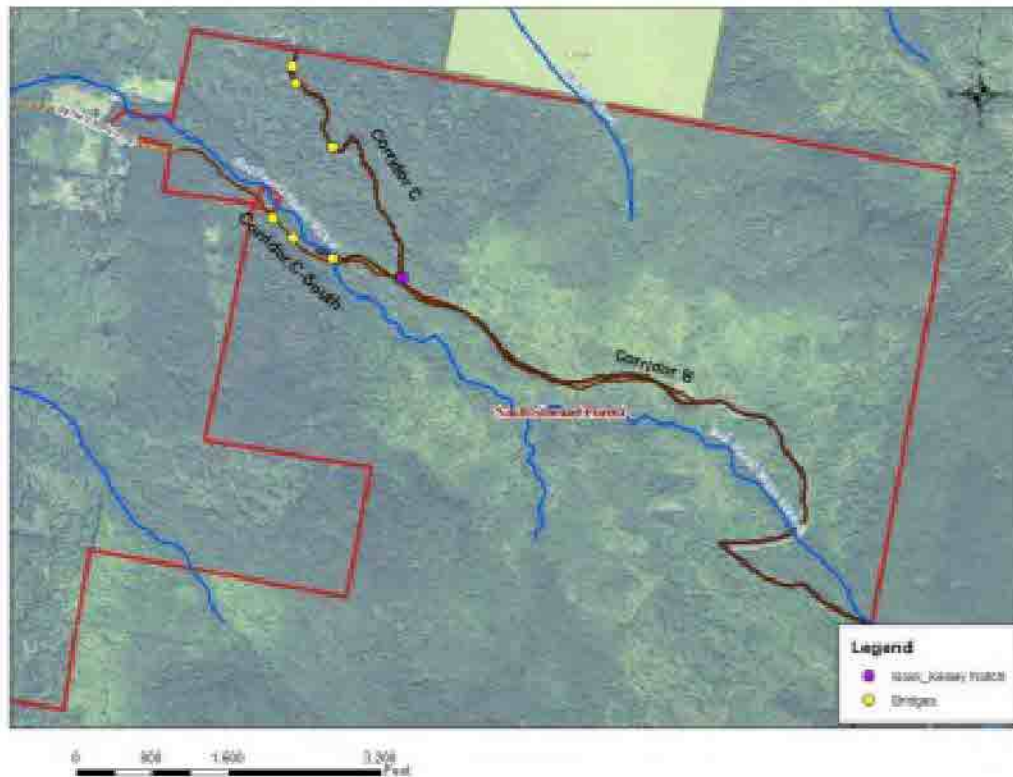


Figure 1- Map of the area showing the location of bridges, kiosk and trails labeled.

Findings

The trail was visited several times throughout the season both by Forests and Lands staff and by Trails Bureau staff. Forestry staff flagged the *Phragmites australis* on June 24, 2021 before the July trail maintenance grading and checked the condition of the trail on several dates during the OHRV season.

On October 15, 2021 the Kelsey Notch trail was reviewed by Jake DeBow (NHFG-Regional Wildlife Biologist), John Magee (NHFG- Fisheries Habitat Biologist), Clint Savage (NH Trails Bureau-Regional Supervisor), and Maggie Machinist (NH Forests and Lands-Regional Forester) as the official monitoring trip.

We started by looking at the bridges coming onto the property, as well as the large bridge over the East Branch of Simms Stream (Corridor C-South). All three appeared to be in good condition, and the first two especially since being replaced last year. There was no apparent sediment getting into the brooks that flowed underneath the bridges.

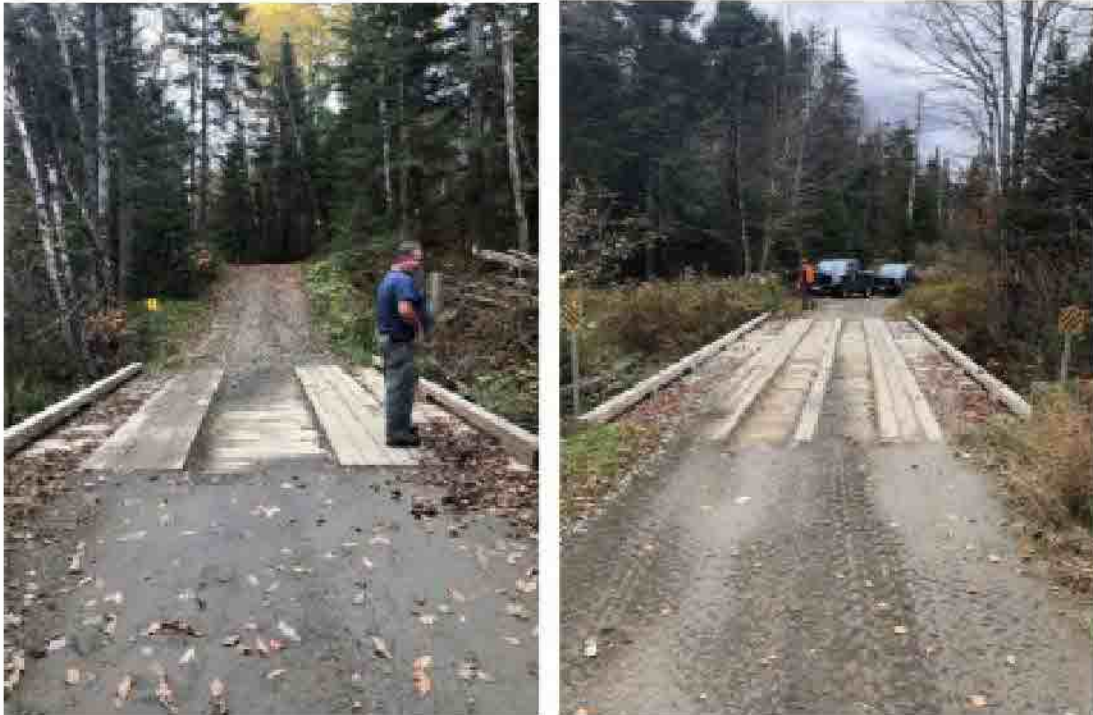


Figure 2- Shows the condition of the bridges

Next, we moved up to the kiosk looking at the hill on the way up. Heading toward Diamond Peaks (Corridor C), we walked out toward the boundary line. This trail was very hard packed. There was minor sedimentation on the trail, meaning there was evidence of sediment that had been washed away from trail but the trail was in good condition. We did not observe evidence of sediment from the trail entering the brooks. All of the bridges had fascia boards added when they were re-decked last year, except one which was noted in the 2020 report. During 2021, the last of the fascia boards were added, and appear to be precluding any sediment from getting into the brooks.

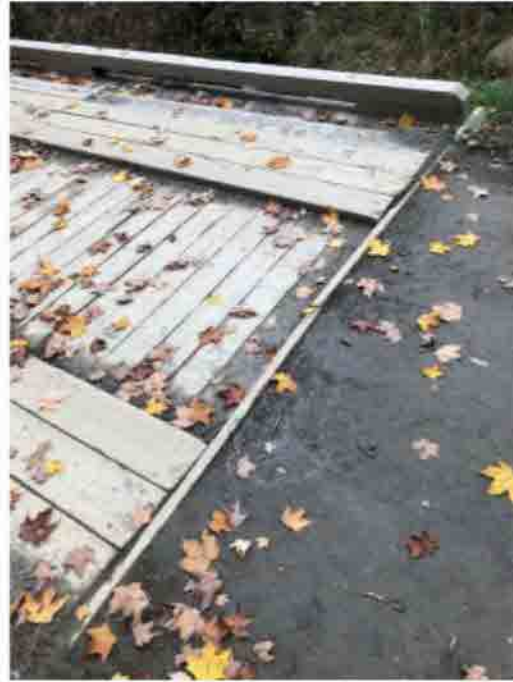


Figure 3- Shows condition of trail and the newly added fascia boards.

Within Nash Stream Forest, near the boundary line on the trail heading toward diamond peaks (Corridor C) there was a mud hole on the trail and there was some ATV's driving in the ditch, but there was no mud getting into the stream (Figure 4).



Figure 4- Mud on trail and ATV tracks in ditch and minor sedimentation on trail from water.



Figure 5- Shows condition of trail

Section 2- Next, we headed up toward Kelsey Notch and the boundary line (Corridor B). This main section had been graded throughout the summer. The trail was in good condition. There

was one location where some sediment was running down the trail and getting into the brook next to the rock/culvert (Figure 6). There was discussion about re-grading the road on that section to grade it away from the stream and culvert.



Figure 6- Depicting the area where the water is eroding around the culvert.



Figure 7 -Shows some off trail riding

Each year, the sharp corner leading up to Kelsey Notch gets a significant berm. This happens from the dirt and rocks getting kicked out as the OHRVs turn and head up the hill, exacerbated with speed.



Figure 8- Shows berm on corner of trail

In 2020, we found a few patches of *Phragmites australis*. These were located and flagged throughout the year to identify their locations and so they could be avoided by the Metallik ATV club performing maintenance.. These areas were treated on September 3, 2021 with glyphosate by Fish and Game staff who are licensed pesticide applicators.



Figure 9- Shows invasive species, phragmites

Recommendations-

- Fix the mud hole near the property line toward Diamond Peaks (Figure 4).
- Place a culvert before the bridge at the end to address the sitting water near the mud hole (Figure 4).
- Fix culvert header where it is washing, and slope the road away from the outlet of the culvert (Figure 6).
- Continue to monitor and clean out the rubber water diversion devices that are in various locations on the trails.
- Continue to monitor and treat the invasive species. It will take many seasons to eradicate the phragmites australis, and should be treated each year during the growing season.

Conclusion- The trail is in good shape though there is some minor erosion and sedimentation. There was some sediment leaving the trail, but most of it was being contained, either naturally in vegetation or in constructed sediment basins, and not entering into the brooks. There were some minor issues that should be addressed in the upcoming year. Fish and Game continues to have concern regarding wildlife impact of ATV noise during high volume trail use days. Three of the four patches of the invasive species were treated in 2021 and all four will be treated in 2022. The trail is currently closed for the season until the spring of 2022, when conditions allow, after May 25.

Margaret Machinist, Regional Forester

Clint Savage Jr.

Clint Savage, Trails Bureau District Supervisor

Jake DeBow, Regional Wildlife Biologist

John A. Magee

John Magee, Fisheries Habitat Biologist

From: Ibarguen, Derek -FS
Sent: Tue, 15 Feb 2022 16:05:17 +0000
To: Hankens, Sarah -FS; Olson, Shawn -FS
Cc: Mcaloon, Lynn - FS; Sjostrom, Joshua - FS
Subject: ACTION BY 2/25 - Nash Stream
Attachments: 11-11-20 AMC Memo.pdf, 9-20-20_AMC_ATV Trails Memorandum.pdf, DRED 1994 Nash Stream Overview.pdf, Letter to FS re Nash Stream February 2022.pdf, AMC,TNC SPNHF NSF letter 2020.pdf, DNCR Response to K. Pastoriza 1.7.2022.pdf, 1-14-22 response to DNCR.pdf, Request for meeting re. Nash Stream altered.pdf
Importance: High

Sarah – Please see the email below and the attached letter to the FS and request OGC support in coordination with Director Shawn Olson. I would like to respond with a letter to Kris Pastoriza by 2/25.

Shawn – Including you here so I can point out the email below also went to Greg Smith at the WO.

Lynn – This went to Chuck Henderson of Senator Shaheen’s office as well. Please let him know we are working through a response regarding the easement.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor
Forest Service
White Mountain National Forest

p: 603-536-6202
c(b)(6)
derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223
www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Tuesday, February 15, 2022 9:04 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Smith, Greg- FS <Gregory.Smith4@usda.gov>; eestill@fs.fed.us; Taylor, Suzanne -FS <suzanne.taylor@usda.gov>
Cc: Matt Leahy <mleahy@forestsociety.org>; sarnold@outdoors.org; Megan Latour <mлатour@tnc.org>; Sarah <Sarah.L.Stewart@dnrc.nh.gov>; Chuck_Henderson@shaheen.senate.gov
Subject: Re: [External Email]Nash Stream

I request that the appropriate counsel at USFS render a legal opinion in response to the questions raised by me and others, concerning the easement terms for Nash Stream State Forest. N.H. (see first, AMC Memo. and letter to FS re Nash Stream.)

Thank you,

Kris Pastoriza
Easton, N.H.

On Tue, Feb 8, 2022 at 9:04 AM Ibarguen, Derek -FS <derek.ibarguen@usda.gov> wrote:
Dear Ms. Pastoriza,

In response to your inquiry below, in which you asked, "Since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. (Revised Southern Connector Request) have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service? And could the same be said of the Kelsey Notch Trails and West Side Trails?"

The United States' role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal's consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the 'Forest Service' should or should not have been checked off on the State's trail proposal form.

Thank You – Derek Ibarguen



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b) (6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Monday, January 31, 2022 5:06 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
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Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

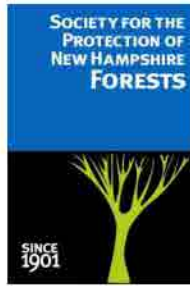
Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

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November 11, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council of Resources and Development
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

RE: CORD Assessment of ATV/UTV use of Kelsey Notch Trail

Dear Mr. Chicoine and CORD members:

We appreciate the time, attention and diligence you have shown in examining the Kelsey Notch Pilot Trail in the Nash Stream Forest. Our organizations have provided comments to you in the past, both independently as well as together.

We submitted comments on August 20, 2020 regarding the failure of the Kelsey Notch Trail to comply with many of the statutory requirements of RSA 215-A. Further, on September 21, 2020, a memo was provided to CORD by the Appalachian Mountain Club outlining the different legal and regulatory standards applied to snowmobiles and ATVs/UTVs in New Hampshire.

The purpose of this letter is not to reargue points made in our preceding communications. Rather, we would like to take the opportunity to respond to the October 26, 2020 letter from the NH Off Highway Vehicle Association ("the Association") and their conclusion that "CORD's statutory duties require" that the Kelsey Notch Pilot Trail remains open. We also question the Association's statement that "the clear intent of the parties to the Easement is to allow the use of ATVs/UTVs in the Nash Stream Forest."

The clear intent of the Easement is perpetual public use consistent with the traditional uses of the land.

The Association argues that the intent of the parties to the Easement was to allow ATV use in the Nash Stream Forest. This version of events is not supported by the historical record nor the clear and plain language of the Easement.

An important component of conservation easements are the recitals – the rest of the easement flows from them. The recitals or "whereas" clauses set forth background information that helps to frame the legal and factual basis for an easement. In the case of the Nash Stream Forest Conservation Easement, the relevant section states that:

WHEREAS, the parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract

with primary management emphasis being the sustained yield of forest products consistent with traditional uses of the land, including public access, and the conservation of other resource values.

A clear decision was made to continue the management policy of the previous landowner and continue to exclude ATV use, as it was not considered low impact, dispersed, or traditional nor consistent with the Vision for the Forest. The original 1995 Nash Stream Management Plan, which took the many stakeholders involved in the protection of the Nash Stream Forest more than 6 years to complete continued to allow traditional recreational uses of the land and did not allow ATV/UTV access.

If the intent of the parties to the Easement was to include ATV's as a traditional use of the land, either the Easement - which notably does list the traditional recreational uses of the property - or the original management plan would have included their use. ATV use on the property was considered at the time of purchase, as well as during the creation of the first management plan, and was not included as an appropriate use.

If ATV use was "expressly permitted by the terms of the Easement", then it would follow that the founding documents and management plan would have allowed their use. The absence of reference to ATV restrictions does not mean they were intended to be allowed.

CORD's statutory duties

We take issue with the Association's conclusion that CORD's statutory duties require that it keep the Kelsey Notch Trail open. In the case of the Nash Stream Forest, CORD's statutory obligations are quite clearly articulated.

Role of Council of Resources and Development

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).¹ Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.

III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands, purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when

¹ <https://www.nh.gov/oep/planning/programs/cord/>

management of these lands is shown to be detrimental to those natural resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Natural and Cultural Resources (DNCR) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DNCR is not properly managing LCIP lands under its control, CORD needs to take corrective action in the interests of the state and the public interest for which the state is holding these lands.

Authority to close trails

CORD clearly has the statutory responsibility to ensure that Nash Stream management is consistent with established state statute, and the original purposes for which the LCIP acquired the land. The citizens of the state of New Hampshire invested more than \$7 million to protect and steward these lands. As the entity with fiduciary responsibility for this investment, CORD must ensure that all trails on Nash Stream are compliant with the law, and if they are not, they should not be open for use.

The State is responsible for managing the Nash State State Forest in accordance with the terms of the Conservation Easement, which is built on a commitment to a primary management emphasis “consistent with the traditional uses of the land”. Public access was intended to be low impact and dispersed, and the State has the right to reasonably restrict and regulate access to ensure prudent resource utilization and protection of all the conservation values of the property.

RSA 215-A:42,II provides that DRED may close trails if:

(a) ATV or trail bike use on the property is not in conformance with this chapter;

CORD has the statutory obligation to maintain public access to LCIP lands, “where appropriate.” Because the Kelsey Notch Trail is not in conformance with the law, as outlined in our August 20, 2020 letter and previous communications, we ask that the Council take immediate action to suspend all ATV use on the Kelsey Notch Trail.

Thank you for your thoughtful consideration of this important issue, and for your continued oversight of the Nash Stream Forest.

Sincerely,

Susan Arnold

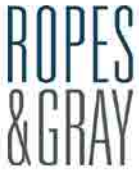
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ROPES & GRAY LLP
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MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. Based on my research of relevant New Hampshire law and regulations applicable to snowmobiles, all-terrain vehicles (“ATVs”) and other off-highway recreational vehicles (“OHRVs”), I conclude that the legal opinions set forth in the Opinion regarding the permitted use of use of ATVs on the tract of forest land known as the “Nash Stream Tract” and subject to the Easement Deed are inconsistent with applicable New Hampshire law.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of the same type as the items specifically listed [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ *Conservation Law Found. v. New Hampshire Wetlands Council*, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also *Roberts v. Gen. Motors Corp.*, 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Council

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: *William G. Abbott*
WILLIAM G. ABBOTT

ITS EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

D.R.E.D.

AUG 16 1989

RECEIVED

Schedule 2

Opinion

[Attached.]

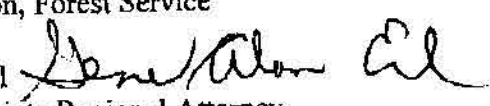


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

Nash Stream

November, 1994

AN OVERVIEW OF THE NASH STREAM FOREST

ACQUISITION

The Nash Stream Forest is a unique parcel of land in Northern New Hampshire. Its acquisition in 1988, through a collaborative effort between the state of New Hampshire, the U.S. Forest Service, The Nature Conservancy, The Trust for New Hampshire Lands, and The Society for the Protection of New Hampshire Forests is equally unique, and serves as a milestone in state, private and federal cooperation.

The diversity of the groups represented in this effort is almost as diverse as the wildlife that exists within the Nash Stream Forest and the topography of the land itself. Yet over an eighteen-month period, representatives from each of these groups worked together, to negotiate an

arrangement which all felt was in the best interest of the land and the people who use it.

MULTIPLE USE STRESSED

All of the groups involved in the purchase and future management of the Nash Stream Forest recognized the importance of protecting the Forest from development, as well as the importance of continuing to use the land in a "multiple-use" manner—for education and research; as a key watershed area; for fish and wildlife; recreation; scenic qualities; and as a sustainable timber resource. These mutual concerns led to the successful purchase of the property, and to a gubernatorially-appointed Advisory Committee to focus public input and provide technical expertise.

THE MANAGEMENT PLAN

Since December, 1989, this Committee has been hard at work, holding public listening sessions to gather input, working with a Technical Committee to review research on the past and present use of the Nash Stream Forest, and developing a working Management Plan. This final Plan will serve as a model of environmentally sound public land stewardship so that future generations may enjoy this unique property.

GATHERING PUBLIC INPUT

As has been done throughout the development of the draft Management Plan, we continue to seek public input from any group or individual interested in the Nash Stream Forest. Your input will help us formulate the final Management Plan, which will ultimately determine the future use of the Nash Stream Forest. For more information about the impact of public input on the Management Plan, see the article on page 6.



Whitcomb Pond, Little Bog (Fourteen and a Half) Pond and Lower Trio Pond in the Nash Stream Forest.

Nash
Stream NEWS

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New Hampshire's
Department of Resources and
Economic Development,
Division of Forests and
Lands.

QUESTIONS & ANSWERS About The Nash Stream Forest

WHAT IS THE DIFFERENCE BETWEEN THE NORTHERN FOREST AND THE NASH STREAM FOREST?

The Nash Stream Forest is a 39,601 acre tract owned by the state of New Hampshire, managed by the Department of Resources and Economic Development, with a Conservation Easement held by the United States of America. The tract lies within a four-state region known as the Northern Forest that stretches from the coast of Maine, across northern New Hampshire and Vermont into New York, totaling 26 million acres. The Northern Forest is one of the largest expanses of continuously forested land in the nation with about 85% in private ownership. Forest-based economies, recreation, and environmental diversity are traditional to the area as are clean air and water.

The breakup of Diamond International Co. lands in 1988 led to both state acquisition of the Nash Stream Forest and national concern about the future of the Northern Forest lands. Congress authorized the U.S. Forest Service to study Northern Forest issues in cooperation with a four-state Governors' Task Force. Congress later created the Northern Forest Lands Council in 1990 to continue the work begun by the Task Force. The Council's report was released in the fall of 1994.

WILL THERE BE A FEE TO USE THE NASH STREAM FOREST?

Although allowed by the Conservation Easement, there are no plans to charge a fee for public entry or general use of the Nash Stream Forest.

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

WILL THERE BE A VISITORS' CENTER OR GATE KEEPER AT THE ENTRANCE?

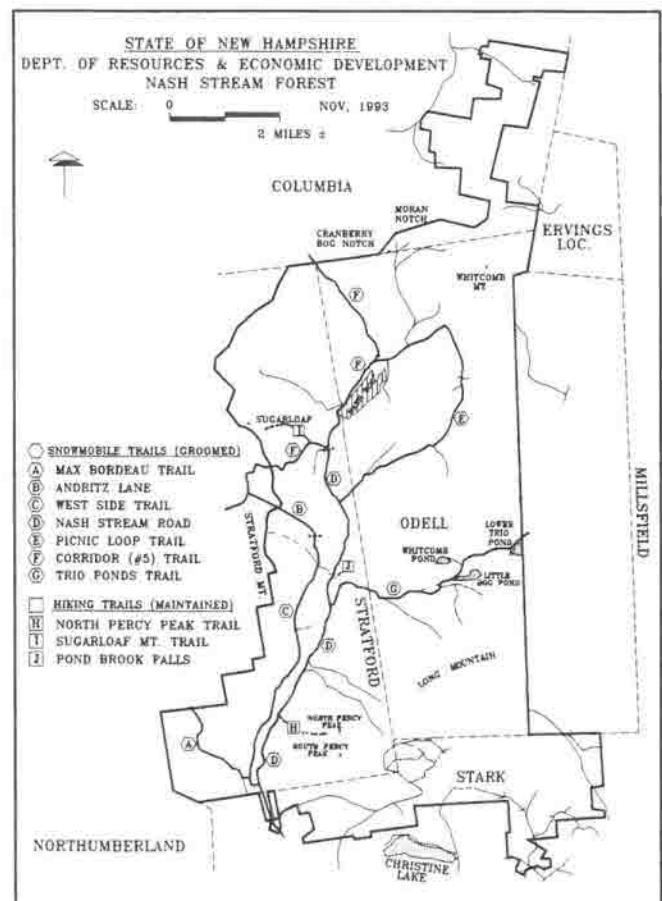
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

WILL THERE BE HANDICAPPED ACCESS?

Reasonable accommodations will be made to provide access to individuals with disabilities. Contact the Regional Forester, North Country Resource Center in Lancaster at (603) 788-4157.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.



WHAT IS THE ROLE OF THE FEDERAL GOVERNMENT?

The Forest Supervisor, White Mountain National Forest (WMNF) is responsible for administering the Conservation Easement on behalf of the United States. The role of the Forest Service is to ensure that the terms and conditions of the Easement are satisfied and does not include active involvement with management. The WMNF staff serve as advisors to the state and provide assistance when needed, primarily with management support and technical advice.

ARE THERE ANY THREATENED OR ENDANGERED SPECIES ON THE PROPERTY?

There are 5 rare plant species identified on the property in as many locations. They are: Black Crowberry, Marsh Horsetail, Three-forked Rush, Broad-lipped Twayblade, and Millet-grass. Four of the five are listed as threatened by the NH Native Plant Protection Act. The other, Three-forked Rush, is relatively rare but is not state-listed. All of these plants occur within designated natural preserve areas.

No federally listed animal species are known to breed on the property. Peregrine Falcons and Bald Eagles nest within 20 miles of the property and may frequent the Forest from time to time. Several state listed animal species occur or potentially occur on the property. Common Loons nest regularly and Northern Harriers have nested in some years. Lynx and Marten may occur as transients if not residents.

WILL HUNTING AND TRAPPING BE ALLOWED?

Yes. Hunting and trapping will be permitted in accordance with state law.

WILL THERE BE ANY NEW (HIKING) TRAILS?

Only modest increases in the trail system are under consideration, such as adding a hiking loop via a short connector between the Percy Peak Trail and an old logging road (north of the Peak) that follows Long Mountain Brook down to Nash Stream. A Nash Stream Trails Advisory Group is recommended in the Management Plan to assess the current trail system, its condition and use, and recommend trail improvements. It is recommended that the Trails Advisory Group consist of representatives of hiking, dog sledding, cross country skiing, bicycling, hiking and snowmobiling to ensure adequate representation of these user groups.

WILL CAMPING BE ALLOWED?

Camping is not currently available. By department policy, camping is not allowed on any state

forest or park where overnight camping facilities are not available. The Management Plan does not recommend development of a campground or camping facilities. However, the Plan leaves open the possibility of future backcountry camping along selected hiking trails, subject to the availability of staff and funds for proper monitoring and maintenance.

ARE THERE PLANS TO STOCK FISH?

Yes. Stocking will occur where natural spawning is poor or non-existent. Lower Trio Pond, Little Bog Pond, and possibly Whitcomb Pond will be stocked annually with brook trout. Until the status of the wild trout population in Nash Stream can be determined, stocking of hatchery brook trout in the mainstem will continue. Nash Stream is unlikely to support a recreation fishery in the near future without an annual stocking program due to a current lack of pool habitat in the stream.

WILL THERE BE A CATCH-AND-RELEASE FISHERIES PROGRAM?

Fisheries management will emphasize natural populations of fish species consistent with habitat capabilities of the ponds and streams. Special fishing regulations such as catch-and-release, minimum fish lengths, and fishing gear restrictions may be implemented to protect spawning stock in order to maintain wild populations of brook trout.

HOW MUCH OF THE FOREST WILL BE NATURAL PRESERVE OR OTHERWISE PROTECTED?

About 46% (18,339 acres) of the Forest is considered ecologically significant, fragile or sensitive and will be preserved or under restricted management. Much of this area coincides with boundaries of areas on which the Conservation Easement prohibits logging (10,665 acres). Protection will be accomplished by several means as follows:

Natural preserves (8,113 acres) are areas of uncommon ecological significance that encompass 9 different natural communities and 1 pond located primarily on the side slopes and mountain tops of Sugarloaf, Whitcomb and Long Mountains and Percy Peaks. There will be no intentional disturbances to these areas.

Preserve buffers (5,115 acres) are lands surrounding natural preserves with soils and topography capable of serving as shock absorbers to protect natural preserves. Management activities will be limited in preserve buffers.

A corridor (515 acres) of pure softwood forest forms a natural drainageway connecting the natural preserves and buffer areas on Whitcomb and Long Mountains. This corridor is located just west of Little Bog Pond.

A 150 foot zone around each pond is protected from logging by the Conservation Easement. These zones total 55 acres.

Other high elevation sites above 2,700 feet elevation where logging is prohibited by the Conservation Easement and not otherwise protected total 49 acres. Other steep slopes of 35% or more where logging is prohibited by the Conservation Easement and not otherwise protected total 925 acres. Other wet, rocky or otherwise fragile soils not otherwise protected total 3,050 acres. And, other fragile mountain tops below 2,700 feet elevation total 516 acres.

<i>Natural Preserves and Other Protected Areas</i>	
DESIGNATION	ACRES
Natural Preserves	8,113
Natural Preserve Buffers	5,116
Corridor	515
150 ft. Pond Buffers	55
Other High Elevation >2,700 ft.	49
Other Mountain Tops <2,700 ft.	516
Other Steep Slopes >35%	925
Other Group II Soils	3,050
TOTAL	18,339

WHAT ARE CONTROL AREAS AND WHY ARE THEY NECESSARY?

One control area will be established in each natural community type under timber management for the purpose of comparing unmanaged (control) areas to ecologically similar areas subjected to logging. This provides a means of assessing the impact of timber management on ecological resources called for in the "Vision".

Although established under different criteria, control areas will also complement natural preserves because they will help preserve, for study, natural communities not represented in natural preserves. In this manner, control areas will help satisfy the "Management Vision" that calls for *"The system of core natural areas will include representatives of the full range of ecological communities..."*.

WHY ARE MOST OF THE NATURAL PRESERVES HIGH ELEVATION ECOSYSTEMS?

High elevation sites, more than any other locations, qualify for natural preserve designation by existing department standards. High elevation sites (above 2,700 feet elevation) remain the least impacted by human activity and contain rare elements or

exemplary natural communities that have retained most, if not all, of their natural character, and/or contain features of scientific and/or educational interest. A total of 8,113 acres of the Forest qualify as natural preserve, of which 8,099 acres are at high elevations on which the Conservation Easement prohibits logging.

HOW DOES THE EASEMENT AFFECT TIMBER MANAGEMENT?

The Conservation Easement protects and conserves resources with a primary emphasis on the sustained yield of forest products. Logging is prohibited on 27% (or 10,665 acres) of the forest which consists of steep slopes (2,462 acres), high elevation (8,148 acres), and buffers (55 acres) around Lower Trio Pond, Whitcomb Pond and Little Bog (Fourteen and a Half) Pond.

The Easement also requires that timber be managed on a sustained yield basis; clearcuts be no larger than 30 acres; clearcuts total less than 15% of the total easement area in any ten year period; logging on areas near streams, ponds and public highways are subject to the provisions of state law; logging shall be conducted in conformance with current federal and state laws and regulations, including use of "best management practices" for erosion control and other activities.

HOW MUCH OF THE FOREST WILL BE MANAGED FOR TIMBER?

More than half (52%) of the Nash Stream Forest will be managed under a multiple-use, sustained yield timber management program. Occasional and restricted timber cutting will be allowed on another 22% of the forest (e.g. buffers, corridors, Group II soils) but only to enhance non-timber values such as wildlife habitat or recreation resources. The remainder of the property is considered ecologically sensitive or protected from logging by the Conservation Easement.

HOW SOON WILL THE FIRST STATE TIMBER HARVEST TAKE PLACE?

It is hoped that the first commercial timber sale will be made within two years of formal adoption of the Management Plan. However, the immediate potential for significant sawlog harvests is low. A 1988 timber cruise identified only 11% (3,140 acres) of forest as sawtimber size (≥ 9.6 inches in diameter) with limited commercial value because it is widely scattered. However, there are significant widespread opportunities for commercial thinning operations over many areas, and since the Forest is restocking through growth, there is a bright future for long-term yield of timber products.

Q & A's (continued)

WILL THERE BE CLEARCUTTING?

Yes. Clearcutting is allowed by the Conservation Easement and the "Management Vision", but with restrictions. The practice will be used only when other cutting methods will not achieve timber and wildlife management goals and forest conditions defined in the "Vision."

WILL THE NASH BOG DAM BE REBUILT?

There were mixed views at the 1990 public listening sessions on whether or not to rebuild the dam. After the dam breached in 1969, a new dam was proposed at a cost of just under \$3.5 million in 1974 dollars. Lack of state and federal funding at the time caused the proposal to be shelved. The conservation easement would allow the dam to be rebuilt, at or in the immediate vicinity of the old Nash Bog Pond Dam, for fish and wildlife and recreation purposes only. However, the Management Plan does not call for rebuilding the dam.

WILL LOCAL COMMUNITIES BE PAID IN LIEU OF TAXES?

Yes. State and federal land reimbursement is authorized by RSA 219:32 which states "...any town in which national forest land and land held by the state for operation and development as state forest land are situated...may apply...for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on said lands...". The

amount of "taxes on said lands" is determined annually by the NH Department of Revenue Administration based on a formula. This amount is then reduced by payments towns receive from federal distributions generated from timber cuttings on the national forest system. Only White Mountain National Forest towns (Stark) receive this payment. For tax years 1990 and 1991, the state's payment, distributed to the towns of Stratford, Columbia, Stark and the unincorporated place of Odell, totaled just under \$110,000. Federal distributions for the same period totaled just under \$26,000.

HOW CAN I VOLUNTEER AS A SUPPORTER OF THE NASH STREAM FOREST?

Volunteers will be encouraged to participate in organized work projects or groups. Individuals and organizations should contact the North Country Resource Center in Lancaster and register their name, affiliation, and area of interest or expertise. Emphasis will be given to focused volunteer work days with logistical support from the department. Work areas for volunteers may include an appointed advisory committee, trail monitoring and maintenance, organized cleanup days, erosion control and restoration projects, natural interpretive programs, and specialized wildlife surveys to name a few. Department efforts will include maintaining a list of appropriate volunteer projects, providing safety and host training for volunteers, keeping a log of volunteer hours and accomplishments, and recognition of outstanding volunteer efforts.

DRAFT PLAN AVAILABLE

Copies of the (draft) Nash Stream Forest Management Plan are available for viewing at the following locations. Written comments on the Plan will be received **UNTIL FEBRUARY 28, 1995**.

- Bedford Public Library
- NH Technical College - Fortier Library and Berlin Public Library (Berlin)
- U.S. Forest Service - Ammonoosuc Ranger Station (Bethlehem)
- Merrimack County Ext. Office (Boscawen)
- Rockingham County Ext. Office (Brentwood)
- Fiske Free Library (Claremont)
- Colebrook Public Library
- NH Law Library and Concord Public Library (Concord)
- Carroll County Ext. Office (Conway)
- Strafford County Ext. Office (Dover)
- UNH - Diamond Library (Durham)
- Franklin Public Library
- U.S. Forest Service - Androscoggin Ranger Station (Gorham)
- Groveton Public Library
- Dartmouth College Library (Hanover)
- New England College - Danforth Library (Henniker)

- Keene State College - Mason Library and Cheshire County Ext. Office (Keene)
 - Belknap County Ext. Office and Laconia Public Library (Laconia)
 - Weeks Memorial Library and North Country Resource Center (Lancaster)
 - Littleton Public Library
 - Manchester City Library, St. Anselm College - Geisel Library, and NH College - Shapiro Library (Manchester)
 - Hillsborough County Extension Office (Milford)
 - Nashua Public Library
 - Sullivan County Ext. Office (Newport)
 - Peterborough Town Library
 - Plymouth State College - Lamson Library (Plymouth)
 - Portsmouth Public Library
 - Stark Public Library
 - North Country Office - NH State Library (Twin Mountain)
 - Grafton County Ext. Office (Woodsville)
- If you have comments or questions, please call the Division of Forests and Lands in Concord, NH (603) 271-3456, or write to:
- Department of Resources and Economic Development
ATTN: Nash Stream Forest
Box 1856
Concord, NH 03302-1856

DRED
Division of Forests and Lands
P.O. Box 1856
Concord, NH 03302-1856

HOW THE MANAGEMENT PLAN ADDRESSES PUBLIC CONCERNS

Two earlier public listening sessions were held in Groveton and Concord. The key points which emerged from these public sessions were:

- Maintaining local influence;
- Keeping the Nash Stream Forest tract undeveloped;
- Eliminating the gravel mining rights of Rancourt Associates;
- Providing for multiple recreation uses;
- Restoring tax yield to local towns; and
- Stressing sound forestry management practices.

This input was factored into the development of a "Vision" statement, and Management Goals and Objectives for the Nash Stream Forest's Management Plan.

Following are some examples which show how specific concerns raised at these listening sessions were addressed and implemented in the draft Management Plan. These are just two of many examples showing how public concerns have been integrated into the Management Plan.

EXAMPLE #1

PUBLIC COMMENT: *"More local input into Forest (Tract) Management."*

MANAGEMENT PLAN RESPONSE: "A Citizen Advisory Group will be appointed and scheduled to meet regularly to serve as a focused source of public input and assistance. Public notification will be made for significant proposed management activities such as timber harvests, major recreation developments, and emergency closures. Local municipalities will be notified of any actions within its boundaries that directly affects that municipality."

EXAMPLE #2

PUBLIC COMMENT: *"Maintain and protect existing roads; no new roads or trails."*

MANAGEMENT PLAN RESPONSE: "The network of existing roads will be maintained. No new permanent roads are planned. Traditional public access by conventional motor vehicle will be continued on the Main Road and Little Bog (Fourteen and a Half) Road. All other interior roads will be gated and maintained for controlled access in order to provide for public safety and prudent resource utilization and protection."

Additional public input is being sought through written comments on the draft Nash Stream Forest Management Plan. These additional comments will be factored into the final Management Plan to be completed this winter.

February 14, 2022

Dear Forest Supervisor Ibarguen,

in response to a recent query about USFS responsibilities as an easement holder for Nash Stream State Forest, you stated:

“The United States’ role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal’s consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the ‘Forest Service’ should or should not have been checked off on the State’s trail proposal form.”

Paragraph III-D of the Nash Stream State Forest Easement states:

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

"The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State."

ATV use was not reserved by the State. Snowmobiles are not ATVs. DNCR acknowledges this when it states that it assists in maintenance of “6,800 miles of snowmobile trail and over 700 miles of wheeled OHRV trails”. A snowmobile is now technically defined as an “Over Snow Vehicle (OSV.)

The Ropes and Gray Memorandum states: "The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A."

If the Forest Service asserts that the Nash Stream Easement permits ATV use; “The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved

by the state. The Forest Supervisor, WMNF, shall administer this easement...Any Forest Service concurrences required under this easement shall be in writing..."

Tom Wagner, former WMNF employee, when queried in 2001 about the legality of permitting ATV use in Nash Stream discussed II-C.1 and II-C.2 but was curiously silent on II-C, "Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. He stated:

"Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and Forest Service involvement would only be required on roads that provide "through travel."

Permission to install, operate and maintain roads does not alter the non-permitted status of ATVs. And, all the ATV trails in Nash Stream provide "through travel:"

Phil Bryce, Director of Forest & Lands, touched on this in a 2001 letter to Representative Alger: "Are requests for connecting trails across state lands handled differently than self-contained trail systems?"

In 2002 the Nash Stream ATV Study Subcommittee made a verbal report to the Nash Stream Citizen's Committee. The ATV Study Committee rejected the "interior trail" and recommended a "connecting trail" providing the through travel that would require Forest Service permission.

Thus, the Forest Service is still left with the fact that the four ATV Trails in Nash Stream S.F. are all through trails, and lack the required "concurrence in writing", a concurrence DRED, and its successor DNCR, never requested.

In conclusion:

- Please state whether the USFS concurs with the Ropes and Gray memorandum.
- If the USFS does not concur with the Ropes and Gray Memorandum, please provide it's interpretation of the easement as it relates to ATV use, and specifically its interpretation of section II-C.
- If the USFS does not concur with the Ropes and Gray memorandum, please state whether the USFS denies responsibility for its concurrence (III-D) on the siting of through trails.

Sincerely,

Kris Pastoriza
Easton, N.H.
February 14, 2022
krispastoriza@gmail.com



1. Snowmobile Trail



2. Bordeau ATV Trail



3. *Westside ATV Trail*



Figure 1, 2 and 3- Shows the broken boards on the bridges and the eroding approaches.

4. *Kelsey Notch ATV Trail*

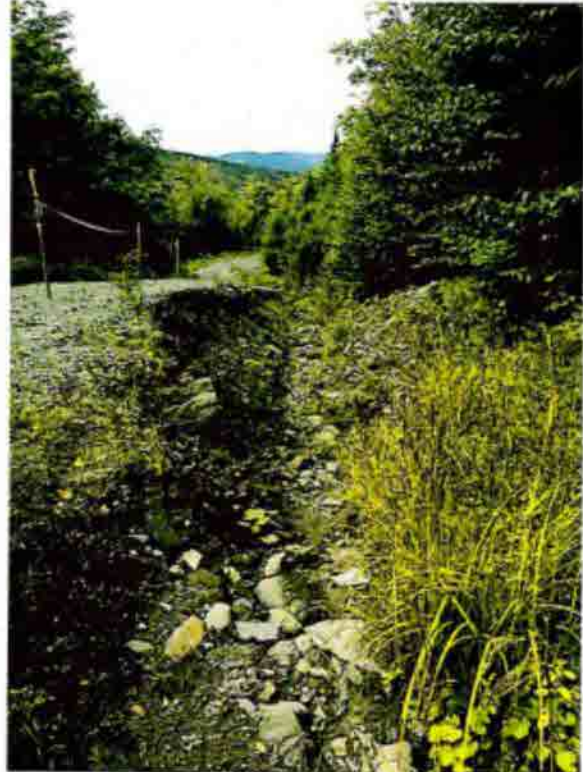
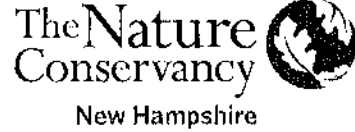


Figure 6 and 7- Depicts the washout along the trail.

5. *Kelsey Notch ATV Trail*

1. *Snowmobile trail, Stark, N.H. 2021*
2. *Bordeau Trail, July, 2019; DF&L files*
3. *Westside Trail, July, 2019; DF&L files*
4. [Kelsey Notch Monitoring Report 2018.](#)
5. *Kelsey Notch Monitoring Report 2018*



August 20, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council on Resources and Development
c/o New Hampshire Office of Strategic Initiatives
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

Dear Mr. Chicoine:

Thank you for this opportunity to express our continued opposition to the operation of the Kelsey Notch ATV Trail in Nash Stream State Forest. As you recall, in 2016 the undersigned organizations first raised concerns regarding the process used to establish this trail.

We argued in our May 5, 2016 letter to CORD that the Nash Stream management plan in effect at that time explicitly authorized only the West Side Trail, and also explicitly prohibited any additional ATV trails of any kind. The amendment to the 2002 Management Plan clearly stated this prohibition:

*Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail, the West Side Road, and the Andritz Trail. This is a pass through trail set up as a pilot for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property.**" (page 50)(emphasis added)*

We appreciate the actions CORD took in its December 14, 2016 Findings. Those steps both articulated CORD's responsibilities for the oversight of LCIP-acquired properties and highlighted the importance of properly following applicable state law. Specifically, CORD found that "the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV environmental laws and regulations."

RSA 215-A:42 and 43 establishes the evaluation process for ATV trails on public lands. We have been provided an undated analysis for the Kelsey Notch ATV/UTV Trail conducted by the Department of Natural and Cultural Resources (DNCR) for the requirements enumerated in RSA

215-A: 42 and 43. In reviewing the document, we have identified several areas that raise questions about the environmental impacts of the trail.

First, and perhaps most important, the process outlined in statute was designed to be conducted on a proposed trail PRIOR to construction in order to site the trail with the least possible environmental impact to state lands. In the case of the Kelsey Notch Trail, there is no evidence that such a coarse and fine filter analysis was conducted as required by statute prior to the establishment of the trail. Rather, the analysis we received was conducted after the trail was already constructed and being used for years by ATV riders. The fact that the trail already existed, in violation of the statute, should not mean that the standards set forth in RSA 215-A:43 should be lowered, amended, dismissed or in any way altered to benefit the trail remaining open and operational. The Kelsey Notch Trail should be held to the same legal standard as any other proposed trail.

RSA 215-A:43, II (g) asks if the “proposal is reasonably compatible with existing uses.” In the comments from DNCR, they only reference snowmobile use on the trail in winter and limited summertime trail use. While additional use of the trail is interesting, we are not sure that is what the Legislature meant by the question. There are many existing uses of the Nash Stream Forest that are not articulated in the comments – including the trails compatibility with hiking, wildlife viewing, scientific research, and fishing to name a few. The only existing use referenced in the comments is hunting, and the analysis finds that “conflict during hunting season is anticipated to be limited as ATV use decreases after Labor Day.” While we do not necessarily dispute this general claim, no documentation or data on this point- or any of the other legitimate existing uses has been made available. We believe that the comments provided do not adequately address the impacts of the trail with existing uses as it currently exists, as well as with anticipated future ATV traffic

RSA 215-A:43, II (k) requires that the proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. In the comments, it is stated that in the opinion of a Fish and Game biologist that “should traffic become heavier on the trail in the future, it might preclude some animals from crossing or denning near the trail and could potentially cause avoidance by some wildlife species in the area.” It would be important to understand the current and projected usage of the trail, and the impacts on wildlife of the increased level of traffic – and how that increase would impact existing uses of the property as discussed in the preceding paragraph.

There are additional requirements in RSA 215-A:43, II that the comments do not fully or adequately address including : (n) states that “the proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (o) the proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing,

unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

In the comments for these requirements, DNCR responds that “the ATV trail was located on existing roadways as well as a snowmobile trail that was built the season prior.” However, it is not clear that the Kelsey Notch Trail meets the important environmental standards enumerated in the preceding paragraph. Further, while RSA 215-A:43 does allow that a “surface roadway” can be used “to reduce adverse environmental impacts,” an existing snowmobile trail does not meet that standard. An existing snowmobile trail is not a “surface roadway.” Furthermore, snowmobile trails are not subject to the analysis outlined in RSA 215-A, so it is unacceptable to rely on them as part of an ATV trail without conducting the required analysis for an ATV trail.

RSA 215-A: 43, II (u) requires the proposed trail avoid known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory. Again, the comments by DNCR suggest that disturbances are minimized because the trail was built on a new snowmobile trail – although there is no indication that such an analysis was conducted prior to the snowmobile trail being built, nor that the trail avoids such rare plants. In fact, the analysis itself notes that “an extensive inventory has not been completed.”

We are aware that the 2019 Kelsey Notch Trail Environmental Compliance Report stated the trail was in very good condition and that it appeared to be in compliance with expectations. But it is important to note that the report also stated, “The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good.” In other words, the maintenance that occurred immediately prior to the site visit clearly addressed any erosion or other degradation issues prior to the site visit. It is also important to note that in his 2018 report, Lt. Mark W. Ober, Jr. District One Chief of the Fish and Game Department wrote, “I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified.”

In addition to the fact that the Kelsey Notch Trail does not meet the requirements of RSA 215-A, we continue to have two additional overriding concerns. First, the fact the trail may currently be in good condition immediately following top to bottom maintenance does not negate our position that it should not have been established as a Pilot Trail under the previous management plan. As we noted, the management plan in effect in 2012 did not permit the creation of the trail.

Second, the State of New Hampshire lacks a comprehensive master plan for the ATV system in New Hampshire, especially in the North Country. With the continued marketing and popularity of Ride the Wilds, expanded trail infrastructure, and safety related issues associated with increased use, we believe the Department of Natural and Cultural Resources and the New Hampshire Department of Fish and Game should lead a comprehensive planning process to develop such a master plan. The state should allocate sufficient resources to complete this

comprehensive planning effort. Key goals should include 1) development of criteria needed to determine appropriate areas to build new trails; 2) identification of the resources necessary to maintain NH's ATV trail system and enforce the laws governing ATV use; and 3) documentation of ecologically-sensitive areas that conflict with ATV use.

To be clear, our organizations recognize the growth of OHRV use here over the last decade. We are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. But, unfortunately, this growth has also presented the State and local communities with trail use management challenges.

Despite those challenges, an opportunity exists to balance the benefits of OHRV recreation with the concerns expressed by private property owners and others. Good planning, ongoing and effective communication, increased education of OHRV users, established avenues to resolve specific conflicts when they occur, and visible law enforcement, are all critical ingredients to a successful OHRV program in our state. Furthermore, if the increase in ATV use has provided new economic opportunities, the financial resources needed to achieve those goals should be available. However, that balance will be difficult to achieve if state agencies continue to allow the expansion of the ATV trail system without also having the capacity to manage it.

To summarize, the establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. Because of those facts, coupled with the State's lack of capacity to maintain, manage and enforce the existing OHRV trail system, we would request that CORD close down this trail.

Thank you. We would be happy to answer any questions you may have.

Sincerely,

Jim O'Brien

Director of External Affairs
The Nature Conservancy
jim_obrien@tnc.org

Susan Arnold

Vice President for Conservation
Appalachian Mountain Club
sarnold@outdoors.org

Matt Leahy

Public Policy Manager
Society for the Protection of NH Forests
mleahy@forestsociety.org



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
OFFICE OF THE COMMISSIONER

172 Pembroke Road, Concord, New Hampshire 03301

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TDD ACCESS: Relay NH 1-800-735-2964

Ms. Kris Pastoriza

(b)(6)

January 7, 2022

Dear Ms. Pastoriza:

Thank you for your letter of January 3 requesting a meeting of the Nash Stream Forest Citizens Committee (NSFCC), Division of Forests & Lands (DFL) and the Department of Natural & Cultural Resources (DNCR) Technical Team regarding concerns about Off-Highway Recreational Vehicles (OHRV) trails on the Forest.

The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests. The Committee serves in an advisory capacity to the state agencies responsible for managing Nash Stream Forest. In that role, Committee members are responsible for communicating with their respective constituents to bring ideas, concerns or opportunities for improvement to the attention of the state's resource managers.

The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.

Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff. An annual report is filed with Council on Resources & Development (CORD), comprised of twelve state agencies "whose responsibilities include providing a forum for interagency communication and cooperation in assuring consistency with established policies relating to the environment, natural resources, and growth management issues." (www.nh.gov/osi/planning/programs/cord/) Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD. Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.

The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD's satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. See *9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.*

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.

As you can see, a monitoring and review process is in place for OHRV trails on Nash Stream Forest. Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.

The next meeting of the NSFCC will be in early November 2022 and will include a briefing of the trail monitoring efforts. At the end of the formal agenda, we can plan for additional time for public comment.

Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.

Sincerely,

A handwritten signature in black ink that reads "Sarah Stewart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Sarah Stewart
Commissioner, DNCR

January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, "Traditional, dispersed, non-motorized recreationists" for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The 'Snowmobile clubs' designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called "Expertise in Recreation and Tourism" designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: "The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting's formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes." At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen's Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that "Existing OHRV trails are monitored annually by N.H. State Park's Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff" is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its "Trial" and monitoring was only instituted after CORD's December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that "Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD." But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn't been any monitoring of Westside, so there are no issues on the record that need to be addressed "to the satisfaction of agency resource managers and members of CORD." That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: "Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails." Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs' request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.
Mark Primack, Berlin, N.H.
Dan Whittet, Berlin, N.H.
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
Susan Percy, New Gloucester, ME
Field Rider, New Gloucester, ME
Margaret and Eric Jones, Trustees of the Legacy Forest Trust
Nancy DeCoursey, Jefferson, N.H.
Michael Phillips, Groveton, N.H.
Pat Kellogg, Littleton, N.H.
Daniel Clarke, Gorham, N.H.
Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
Jody Camille, Dummer, N.H.
Milton Camille, Dummer, N.H.
Bill Joyce, Stark, N.H.
Wayne Moynihan, Dummer, N.H.
Kim Votta, Lancaster, N.H.
Cam Bradshaw, Berlin, N.H.
Roger Doucette, Whitefield, N.H.
George Brown, Shelburne, N.H.
Howie Wemyss, Randolph, N.H.
Representative Judith Spang, Durham, N.H.
Stephanie Kelliher, Whitefield, NH
Beau Etter-Garrette, Whitefield, NH
Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH

January 3, 2022

To Commissioner Stewart and Director Hackley,

we request a meeting of the Nash Stream Forest Citizens' Committee, and the Department of Forests & Lands and Fish & Game Tech Team members; a meeting in which these groups are prepared to record and respond to the questions and concerns of the public regarding the serious problem of ATVs in Nash Stream State Forest.

RSA 215-A:42 has not been followed. Baseline studies were never done. Despite the fact that DF&L and F&G monitoring repeatedly shows damage, and despite pointed observations and communications to management from DF&L and F&G staff in the field, no ATV trails have been closed. No response has been made to AMC/SPNHF's legal memos disputing the legality of ATV use in Nash Stream. Invasives, likely brought by ATVs or ATV trail maintenance vehicles, have been treated with the carcinogenic glyphosate while the ATV trails remain open, increasing the risk of more invasives. ATVs contribute to global warming, which threatens Nash Stream State Forest.

The NSFCC November 2021 meeting was not the first time these problems were brought to the attention of DNCR/DF&L/BOT, CORD and the NSFCC.

DNCR and NSFCC appear to be taking the position that they can ignore the law and the state of the Forest.

This meeting should take place well before the ATV season.

Sincerely,

Kris Pastoriza, Easton, N.H.

Lucy Wyman, Lancaster, N.H.

Margaret and Eric Jones, Trustees of the [Legacy Forest Trust](#)

Cam Bradshaw, Berlin, N.H.

Abby Evankow, Gorham, N.H.

Monique Petrofsky, Stewartstown, N.H.

Nancy DeCoursey, Jefferson, N.H.

Claudia Damon, Concord, N.H.

Dick Harris, Colebrook, N.H.

Pat Kellogg, Littleton, N.H.

Rick Audy, Shelburne, N.H.

Michael Phillips, Groveton, N.H.

Dave Evankow, Gorham, N.H.

Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, Massachusetts

Campbell McLaren, Easton, N.H.

Susan Percy, New Gloucester, ME

Field Rider, New Gloucester, ME

Gary Robertson, Gilford, N.H.

Will DeCoursey, Jefferson, N.H.

Nash Stream State Forest, Bordeaux ATV Trail



July 9th, 2019. (DF&L files)

Ms. Kris Pastoriza

(b)(6)

Dear Ms. Pastoriza,

This responds to your inquiry dated February 14th, 2022.

The Forest Service was the acquiring agency, on behalf of the United States of America, with respect to the 1989 Nash Stream conservation easement purchased from the State of New Hampshire. It has been the Forest Service's longstanding position that, under the terms of the conservation easement, the State of New Hampshire reserves the discretion to ban, authorize, or regulate ATV trails within the conservation easement area. Conversely, the Forest Service acquired no role in the exercise of the State's discretion in this regard. Our position has not changed, notwithstanding the 2020 Ropes and Gray memorandum which we previously reviewed.

Also, you raised the subject of "through trails." The conservation easement at II(C)(1) makes no distinction between a "through trail" and a "non-through trail," when it comes to the discretion reserved by the State. We note that II(C)(2) does make a distinction between internal roads that do not provide for "through travel" and "public roads." In the context of public roads, the Forest Service does have approval authority under the conservation easement terms. That provision has no bearing on the reserved authority of the State with respect to recreational trails.

As such, we do not have a role in the development or management of ATV trails. Nor is there a requirement for written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. Please direct any concerns about ATV trails on the conservation easement area to the State.

Sincerely,

DEREK J.S. IBARGUEN
Forest Supervisor

CC: James Simino, Sarah Hankens, James Detzel, STATE FORESTER or appropriate State POC

From: Corless, Theresa -FS
Sent: Fri, 15 Apr 2022 15:06:59 +0000
To: Ibarguen, Derek -FS; Sjostrom, Joshua - FS; Lemieux, Stacy -FS; Wigler, Gail -FS
Cc: Detzel, James -FS
Subject: FOIA 2022-FS-R9-02387-F Nash Stream State Forest

Derek, Josh, Stacy, and Gail,

You should have received links to a folder in Box

<https://usfs.box.com/s/ro3bqecxqeyfshtorbd2jeb79cdoqxea> to place your responsive documents to Kris Pastoriza's FOIA related to Nash Stream state Forest and forest policy on ATVs. There should be a sub-folder for each of you. The request is as follows:

documents related to Forest Service responsibility or input regarding the use of ATVs at Nash Stream State Forest, not everything we have that mentions both Nash Stream and ATVs individually (e.g. there may be comment letters to our 2005 plan revision that mention both ATVs and Nash Steam State Forest, but are not necessarily responsive to the Forest's responsibilities or input on use of ATVs at Nash Stream State Forest.)

Please let me know if you have any questions or issues with access to the Box folders. Please let me know if you cannot respond by Friday April 22 and how much time you need.

Thanks,
Theresa



Theresa Corless (she/her)
Forest Planner and Environmental
Coordinator

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223
www.fs.fed.us



Caring for the land and serving people

From: Corless, Theresa -FS
Sent: Fri, 8 Apr 2022 20:31:41 +0000
To: Ibarguen, Derek -FS; Sjostrom, Joshua - FS; Lemieux, Stacy -FS; Wigler, Gail -FS
Cc: Detzel, James -FS
Subject: FOIA request 2022-R9-02387-F Pastoriza re NSSF

All,

We have a FOIA request from Kris Pastoriza related to Nash Stream State Forest and ATVs. She is looking for records from 1/1/2002 to 2/24/2022. For now, can you please give me a time estimate of how long it would take you to search your emails and other records to respond to this request. Once I have this time estimate I will see if we will need to charge her and provide her a cost estimate. Note that we already gave her two redacted documents with her request related to this topic last year. Also, please let me know if there is someone else I should be checking with that might have records that are not duplicative of the ones you have.

James, I just copied you as an FYI.

Thanks,
Theresa



Theresa Corless (she/her)
**Forest Planner and Environmental
Coordinator**

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Currier, Morgan - FS, CAMPTON, NH
Sent: Tue, 8 Mar 2022 13:16:29 +0000
To: Ibarguen, Derek -FS
Subject: For Review and Signature: Pastoriza Letter
Attachments: Formal Letter 1 Signature Pastoriza Response Letter March 2022.pdf

Please let me know if you want any changes made. I know it's just the CC group on the second page, I can move your signature block down to the second page as well – it's weird either way



Morgan Currier
Executive Assistant
Forest Service
White Mountain National Forest
p: 603-536-6203
c: (b)(6)
f: 603-536-3673
morgan.currier@usda.gov

71 White Mountain Dr
Campton, NH 03223
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**Caring for the land and serving
people**

File Code: 5440
Date: March 8, 2022

Kris Pastoriza

(b)(6)

Dear Ms. Pastoriza,

This responds to your inquiry dated February 14th, 2022.

The Forest Service was the acquiring agency, on behalf of the United States of America, with respect to the 1989 Nash Stream conservation easement purchased from the State of New Hampshire. It has been the Forest Service's longstanding position that, under the terms of the conservation easement, the State of New Hampshire reserves the discretion to ban, authorize, or regulate ATV trails within the conservation easement area. Conversely, the Forest Service acquired no role in the exercise of the State's discretion in this regard. Our position has not changed, notwithstanding the 2020 Ropes and Gray memorandum which we previously reviewed.

Also, you raised the subject of "through trails." The conservation easement at II(C)(1) makes no distinction between a "through trail" and a "non-through trail," when it comes to the discretion reserved by the State. We note that II(C)(2) does make a distinction between internal roads that do not provide for "through travel" and "public roads." In the context of public roads, the Forest Service does have approval authority under the conservation easement terms. That provision has no bearing on the reserved authority of the State with respect to recreational trails.

As such, we do not have a role in the development or management of ATV trails. Nor is there a requirement for written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. Please direct any concerns about ATV trails on the conservation easement area to the State.

Sincerely,

X

DEREK J.S. IBARGUEN
Forest Supervisor



CC: Sarah Stewart, Commissioner of the Department of Natural and Cultural Resources; Patrick Hackley, Director of the NH Division of Forests and Lands; James Simino; Sarah Hankens; James Detzel

From: Tom Wagner
Sent: Thu, 20 Jan 2022 10:09:17 -0500
To: lbarguen, Derek -FS
Subject: [External Email]Fwd: 2001 memo
Attachments: Opinion from Milwaukee USFS office.pdf

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

This is one of the items I wanted to bring up on Monday (Nash Stream Forest Legacy Easement). Assuming you may have already been contacted on it but thought I can give you some background on why I requested a legal opinion from OGC and what is currently being asked of conservation organizations.

Tom

Sent from my iPhone

Begin forwarded message:

From: Jack Savage <jsavage@forestsociety.org>
Date: January 19, 2022 at 12:47:12 PM EST
To: Tom Wagner <tgwags55@yahoo.com>
Subject: 2001 memo

Tom,

Here's the memo I referenced. It looks like you were copied on it but not the official author of it.

I haven't read the easement, but I would probably come to a different interpretation regarding "snowmobiles = ATVs". That doesn't mean to basic opinion, that the state can regulate, is off base.

Jack

Jack Savage
President
Society for the Protection of NH Forests
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Concord, NH 03301
603-224-9945 ext. 330
(b)(6) (cell)

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF