

*Protect the natural qualities and integrity of the land,  
natural communities, native species, and ecological processes...  
Manage the land with as little interference as possible with natural ecological functions.*  
—“Vision,” Nash Stream Forest Management Plan, 1995: 61

Tom Wagner, Superintendent of the WMNF approved the 2001 Westside proposal as long as the ATV trail remained an internal road and not a connecting (or through) road.<sup>1</sup>

Wagner ignored the wording of Section II-C of the Easement that states New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. Section II-C continues: “*Uses which are not expressly reserved by the State shall be prohibited by the State...*” **New Hampshire did not expressly reserve ATVs as a permitted use; therefore, the state lacks jurisdiction over ATVs in the Nash Stream.**<sup>2</sup>

The New Hampshire Legislature’s ATV Study Committee issued a number of conclusions on December 19, 2001, notably:

- “A successful enforcement program is critical to the long-term success of ATV trail expansion and development.”
- “Environmental concerns and potential degradation of an area must always be the paramount consideration.”

The Legislative committee’s report, released on December 28, summed up the conflicts between ATV riders and non-enthusiasts: “Issues for property owners and residents, especially those who live adjacent to trails, typically are: trail erosion, illegal driving on land of others, noise, dust, dominance over other forms of recreation in trails, and operation illegally at night.”

The Legislative Committee Report agreed to allow the Bureau of Trails (BOT) to develop a system of ATV trails on public and private lands, but only on the condition “such trails must be operated such that all applicable state laws can be, and are, appropriately enforced...” **Recommendation #5 stated: “New ATV trails shall be created only when... [2] DRED/Trails Bureau has the resources to monitor and maintain trails for ATV use, and [3] Fish and Game has the resources and made the commitment to reasonably monitor ATV use and enforce applicable laws.”** Nine days earlier, this Committee had acknowledged Fish and Game was incapable of enforcing state laws:

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<sup>1</sup> Thomas Wagner, Forest Supervisor-White Mountain National Forest, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, September 25, 2001.

<sup>2</sup> Nash Stream Forest Conservation Easement: State of New Hampshire to US Forest Service, August 4, 1989, Section II-C

“NH Fish & Game, admittedly, is understaffed and under equipped to provide the necessary law enforcement component.”<sup>3</sup> New Hampshire opened the Nash Stream Forest to ATVs in full knowledge this violated its own laws.

On November 8, 2001, Phil Bryce established an ATV subcommittee to the Nash Stream Citizens Advisory Committee to “understand what the potential impacts of ATV use would be,” and to advise the Legislature’s ATV study committee..<sup>4</sup>

The subcommittee met once for 90 minutes, requested no data or studies, and refused to convene a second meeting. The minutes of the February 13, 2002, CAC meeting reported the subcommittee “felt it was premature to consider the interior trail and concentrated on the connecting trail.”<sup>5</sup> The CAC approved amending the Management Plan to permit opening the Westside Trail, an existing snowmobile trail that parallels Nash Stream for seven miles. By opening a through-trail connected to the trails network on private lands west of the Nash Stream Forest, the state violated the Forest Service’s interpretation of the Nash Stream Easement. There is no letter from the US Forest Service approving this change.

Peter Benson of The Nature Conservancy and David Publicover of the Appalachian Mountain Club submitted a minority report challenging the legitimacy of the process: “Such a decision should not be inappropriately legitimized by reference to a Study Committee that collected little information, identified no issues or concerns, and produced no written report that could help inform the Citizens Advisory Committee, DRED, the legislature, or the public.... In no way did the Committee’s work represent the in-depth analysis called for by Director Bryce.”<sup>6</sup>

Bryce’s subcommittee ignored concerns about erosion, sedimentation, siltation, and degradation of water quality; impacts on native brook trout; habitat fragmentation; the effects of noise on wildlife and non-motorized recreationists; and conflicts between ATVs and traditional recreational uses explicitly protected by the Nash Stream Forest Management Plan. It ignored the contribution of ATV emissions to climate change and the impacts of ATVs on climate stressed species.

At the February 13, 2002 meeting of the citizens’ committee, Fish and Game biologist, John Lanier, said he needed one season without ATVs to gather baseline data. The politicians had other ideas. In May, the New Hampshire Legislature voted to permit ATVs in the Nash Stream. At the Citizens Advisory Committee’s May 16 meeting, Chris Gamache, of the Bureau of Trails, reported the new Westside Trail required 44 new culverts and two re-routes to avoid a beaver pond and a wet section. Gamache assured the

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<sup>3</sup> NH Legislature, “ATV Study Committee, Attachment One: Conclusions,” December 19, 2001; ATV Study Committee, “Attachment Two: Recommendations,” December 28, 2001.

<sup>4</sup> Memo: Minutes: Nash Stream Advisory Committee, November 8, 2001.

<sup>5</sup> Minutes: Nash Stream Advisory Committee, February 13, 2002.

<sup>6</sup> Peter Benson & David Publicover, “Minority Report” to Nash Stream ATV Study Committee, 2002.

committee “there are currently no air quality concerns,”<sup>7</sup> even though, in the US, ATVs emit several million tons of carbon annually.

George Bald, Commissioner of DRED approved the Westside Trail pilot project in June, and it opened to ATV traffic on August 1, 2002. Any baseline studies would have to be performed with ATVs whizzing by. The state has never monitored or assessed the ecological and cultural impacts of ATVs in the Nash Stream Forest.

On March 21, 2007 Commissioner Bald informed NSCC chair, Fred King: “During this pilot period several studies were conducted to assess the impact of the ATV trail on wildlife, noise levels, and surface water. The final results were presented and discussed at the Nash Stream Forest Citizens Committee on January 25, 2007.” The minutes of that meeting paint a somewhat less rosy picture.

The Westside *snowmobile* trail had been covered in vegetation that minimized erosion. By 2007, with heavy ATV usage, the vegetation cover had disappeared, replaced by serious problems with dust, erosion, and mud. At the January 2007 NSFCC meeting, Bryce reported results of the 3-year mammal study had been “inconclusive,” and “there were many problems with the study.”<sup>8</sup> There is no record of an attempt to conduct a conclusive mammal study. And from 2002-2021 the state never submitted an annual monitoring report on the impacts of the Westside Trail—as required by RSA 215:A-42(b).

In 2012, the ATV lobby proposed several additional ATV trails within the Nash Stream Forest to allow riders east-west passage through the Nash Stream. That December the State Lands Management Team solicited agency comments on the Kelsey Notch Trail proposal in the northeast sector of NSF.

Jim Oehler of NH Fish and Game wrote on January 28, 2013:

The continued expansion of North Country ATV trail riding opportunities has increased the demand on law enforcement substantially.... This demands that the NHFG Law Enforcement Division stretch existing funds and manpower thinner and thinner. Additional enforcement efforts on the Nash Stream SF or other new trails in the North Country will be marginal at best. *There doesn't seem to be a clear plan for meeting law enforcement needs on the expanded Nash Stream SF ATV trail system or other proposed North Country ATV trails....* ATVs were not a part of the original management plan. ... [T]he NH Fish & Game Department will concur with the proposed trail expansions at Nash Stream SF only under the condition that the planned expansions go through an amendment process that effectively gains input from a broad array of Nash Stream stakeholders. The plan amendment should adequately address potential impacts to fish, wildlife, and their habitats, especially wetland and stream connectivity issues, an assessment of law enforcement and trail maintenance needs and how those needs will be met, and an assessment of alternative routes. [Failure to perform such a plan amendment] *will*

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<sup>7</sup> Minutes: Nash Stream Advisory Committee, February 13, 2002; Minutes: Nash Stream Advisory Committee, May 16, 2002.

<sup>8</sup> Minutes: Nash Stream Forest Citizens Committee, January 25, 2007.

*likely lead to intense criticism by individuals and groups who are interested in the State Forest's other uses for which the property was originally acquired.*<sup>9</sup>  
(emphasis added)

On August 2, 2016, NH F&G biologist John Magee wrote to Director Glenn Normandeau:

I was disappointed to see [on a visit to the Kelsey Notch Trail in November 2015] the road erosion problems on this trail and the resulting truckloads of sediment that were obviously entering the perennial streams there. This is a direct result of a lack of suitable erosion control on this OHRV trail.... The erosion issue may be even worse now because the needed work still has not been done. Therefore, it seems that this trail should be closed until a solid, signed agreement is in place and the erosion problems are fixed. Furthermore, the agreement should include details about how often and when assessments will be done and by when erosion issues will be fixed. *Again, the sediment coming off this road and entering perennial streams is TREMENDOUS.*<sup>10</sup>

The Bureau of Trails allowed the Kelsey Notch Trail to remain open and unrepaired until the fall of 2017, when it trucked in 105 loads of gravel and fill (12 cubic yards per load) to replace the eroded gravel and soil. Where did 1260 cubic yards of eroding materials end up? The Bureau of Trails annually receives \$3 million from ATV registration fees. It paid the \$22,000 cost for the gravel from those funds.<sup>11</sup>

On May 5, 2016, the Appalachian Mountain Club, the Society for the Protection of New Hampshire Forests, and The Nature Conservancy wrote to CORD: “Existing [ATV] Trails in Nash Stream [are] in Clear Violation of RSA 215-A: 42.”

In the 2020 monitoring report, New Hampshire Fish & Game wildlife biologist, Jacob DeBow, expressed “continued concern” over the impacts of noise pollution on wildlife: “... we have concern about potential increases in flight behavior around active trails.... We have concern for how this may disrupt the normal cycles of wildlife within ear shot of the trail by interfering with breeding behavior, decreasing time spent foraging, and increasing time spent on alert and on edge as machines constantly pass by.” *No credible noise studies have ever been conducted in Nash Stream Forest.* A sloppy 2001 noise study conducted by the Bureau of Trails had concluded if ATVs do not exceed 25 mph, no sound registers on the noise meter, and “the greater number of ATV’s, obviously increases the noise.” The study did not indicate how often ATVs on the Westside Trail exceeded 25 mph, or the noise levels produced by a pack of ATVs traveling at higher

<sup>9</sup> Jim Oehler New Hampshire Department of Fish and Game to “State of New Hampshire Department of Resources and Economic Development Division of Forests and Lands State Lands Management Team—Request for Review,” January 28, 2013, State of New Hampshire Department of Resources and Economic Development, “Nash Stream Forest Management Plan December 2017, 286-289.

<sup>10</sup> Memo: John Magee, Fish Habitat Biologist to Glenn Normandeau, Director of NH Fish and Game, August 2, 2016.

<sup>11</sup> Nash Stream Citizens Committee Minutes November 2, 2017.

speeds.<sup>12</sup> The Bureau of Trails installed counters for the first time in 2020. The following year, 12,293 ATVs travelled over Kelsey Notch Trail in 2021.

In November, the three conservation groups submitted a legal opinion from Attorney Ryan S. Duerring of the Boston legal firm of Ropes and Gray. It stated:

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 [2001 USFS] Opinion regarding the permitted 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.

In January 2022, David Govatski, Chair of the Nash Stream Forest Citizens Committee and a retired career USFS forester, formally requested Commissioner of the Department of Natural and Cultural Resources, Sarah Stewart, seek a legal opinion from the US Forest Service regarding the meaning of Section II-C of the 1989 NSF Easement. Stewart denied Govatski’s request. A couple of days later, AMC, TNC, and SPNH submitted a letter to the Commissioner strongly supporting the Chairman’s request for a legal opinion from the USFS. Stewart rebuffed them also. She also ignored a letter signed by 35 concerned citizens making a similar request. On March 8, WMNF Superintendent, Derek Iburguen, refused to re-visit the legality of the 2001 USFS decision.<sup>13</sup>

The number of hours DFL and F&G staff has devoted to ATV issues is “substantial,” and most of that time has dealt with demands for more ATV trails in the Nash Stream.

Since 1995, state agencies have complained they cannot perform required monitoring on Nash Stream because of inadequate agency funding, yet DFL and F&G can afford to divert substantial staff time to respond to the demands of ATVs. This is a huge subsidy to a high-carbon activity.

During the 180-day Nash Stream Forest ATV season, Fish & Game enforcement officers made 10 visits in 2018; 4 in 2019; and 5 in 2020. The enforcement staff of the Division of Forests and Lands has been forced to assume these duties.

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<sup>12</sup> Kelsey Notch Monitoring Report 2020; Nash Stream Forest Management Plan December 2017, 329-337; Minutes: Nash Stream Forest Citizens Committee, January 25, 2007.

<sup>13</sup> Dave Govatski to Jamie Sayen, personal communication; Appalachian Mountain Club, The Nature Conservancy, and The Society for the Protection of New Hampshire Forests to Commissioner of DNCR, Sarah Stewart, February 7, 2022; Letter: Derek Iburguen, Superintendent WMNF, to Kris Pastoriza, March 8, 2022.