

Dear Chair Govatski,

at the NSFCC meeting of 11/17/22 you asked Committee member Jamie Sayen what the USFS lawyers said about the Nash Stream Conservation Easement re ATVs. I sent you, Commissioner Stewart, Craig Rennie, Maggie Machinist, WMNF Supervisor Derek Ibarguen and others the two important statements they made, in an email on November 9th, 2022.

Vince Vukelich, who was involved in the 2001 conversation about ATV use and the easement wrote, in 2022

Based on Gene Erl's opinion (which we have reaffirmed in 2001, 2017 and I reaffirm here in 2022) if the State proposes to allow cross country ATV use, we have a strong argument that right was not reserved by the State and therefore we could block that type of use.

Obviously it appears there are more questions you have as this moves forward.

Feel free to give me or call, or if you would like we can arrange a call with you and the appropriate staff if you have more questions regarding the conservation easement on the Nash Stream Forest.

Take care – vince v.

John M. Vandlik, Senior Counsel USDA wrote in 2022:

When I lost connection, James was talking about "through trails". In a quick review of CE just now, I don't see that the CE addresses through **trails**. Rather, it appears to only address "through roads." Am I missing something? If Tom Wagner mentioned "through **trails**," in 2001, that was not based on any legal conclusion Gene had made. Trails are only addressed at II( C)(1) while roads are addressed at II ( C ) (2). II ( C ) (1) makes no mention of through trails. Per II ( C)(2) , it would seem that new through roads would require prior FS written approval. (As we mentioned, generally such "concurrence" must be in writing per III(D), though in this case II( C)(2) itself speaks of written approval). BTW, seems like various logging practices also implicate need for FS approval. Let me know if we need to talk more about this so called through trail issue.



John M. Vandlik  
Senior Counsel  
Milwaukee Office  
*Office of the General Counsel*  
U.S. Department of Agriculture

These statements were made to WMNF Supervisor Derek Ibarguen in response to my request that WMNF render an updated opinion on the legality of ATVs in Nash Stream Forest.

Was my letter distributed to the NSFCC members and relevant Agency representatives?

Why were they not aware of the issues with ATVs and "various logging practices" and able to engage in an intelligent and informed conversation on these critical issues? Commissioner Stewart should have distributed this letter but apparently did not, nor did she respond to it.

In a letter to me dated January 7, 2022, dismissing concerns about the illegality of the ATV trails and DNCR's failure to comply with RSA 215-A:42, Commissioner Stewart stated:

“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 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.”

No meeting minutes of the NH Fish & Game and DNCR meeting regarding compliance with RSA 215-A:42 are available to the public. Perhaps minutes were not taken.

No mention was made of this meeting or of the two year study, at the November 17<sup>th</sup> 2022 meeting, at which Commissioner Stewart was not present.

The Committee members and Agency representatives, including Commissioner Stewart, have had a year to re-research the violation of RSA 215-A:42, which was brought up by Jamie Sayen and Lucy Wyman at the NSFCC [meeting](#) last year, SPNHF, TNC and AMC in [2016](#) and [2020](#) and Fish & Game in [2020](#). When Jamie Sayen's [clear summary](#) of the legal problem of ATVs in Nash Stream was given to the Committee members, none of them responded to it in any meaningful way. It appears that no one in the room, except Jamie Sayen and some members of the public, had researched the issue or cared enough about these violations to try to end them.

The majority of the Nash Stream Forest Citizens' Committee members and Agency representatives have taken the position that those above them in the power hierarchy know best and that the Committee is not responsible for fulfilling even its limited advisory responsibilities when Commissioner Stewart and Supervisor Ibarguen defy the conditions of the Conservation Easement, and allow 12,000+ ATVs a year to degrade Nash Stream Forest.

None of the Committee members or Agency representatives pointed out that the current situation with ATVs exists because Governor Sununu (who appointed Sarah Stewart and Scott Mason), DNCR and the New Hampshire Attorney General all support OHRV use.

Those exploited and damaged by the violation of these protections (a group that includes flora, fauna, water, air and soundscapes) can't afford a lawsuit against the DNCR. The Gorham lawsuit and actions of DNCR (sovereign immunity!) and the Town of Gorham in that lawsuit show this clearly. Should not Mike Waddell, member of the Gorham Selectboard, recuse himself from discussions on ATVs in Nash Stream Forest?

WMNF Supervisor Ibarguen is allied with the State in placing logging and tourism income over protection of Nash Stream Forest.

Mike Waddell's position; ATVs have been in Nash Stream for a long time, objections to their presence have been rejected by the committee repeatedly, and those of us opposed to ATV use in Nash Stream shouldn't annoy him by bringing up the issue again, lacked any data supporting the legitimacy of the Committee's support for ATVs. More egregious, his irritation and hostility were manipulative and abusive. This type of behavior is unacceptable toward anyone; women, people of color, obese people, the disabled, old people, ugly people, children, white men. He needs to be controlled or removed from the Committee. Allowing him to continue this behavior sanctions it on behalf of the Committee and DNCR.

Committee members responded to mention of global warming and the sixth great extinction not with agreement and concern or meaningful data disputing it, but with dismissive annoyance and hostility (Mike Waddell) and abdication of responsibility (Craig Rennie.) This greatly diminishes the Committee's integrity.

The ignorance of the majority of the members of the Committee of the history of ATVs in Nash Stream also damages the Committee's credibility and legitimacy and leaves it incapable of a fact-based discussion of any of the issues. Before the next meeting, a summary of the important issues needs to be distributed to the Committee members. In addition to Jamie Sayen's document on the easement issues, this would include an inventory of the studies done on all the ATV roads, photographs of the trails/roads from their establishment to the present, comments in former meeting minutes and agency reports on the ATV trails/roads, and a summary of climate change damages predicted for Nash Stream Forest..

It should not be left to the public to collect the documents, read through them and summarize them for the Committee.

The West Side ATV Road [bird survey](#) done in 2002 has not been repeated.

The West Side ATV [Road mammal survey](#) done in 2002 has not be repeated.

The West Side ATV Road [water quality, fish and benthic macroinvertebrates study](#), which stated "It is strongly recommended that periodic site investigations and maintenance be performed on the ATV trail and at surface intersections with water courses in order to minimize water quality impacts" has not been repeated.

The West Side ATV Road sound study was not a sound study; it did not produce a sound map of ATVs in Nash Stream State Forest or any measurements of ATV noise from various places in the forest. No further sound data has been collected despite John Magee’s [letter](#) to Fish and Game Director Glenn Normandeau on July, 2016 in which he wrote: “over the years I have heard from the mainstem of Nash Stream OHRVs on the West Side Trail, even when they are several hundred feet away. Most anglers that fish the part of Nash Stream near the West Side Trail do so for the overall experience of being away from multitudes of cars, dwellings, OHRVs and other human activities.”

A [2007 Summary of Findings](#) on the West Side Trail references the 2002 mammal study which it incorrectly describes as done in 2006. It does not mention the bird study done by the same contractor, Natural Resources Study Group. It states that the results of the DES macro invertebrate and stream sedimentation studies (done four years ago!) will be presented at the meeting. It states that reasons for trail closure will be discussed.

The [2003 trail report](#) by the North Country ATV Club states that North Country ATV Club volunteers spent 645 hours patrolling the ATV trails and met six non-ATV users on weekend days, on average. It states: “Confirming our original thoughts on this trail and its use, there has been very little impact to the environment from the use of atvs and that is no surprise to our club. It seems to be only the people who see the sky falling each day that find it necessary to prohibit and restrict the things they do not understand through lack of information and worse, misinformation.”

The [2004 trail report](#) states that North Country ATV Club volunteers spent 113 hours on the trails and met the same amount of non-atv weekend visitors. A handwritten note states: “Summary of West Side Trail in Nash Steam only, 2004 season only.” Much of the report appears cut and pasted from the 2003 report. Trails patrolled are listed as:

Trails Patrolled													Trail Condition			
Lgtn Mt	Percy Rd	BB Hill	Strat Bog	Ledge Mt.	Ball's	Blue Mt.	RR	West Side	Bord	Andz	Big Rock	Charlie's	Potato Grove	Muddy	Need Brsh	Other
44	77	74	83	3	31	17	87	22	22	27	33	59	17			

It appears the majority of these trails are outside Nash Stream State Forest. There is a section for reporting trail conditions (muddy, needs brsh, other) but no tally is provided. Perhaps someone in the North Country ATV Club can tell the Committee where the Lightning Mt., BB Hill, Stratford Bog, Ledge Mt., Ball’s, Blue Mountain, RR, Big Rock, Charlie’s and Potato Grove trails are or were located.

The [2005 trail report](#) has sections cut and pasted from the 2004 report. For example, despite new figures of an average of 11 other users a day reported on the trails during ATV patrols, this document goes on to state “Please bear in mind that most of our trail patrol hours are on the weekends when most riders are out there. Keeping this in mind, you will have to conclude that during the weekdays there is much less traffic than the observed 6 per day” a sentence which



shows up in the 2003 and 2004 reports. The “time invested” in trail patrols is listed as 256 hours.

These reports are incomplete, poorly written and unprofessional. They are unsigned, though the 2005 report was sent to DNCR by Ted Burns.

No baseline studies were done for the West Side Rd. and Andritz/Bordeau Trails. No follow-up studies have been done since 2003 though there are references to trail/road conditions in some of the NSFCC minutes, for example the loss of cover on the West Side Road caused by ATV use.

Below is a portion of 1999 [North Country ATV Club proposal](#) to open Nash Stream State Forest to ATVs:

***Enforcement and Monitoring plans.*** \*\*\* We believe that we have a much better method of both monitoring and enforcing out trails laws and rules than the State of New Hampshire. It is called peer pressure. When we have had problems on our trails it is far easier to catch someone with several hundred members watching our trails than just a couple of Conservation Officers. Don't get me wrong, we work very closely with our local Fish and Game folks but their somewhat limited in number and they have more burden of proof than we do. By saying this I mean that when we are told of someone riding across a farmers hay field we need less proof to threaten to bar an individual from our trail system, than a Conservation Officer trying to get a conviction. It works great and we have never had it go any further than a warning. You would have to see the results with your own eyes to believe how effective this form of enforcement is. Our local farmers, landowners and Conservation Officers will back us up on this I am sure.

In closing it should be noted that in areas where water bars are damaged or wet areas are muddied up, there is on user group or state agency at present to repair or maintain trails in the summer. This is our strongest point we have in dealing with all of our private landowners and should you as well. The North Country ATV Club is offering you manpower and money to make any necessary repairs and or maintenance of these trails as well as helping police them.

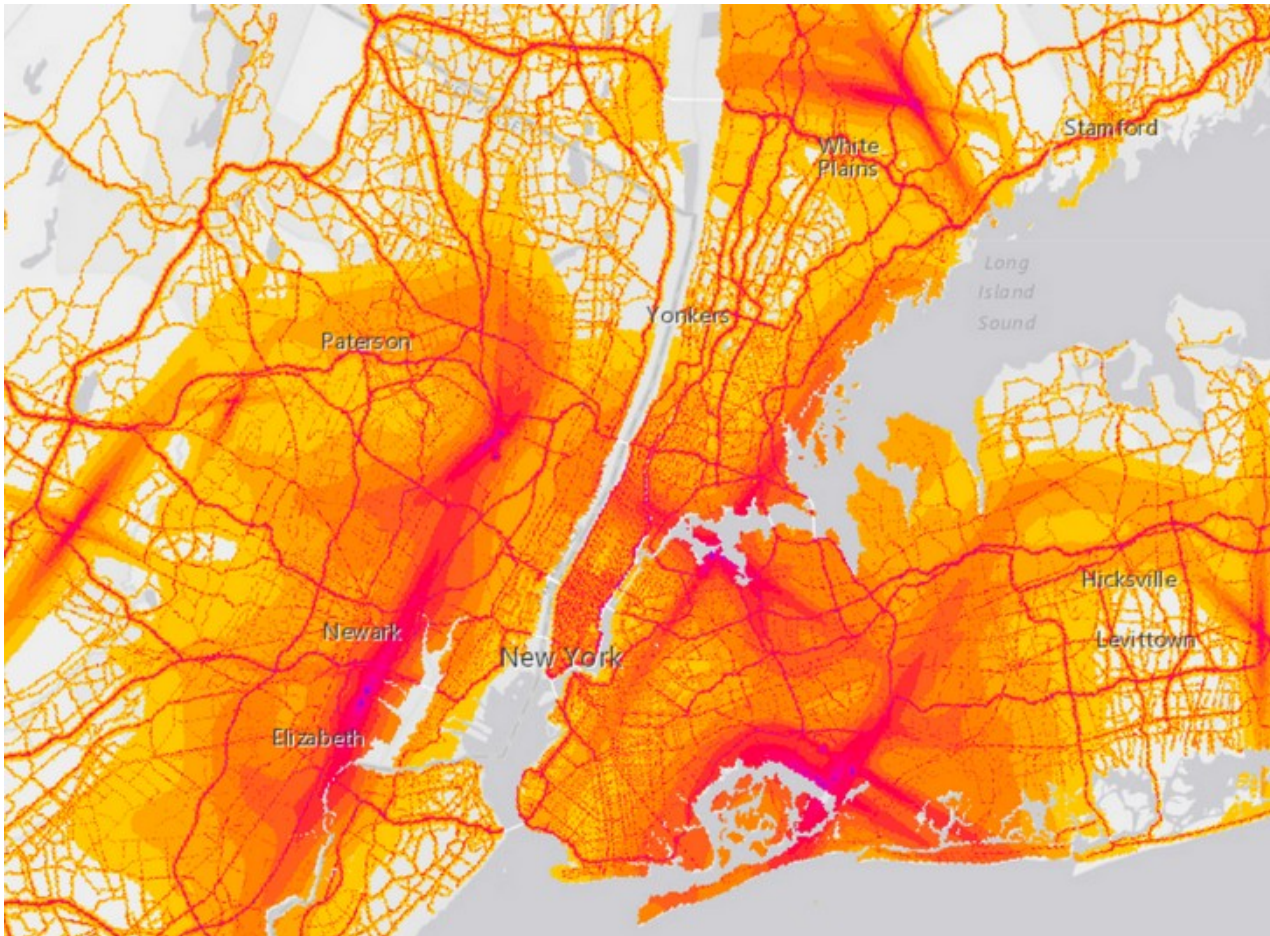
Apparently neither the Nash Stream Citizens' Committee nor DRED objected to this offer by the North Country ATV Club members to threaten other ATV users on public land.

I request that the Harvard Negotiations and Mediation Clinical Program be hired to assess the functioning of the Nash Steam Citizens' Committee, and that the Committee be required to follow, if made, a recommendation to hire a facilitator for meetings, whose expertise would be helpful as the Committee “tackles the process and relational barriers” to responding to global warming and the ATV problem. “A facilitator, or third-party neutral without a stake in the outcome, could bring a disinterested perspective, and therefore a sense of legitimacy” to the Nash Stream Forest Citizens' Committee meetings.

Other documents on Nash Stream State Forest are here:

[https://nhconservation.org/doku.php?id=nash\\_stream\\_state\\_forest](https://nhconservation.org/doku.php?id=nash_stream_state_forest)

Below is an example of the kind of sound (pollution) map that should have been produced for Nash Stream Forest before the ATV trails/roads were permitted, and each year thereafter:



<https://usa.streetsblog.org/2020/09/14/the-other-type-of-car-pollution-that-harms-us-all/>

The Nash Stream Committee has no information on the increase in noise pollution in Nash Stream Forest, though a credible map could probably be produced using the most recent ATV road/trail counts, and a baseline map could be produced when logging is not being done and ATVs/snowmobiles are not in the Forest.

The Nash Stream Citizens' Committee needs to write a position paper and recommended actions on climate change and the sixth great extinction.

"Realize the North Country is now actively courting a Federal prison, has a State prison, and will ask the legislature for the right to have a gambling casino! In that context, isn't a well organized ATV and trailbike system to attract tourist dollars and jobs a better idea?"

State Representative John Alger, 2001



