



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 Steam 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,

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