

To: CORD Members

From: Office of Energy and Planning Staff

Date: December 8, 2016

RE: Revised Draft Findings and Motion regarding ATV Use on the West Side Trail and Kelsey Notch Trail

Background

Under RSA 162-C:6, the Council on Resources and Development (CORD) is charged with the management of land interests acquired by the State through the land conservation investment program (LCIP). CORD shall manage such lands 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.” (RSA 162-C:6, III)

The Nash Stream Forest is by far the largest of the LCIP properties, spanning almost 40,000 acres in the towns of Columbia, Stratford, and Stark, and in Odell Township. The State acquired it in 1988 and concurrently sold a conservation easement on the property to the U.S. Forest Service. Its day-to-day management is carried out under the supervision of the Department of Resources and Economic Development (DRED). As described in the original (1995) Nash Stream Management Plan, permitted activities on Nash Stream included timber harvesting, passive recreation, and snowmobiling; ATV use was prohibited.

A 2002 update of the Management Plan provided for the establishment of one pilot ATV trail in Nash Stream Forest (the West Side Trail). The trail was opened for use that year as a three year pilot, then extended two years by DRED Commissioner George Bald before being established as a “designated” trail in 2007. Located in Stratford, the West Side Trail is a 7.6 mile pass through loop into and out of Nash Stream Forest and is part of a local ATV trail network.

In 2001, prior to the management plan update, upon request for guidance from the director of the Division of Forests and Lands, an attorney for the U.S. Forest Service opined that recreation management on Nash Stream is a right reserved by the State and therefore the State has the discretion to allow ATV use within its borders.

A second trail, known as the Kelsey Notch Trail, was opened as a pilot trail for ATV use in 2013. The Kelsey Notch Trail covers a total of four miles in Columbia (one mile of new trail and three miles of existing upgraded trail), near the northern border of the Nash Stream Forest. It is currently being used as part of the larger “Ride-the-Wilds” network.

In a letter to CORD members dated May 6, 2016, representatives from the Society for the Protection of New Hampshire Forests, the Appalachian Mountain Club, and The Nature

Conservancy (the Advocates) voiced their concern about the appropriateness of current ATV use in the Nash Stream Forest, as well as potential expansion of such use. The Advocates requested that the Council review the requirements of RSA 162-C:6, II and III (as well as RSA 215-A:43 regarding establishment of ATV trails) and subsequently “determine that the existing ATV trails are not in compliance with the law and take appropriate action.”

Amended Draft Findings and Motion

As directed by CORD at its October 13, 2016 meeting, CORD staff in consultation with Department of Justice counsel has developed the following draft findings, with associated motion, for consideration by the Council. This draft is based on recent CORD meeting discussions, a field visit to Nash Stream by several CORD members, and information gathered from DRED, as well as ongoing staff discussion and consultation with DOJ counsel. (Please note that an alternative draft, circulated to CORD members on November 7, 2016, is reprinted at the end of this document.)

General Findings:

The Council finds that in order to perform its statutory duty to manage LCIP lands, members must review and find that any use of ATVs within Nash Stream Forest is consistent with the principles set forth in RSA 162-C:6 prior to implementation.

CORD further finds that any ATV use in Nash Stream Forest must be limited to specific ATV trails approved by CORD in advance. In order to be consistent with the principles set forth in RSA 162-C:6, CORD finds that each proposed ATV trail must meet the following conditions: (1) the trail must be designed and sited so that it does not adversely impact natural resources and conservation attributes of the property and does not interfere with or detract from the other uses of Nash Stream Forest; (2) the trail must be authorized in a current management plan, which has been reviewed by CORD for consistency with RSA 162-C:6 and has had appropriate public and state agency input; (3) the trail must comply with the requirements of RSA 215-A and all other applicable ATV and environmental regulations, standards, and best management practices; (4) after construction, the trail must be continually managed to protect natural resources and conservation attributes and to limit interference with other uses of Nash Stream Forest; (5) CORD must be adequately informed on an ongoing basis of the status of management, maintenance, and enforcement efforts related to ATV use, as well as impacts of ATV trails on the Nash Stream Forest; and (6) CORD reserves the right to periodically reassess whether ATV use in the Nash Stream Forest, or on any of the trails therein, remains consistent with RSA 162-C:6 and reserves the right to temporarily or permanently close trails if necessary as circumstances change over time.

West Side Trail:

The Council finds that the use of ATVs on the West Side Trail, as currently managed, is consistent with its management obligations under 162-C:6 as long as: (1) the memoranda of agreement required by RSA 215-A:42 relating to monitoring, maintenance, and enforcement remain up-to-date and contain sufficient detail and safeguards to ensure that the trail is maintained in a safe and environmentally appropriate manner; and (2) conditions and use of the trail do not change in such a way that makes continued use of ATVs on the West Side Trail inconsistent with the requirements of RSA 162-C:6 as determined by CORD.

Kelsey Notch Trail:

MOTION: The Council finds that, based on current available information, it is not able to determine at this time whether continued use of ATVs on the Kelsey Notch Trail is consistent with CORD's management obligations under RSA 162-C:6. In order to assist in this determination, CORD requests the following additional information regarding the use, maintenance, and impacts of ATVs at this location:

1. By the January 12, 2017 CORD meeting, DRED shall submit to CORD for review the following:
 - a. A completed coarse and fine filter analysis of the Kelsey Notch Trail, pursuant to RSA 215-A:43;
 - b. An interagency memorandum of understanding, pursuant to RSA 215-A:42; and
 - c. Written agreements between DRED and a local ATV club, pursuant to RSA 215-A:42.
 2. At such time that CORD has reviewed the information above and determined that it is sufficient for the Kelsey Notch Trail to provisionally re-open for ATV use, DRED shall then submit the following to CORD for review as they become available:
 - a. The annual reports required pursuant to the interagency memorandum of understanding; and
 - b. Such additional studies, data, and information as CORD may require to adequately assess whether the continued use of ATVs on the Kelsey Notch Trail is consistent with RSA 162-C:6.
 3. CORD will assess this additional information for three years (beginning in 2017) and at the end of this time period, or at any other time as circumstances dictate, CORD shall determine, based on available information:
 - a. That additional information and assessment is necessary to determine whether the use of ATVs on the Kelsey Notch Trail is consistent with RSA 162-C:6; or
 - b. That use of ATVs on the Kelsey Notch Trail is consistent with RSA 162-C:6, subject to the general conditions for any ATV use in Nash Stream Forest; or
 - c. That ATV use on the Kelsey Notch Trail is not consistent with RSA 162-C:6 and the trail shall cease to be open for ATV use.
-

Previously circulated draft (November 7):

CORD finds that recreational ATV use within Nash Stream Forest on defined ATV trails is consistent with RSA 162-C:6, but only to the extent that each specific ATV trail is: (1) appropriately sited following review and approval of the location by CORD; (2) continually managed to protect natural resources and conservation attributes and to limit interference with other uses of Nash Stream Forest; (3) authorized in a current management plan, which has been reviewed by CORD for consistency with RSA 162-C:6 and has had appropriate public and state agency input; and (4) complies with the requirements of RSA 215-A and all other applicable ATV and environmental regulations and standards.

CORD further finds that in order to perform its statutory duty to manage LCIP lands in compliance with the principles set forth in RSA 162-C:6, CORD must be adequately informed of the status of ongoing management, maintenance, and enforcement efforts related to ATV use, as well as any impacts of ATV trails on the Nash Stream Forest, and must reassess on an ongoing basis whether ATV use in the Nash Stream Forest, or on any of the trails therein, remains consistent with RSA 162-C:6 as circumstances change over time.

West Side Trail:

CORD finds that the use of ATVs on the West Side Trail, as currently managed, is consistent with the requirements of RSA 162-C:6 as long as: 1) the memoranda of agreement required by RSA 215-A:42 relating to monitoring, maintenance, and enforcement remain up-to-date and contain sufficient detail and safeguards to ensure that the trail is maintained in a safe and environmentally appropriate manner; and 2) conditions and use of the trail do not change in such a way that makes continued use of ATVs on the West Side Trail inconsistent with the requirements of RSA 162-C:6 as determined by CORD.

Kelsey Notch Pilot Trail:

MOTION: CORD provisionally finds, based on the available information, that continued ATV use on the Kelsey Notch Trail as a pilot is consistent with CORD's management obligations under RSA 162-C:6 while CORD obtains and reviews additional information regarding the use, maintenance, and impacts of ATVs at this location, subject to the following conditions:

1. By the January 2017 CORD meeting, DRED shall submit to CORD for review the following:
 - a. Documentation of a completed coarse and fine filter analysis of the Kelsey Notch Trail, pursuant to RSA 215-A:43;
 - b. An interagency memorandum of understanding, pursuant to RSA 215-A:42; and
 - c. Written agreements between DRED and a local ATV club, pursuant to RSA 215-A:42

2. DRED shall also submit to CORD for review:
 - a. The annual reports required pursuant to the interagency memorandum of understanding; and
 - b. Such additional studies, data, and information as CORD may require.

3. The pilot period shall continue for up to three riding years (beginning in 2017). At the end of the pilot period, or at any other time as circumstances dictate, CORD may determine based on available information:
 - a. that the pilot period should continue while additional information is gathered;
 - b. that the Kelsey Notch Trail may be designated for ATV use; or
 - c. that ATV use on the Kelsey Notch Trail is not consistent with RSA 162-C:6 and the trail shall cease to be open for ATV use.