

File Code: 5440
Date: April 22, 2022

Kris Pastoriza
294 Gibson Rd
Easton, NH 03580

Dear Ms. Pastoriza:

In response to your letter dated March 21st, 2022, I have again thoroughly reviewed your concerns with counsel and staff. However, as noted in my March 8th, 2022, letter (responding to yours of February 14th), it has been the Forest Service's longstanding position that the State of New Hampshire has discretion to determine whether or not to allow ATV use on trails within the conservation easement area.

Our position on this issue has been informed by the review of the conservation easement, as completed by USDA's Deputy Associate Regional Attorney Gene Erl more than 20 years ago. You include with your March 21st letter an unredacted copy of Mr. Erl's legal memorandum. We are not aware how this unredacted version became public, as typically the legal advice from USDA's Office of the General Counsel to the Forest Service is made on the premise that such advice remain privileged and confidential. Nonetheless, you possess the legal rationale that forms the basis of our position.

Your more recent letter draws particular attention to your concerns about ATV use on roads within the conservation easement area. We note the Erl memorandum concludes "that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes." The Forest Service's stance on this question of ATV use remains the same, based on the conclusions reached in the Erl memorandum.

Concerns over ATV use within Nash Stream conservation easement area ought to be addressed to the State. The Forest Service has no property rights under the terms of the conservation easement to interfere with the exercise of the State's discretion in managing the public's recreations use of ATVs.

Finally, your March 21st letter requests additional documents "that indicate if (USFS) had any involvement in Nash Stream after 2001; documents that would support a 'longstanding position'." We do not construe your March 21st letter as a Freedom of Information Act (FOIA) request, consequently, if you are now requesting more documents, please make a new, separate FOIA request.



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; Diane Taliaferro; Sarah Hankens; James Detzel