

March 21st, 2022

Supervisor Ibarguen,

I request that you produce a current legal interpretation of the Nash Stream State Forest conservation easement that supports the USFS's position that ATVs are an allowed use.

I request that you produce a current legal interpretation of the easement that supports USFS/Attorney Erl's assertion that the multiple use provision of the deed, paragraph II. C. 4 permits ATV use in Nash Stream State Forest.

I request that you produce a current legal interpretation of the easement that supports USFS/Attorney Erl's assertion that the public access provisions of the deed, paragraph II F.1. & 2. mean the State can allow ATVs in Nash Stream State Forest.

I request that you produce legal definitions of 'trail' and 'road' that support your assertion that the ATV travelways in Nash Stream State Forest are trails, not roads.

Your letter stated "It has been the Forest Service's longstanding position that, under the terms of the conservation easement, the State of New Hampshire reserves the discretion to ban, authorize, or regulate ATV trails within the conservation easement area."

On March 15, 2021 I submitted a [FOIA](#) to the USFS for documents responsive to USFS involvement with the four OHRV trails in Nash Stream State Forest. USFS [found](#) only [two documents](#) responsive to this request; the Erl document, (its contents were redacted), and another page signed by John V., also redacted.

I request that USFS produce any documents that indicate it had any involvement in Nash Stream after 2001; documents that would support a "longstanding position" rather than an uninformed decision followed by 20 years of USFS averting its gaze from its "affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State."

Supervisor Wagner's permitting of Northern Pass, and the relentless logging and clear-cutting of White Mountain National Forest have made it clear to many people in the state that Forest Service policy is driven by political influence rather than science. It is unfortunate that the Forest Service is formalizing its acceptance of illegal recreational ATV use on lands it oversees, especially now, in our accelerating Climate Emergency.

You are incorrect in your implication that the ATV roads in Nash Stream State Forest are trails, thus not covered under II C.2.

In 2001 DRED/DFL solicited the Forest Service's opinion on whether the Nash Stream conservation easement permitted ATVs in Nash Stream.



West Side Road, BOT photo, 2016

When solicited by DRED for an opinion on whether the Nash Stream S.F. easement allowed ATV use, Tom Wagner, then Supervisor of WMNF, raised the issue of through roads. He wrote:

“II. Use of the Easement Area

Under C.1, the State has expressly reserved public recreation uses in order to construct, operate and maintain campsite, trails, internal access roads, picnic roads, boat launches, trailhead parking areas, visitors center and ranger station. The reserved right specifically highlights cross country ski trails and snowmobile trails, but based on the way it is written it does not appear to preclude other kinds of trails such as hiking and ATV trails or internal access roads.

Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation and maintenance of these facilities. In the case of this instrument “public roads” does not include internal access roads and Forest Service Involvement would only be required on roads that provide “through travel.” I see

nothing in this provision that would preclude the State from considering internal access roads for ATV use.”

Though he may not have been aware that ATV “trails” would become, or be built, as roads, Supervisor Wagner understood that existing roads in Nash Stream might be approved for ATV use (as they were.) There is no evidence that DRED, which was dedicated to promoting ATV use in Nash Stream S.F. provided him with the locations of the proposed ATV “trails.”

In 2017 DNCR asked the Council on Resources and Economic Development for permission to fix West Side Road:

“The **West Side Road** is a **gravel forest management road**, which runs south to north on the west side of Nash Stream. The **road** was already in existence when the State of New Hampshire acquired the property. The **road** is approximately 4 miles long...”



Snowmobile Trail 2021

In 2014, Nash Stream Forest Citizens’ Committee minutes stated “The **West Side Road** is under construction to fix water bars to control run-off on the **ATV trail**.”

In 2018 DNCR Commission Sarah Stewart described the West Side ATV Road as a road and a trail interchangeably:

“Nash Stream Forest was acquired in 1988 using Land and Conservation Investment Program (LCIP) funds and as such CORD has management oversight in certain activities that occur on the property. The DNCR is bringing this project to you for review and input because **this road is also an ATV trail within Nash Stream Forest. The West Side Road was formally designated as an ATV trail in the forest in March of 2007...**

It is of utmost importance to the agency to be able to perform this **road relocation** work this fall, to avoid having the **trail** closed during the snowmobile season.

The DNCR proposes the following:

1- reroute approximately 500' of **West Side Road**. Route will be cut, stumped and built as a gravel **road** with a travel way of 12' wide and appropriate ditch lines (total finished width of 20')

2- Remove current **road bed** within ravine, down to and including removal of steel boiler culverts. Ravine will be stabilized, seeded and mulched. Erosion control, as noted in Best Management Practices (BMP) manual.

3- all use of existing **road**, at this location, will cease and **West Side Road** will formally be noted in its new location.” (emphasis added)

When USFS's opinion on the easement was solicited by DRED in 2001, USFS classified roads within National Forest System that were planned or managed for motor vehicle access as Roads:

“The definition of “Road” in the glossary of the DEIS defines “Classified Roads” as “roads within National Forest System lands planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads (36 CFR.212.1). [2000](#)

The first Kelsey Notch ATV Road count, in 2021, on Corridor B, registered 12,293 ATVs over a 4 ½ month season.

The high traffic volume and the type and amount of maintenance performed also indicates that these trails are roads:

In 2016, North Country ATV Club spent some portion of their \$47,963 grant from DNCR to “Restore drainage and water diversion to trail, add gravel” to the Bordeau Road in Nash Stream S.F. to reinforce it for ATV use. Other maintenance funded by that grant include ‘add gravel’, ‘remove stumps and very large rocks’, ‘cover ledge’, ‘widen trail,’ remove large rocks’, ‘cover ledge’, ‘widen trail.’

The Board of Trails 2021 report to CORD on Kelsey Notch Trail/Road stated:

“2017- **trail** surface was layered with gravel... additional culverts were installed in the existing **road**. The trail/road were graded in the fall...

2018 - the **trail/road** were graded and rock raked... 88 hours of excavator work was performed to reshape the **trails** surface and improve the ditch lines, and an additional 40 loads of gravel were spread over a 5 day period.

2019 -20 hours of grading and rock raking were performed on the **trail/road**. A magnetic **trail** counter was installed on the **trail** between July and October and it recorded 2400 vehicles passing over it...

2020- 5 bridges were rebuilt... The **trail** is planned for annual grading in the fall of 2020.” [p. 27](#)

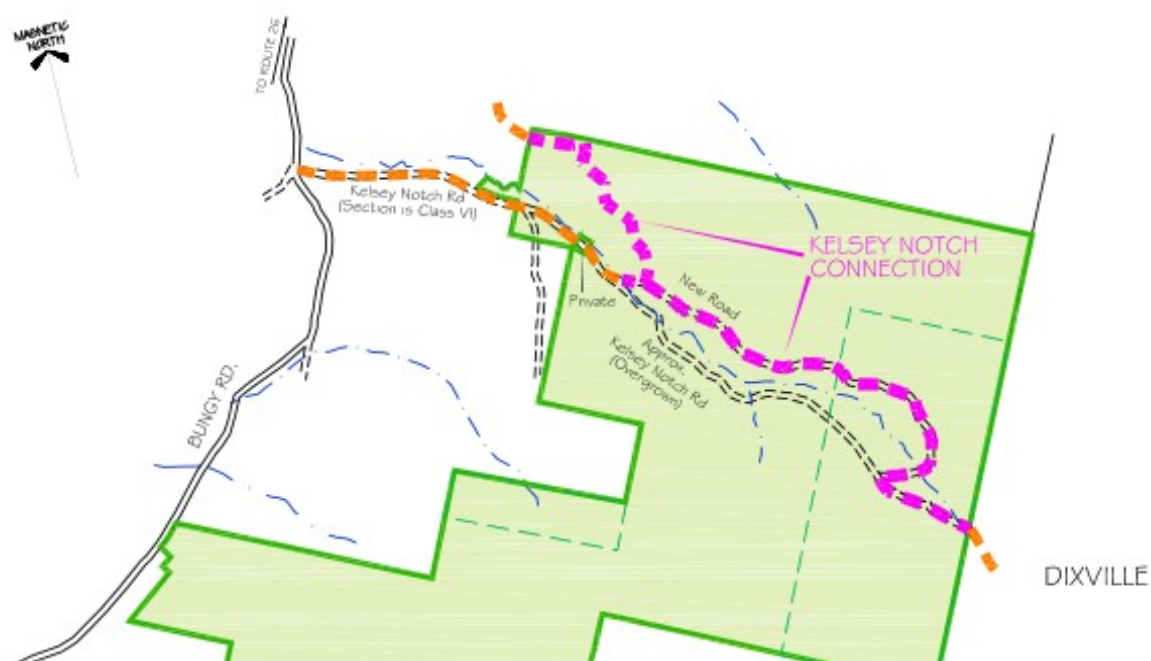


(Kelsey Notch ATV Road. Division of Forest and Lands files, 2016)



In the fall of 2017, 105 loads of gravel and fill (12 cubic yards per load), at a cost of \$22,000., were trucked in to replace the gravel and soil that had been blown off the [Kelsey Notch Road](#) by ATVs.

In 2019 nine loads of gravel (\$900.00) were spread in Kelsey Notch.



(Board of Trails map of proposed Kelsey Notch ATV Roads)

The ATV “trails” in Nash Stream are roads. The intermittent use of the word ‘trail’ to describe the ATV roads in Nash Stream State Forest is colloquial; not a technical, legal or accurate term.

Supervisor Wagner understood that existing roads in Nash Stream might be approved for ATV use (as they were.) There is no evidence that DRED, which was dedicated to promoting ATV use in Nash Stream State Forest, provided Supervisor Wagner or Attorney Erl with the locations of the proposed ATV “trails.”

At the next Nash Stream Advisory Committee meeting after receipt of the Wagner and Erl letters (Feb. 2002), the ATV Study Subcommittee reported: “Initially 2 trails were under consideration, a connecting trail, “West Side Trail” and a larger, self-contained interior trail. The committee felt it was premature to consider the interior trail and concentrated on the connecting trail.” Discussion then pivoted to discuss and approve the Westside and Bordeau connecting “trails”. The State did not inform the USFS of this change and the "uninvolved" Forest Service seems not to mind two decades later. There is no evidence that DNCR provided USFS with any information about the construction of the Kesley Notch ATV roads.

DNCR ignored the through-road restriction in siting all four of these roads.

The ATVs through roads in Nash Stream State Forest require explicit USFS permission.

Supervisor Wagner solicited a legal opinion on the Nash Stream conservation easement from Alan Gene Erl, legal counsel for USFS. Erl was silent on the through road vs. internal road distinction in the easement deed.

Both Supervisor Wagner and Attorney Erl failed to understand that ATVs were not a reserved use, and were thus prohibited by the terms of the Nash Stream easement.

Attorney Erl appears confused in his letter, which fails to cite any laws, definitions or precedents.

He ignored, or was ignorant of, the fact that ATVs were banned on the Nash Stream before, during, and after the negotiation of the 1989 Easement and in the 1995 [Management Plan](#) which stated: “The use of all-terrain vehicles (ATVs) and trail bikes is prohibited. Snowmobiles are limited to areas or trails established for their use.” (p. 129) “Recreation management will emphasize low-impact, carry-in/carry-out dispersed use.” (p. 63)

His wording on snowmobile trails appears to be an error, his interpretations of section II. F. and section II. C. 4 are questionable, and he found it necessary to qualify almost every opinion he ventured; “indicates”, “reasonable interpretation”, “seems distinctly relevant”, “seems broad enough”, “discretionary regulatory authority”; all in less than one page of text.

He wrote: “The mention of snowmobile trails as a subset of trails indicates that motorized use is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”

This statement by Attorney Erl makes no sense.

1. What was at issue was the right of the State to permit ATV trails, not snowmobile trails (does Erl mean all snowmobile trails, or only those of the “same kind, class or nature as ATV trails”?)

2. Is this text in error? Did Erl intend to write “a reasonable interpretation would be that ATV trails being of the same kind, class or nature as snowmobile trails could be regulated by the State? In which case, the fact that ATV trails are not “of the same kind, class or nature as snowmobile trails” would preclude them. Since there is no way to know Attorney Erl’s intent, USFS needs to provide a current legal document in support of its claim that ATVs are snowmobiles.

3. The right of the State to build snowmobile trails does not mean that other motorized use is permitted.

Is USFS prepared to defend its position that II F.1. & 2. mean the State can allow ATVs Nash Stream State Forest?

II “F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and [prudent resource utilization and protection](#).”

Is USFS prepared to defend its position that Paragraph II C. 4. allows the State to permit ATVs in Nash Stream State Forest?

Allowed use expressly reserved by the state: **“4. Natural Resources Management. Management for multiple use consistent with the purposes and provision of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management...resources...**

For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.”

In 1994 DRED’s produced a [Nash Stream Overview](#) pamphlet to educate the public on this new and remote State Forest:

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.

In 1996 DRED [wrote](#) to Fish and Game stating that ATVs were not allowed on certain rail trails because these trails “cannot be used for motorized recreation with the exception of snowmobiles.

In 1997 DRED began allowing ATVs on all rail trails in the winter, without controlling summer use.

In early 2007 FHWA was informed (by Andrew Walters, of ATV Watch) that DRED and DOT were not in compliance with FHWA law regarding motorized use of certain rail trails in New Hampshire. [FHWA wrote](#) to New Hampshire DOT:

“Federal transportation law does not define “snowmobile,” nor does the *Uniform Vehicle Code*. Therefore, the State may define “snowmobile.” FHWA does not challenge the described NHDOT and DOT definition of wheeled ATVs as “snow traveling vehicles.” However, absent a State law or regulation defining a “snowmobiles” as including any snow traveling vehicle, FHWA must consider a commonly understood definition of snowmobile, such as those of other Federal agencies or industry.

The USDA Forest Service defines an “over-snow vehicle” in 36 CFR 212.1 as a “motor vehicle that is designed for use over snow and that runs on a track and/or a ski or skis, while in use over snow.” This regulation does not define “snowmobile.” But an ATV that does not run on tracks or tracks and/or skis does not meet the Forest Service’s definition of “over-snow vehicle.”

The National Park Service defines a snowmobile in 36 C.F.R. 1.4 as “Snowmobile means a self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1000 pounds (450 kg), driven by a track or tracks in contact with the snow, and steered by ski or skis in contact with the snow.” An ATV does not meet this definition.

The International Association of Snowmobile Manufacturers (ISMA) defines a snowmobile as: “Snowmobile – A self-propelled vehicle intended for off-road travel primarily on snow, having a curb weight of not more than 453.59 kg (1,000 lb); driven by track or tracks in contact with snow; and steered by a ski or skis in contact with the snow.” An ATV does not meet this definition.

Based on documentation FHWA has seen so far, it would appear under New Hampshire policy (“No person shall operate an OHRV, other than an ATV, trail bike or snowmobile on a bureau snowmobile trail.”) that an ATV is considered a distinct vehicle from a snowmobile, and, therefore, does not meet the State’s definition of “snowmobile.”

FHWA stated that ATVs did not meet the USFS definition of an over-snow-vehicle, the USFS term for the class of vehicles which included snowmobiles but not un-tracked ATVs.

Neither NH DOT nor DRED were able to provide a legal State definition of snowmobile that stated that ATVs were snowmobiles. DRED disputed, then three months later, admitted the legitimacy of FHWA’s interpretation of New Hampshire law and ceased its ten year practice of allowing ATVs on rail trails that permitted only snowmobiles.

From 2007 to the present DRED (now DNCR) withheld from USFS its knowledge that according to state and federal law ATVs were not snowmobiles and that ATV access to Nash Stream State Forest must be closed.

At a 2015 meeting, the Nash Stream Citizens’s Committee discussed ATV use in the Forest:

“Wink Lees questioned how the conservation easement is overseen by the U.S. Forest Service and if ATV’s should be allowed by what’s written in it. Maggie [Machinist, DF&L] explained that the Forest Service is not very involved.”



Gadwah Notch Trail, [Cohos Trail](#), Nash Stream State Forest



Kelsey Notch ATV "Trail", Nash Stream State Forest, BOT files, 2016

Kris Pastoriza

Easton, N.H.

krispastoriza@gmail.com



STATE OF NEW HAMPSHIRE
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
 DIVISION of PARKS and RECREATION

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-3255
 FAX: 603-271-2629

A.S. BARTLETT, JR.
 Commissioner

March 21, 1996

RICHARD MCLEOD
 Acting Director
 603 271-3255

Parks Bureau
 603 271-3556

Trails Bureau
 603 271-3254

Information
 and Education
 603 271-3556

Technical and
 Community
 Assistance
 603 271-3627

REGIONS:

Northern
 603 788-3155

Central
 603 323-2087

Southwest
 603 547-3373

Southeast
 603 485-2651

Seacoast
 603 436-1552

Chris Berg, Conservation Officer
 NH Department of Fish and Game
 Region 4
 25 State Route 9
 Keene, NH 03431

Dear Chris,

It has been brought to my attention that you are looking for information regarding the use of ATVs and motorcycles on the newly acquired rail corridors in your district. The federal funds that were used by DOT, Bureau of Railroads and Public Transportation to purchase the corridors specifies they cannot be used for motorized recreation with the exception of snowmobiles.

The Bureau of Trails has an agreement with DOT to operate the corridors as trails, but we are held to the above constraint. I have enclosed a copy of the agreement and pertinent DRED rules (Res 8500 & Res 8300) that address the use of OHRVs on DRED properties. More specifically, Res 8501.01(a) states "no person shall operate an OHRV on DRED properties except in areas or trails established by the bureau for OHRV use", and Res 8503.01(c) states "no person shall operate a trail bike or ATV off established bureau trails on DRED properties as listed in Res 8300". These corridors have not been established as OHRV trails and therefore anyone riding on them is operating illegally and should be prosecuted. Our statutory authority is found in RSA 215-A, and in RSA 216-F.

If you need more information or input, feel free to call so we can continue to protect this important state resource.

Sincerely,

E. Paul Gray
 Trails Bureau Chief

EPG/BS/s



6:00pm Phil Bryce welcomes the committee members and hands the meeting over to Fred King, the chairman.

Fred King calls the meeting to order

The minutes from the March meeting were approved.

Fred King explains that the main purpose of this particular meeting is to discuss the ATV trail and make a decision on the status.

Forest Management within Nash Stream-

Dave Falkenham discussed timbersales that have been completed since the last meeting.

Maggie Machinist gives a quick presentation on the upcoming timbersale in Compartment 10 for the Winter of 2007/2008.

Fred starts the discussion of the ATV trail, saying that it has been in operation since November 2002 with a 3 year test period.

Phil Bryce reviews the summary of findings about the ATV trail. (handout)
5 Studies were conducted within the pilot period to monitor conditions and aid in decision making.

1- Carol Foss gives a presentation on the bird study that was conducted. According to this study ATV's seemed to have little effect on birds. This study provided good baseline information for future surveys for monitoring or if conditions change or usage change.

2- Phil Bryce gives a summary of the mammal study. The results seem to be inconclusive, there were many problems with the study.

3- Chris Gamache shares the findings from the noise study. Overall, if ATV's stay below 25 mph the sound doesn't register on the noise meter. The greater number of ATV's, obviously increases the noise.

Dave Goulet inquires if Fish and Game has decibel meters, and Chris responds yes.

4- Chris Gamache reviews the results from the Macro-Invertebrate study. Currently there is no written report, but it will be completed soon. Summary shows that there was no negative impact and no change over the course of the 2 year study.

5- Chris Gamache also reviews the results from the Turbidity study. The written report is not completed yet, but no adverse effects were shown.

Dave Falkenham discusses the road and trail maintenance issues.

- The West Side Road went from a winter road to a 4 season road.
- The road needs to be graded at least every two years to keep the crown in the road and minimize erosion.
- Mud flap water bars also need to be cleaned out and maintained.
- Someone needs to be definitively in charge and responsible for maintenance.

Chris Gamache said that in the original agreement maintenance wasn't addressed.

Fred King inquires about funding for the trail from the Trails Bureau. Chris Gamache responds that there is funding, but it is tight.

Dave Goulet and Ted Burns both agree that a user group needs to be responsible for the trail.

Bill Carpenter reviews the contents of the MOA. (handout) Bill thinks the agreement should be continued and possibly enhanced in the future.

The committee reviews the draft recommendation. (handout)

Fred King proposed entering into another 3 year agreement, in which the club will be responsible for maintenance.

Phil Bryce recommends having a 30 day public comment period.

Ted Burns inquires into the 3 year agreement, and questions why the club needs another agreement, he would like to see the trail system become permanent in Nash Stream.

Bill Carpenter replied, saying that MOU's are used all over the state with other ATV clubs and are becoming more common.

Phil Bryce stressed that the state can't permit a trail in perpetuity, especially a property like Nash Stream.

- the Forest Service has an easement
- there is an advisory team
- Overall, more scrutiny associated with the property.

Fred King points out within the easement wording that prohibits agreements longer than 5 years.

Bill Carpenter adds that contracts longer than 3 years have to have G&C approval, and go through a process, which they would like to avoid.

Wink Lees stresses the importance of monitoring wildlife in the future.

Mary Sloate wants the word "thresholds" in part 1B to be defined.

John Lanier agrees that needs to be addressed in the future, after appropriate research has been conducted.

The floor is opened up to the public.

Edith Tucker wants to work into the agreement numbers of ATV's on the property. She feels that the public has been waiting to find the results of this study to see how often the trail is used. She would like to see usage monitored, to get a better idea on the number of recreators on the trail.

Dave Goulet motions to move forward with the 3 year agreement.

Ted Burns seconds the motion.

There will be a 30 day public comment period.

Fred King adjourns the meeting at 8:10

Nash Stream

November, 1994

AN OVERVIEW OF THE NASH STREAM FOREST

ACQUISITION

The Nash Stream Forest is a unique parcel of land in Northern New Hampshire. Its acquisition in 1988, through a collaborative effort between the state of New Hampshire, the U.S. Forest Service, The Nature Conservancy, The Trust for New Hampshire Lands, and The Society for the Protection of New Hampshire Forests is equally unique, and serves as a milestone in state, private and federal cooperation.

The diversity of the groups represented in this effort is almost as diverse as the wildlife that exists within the Nash Stream Forest and the topography of the land itself. Yet over an eighteen-month period, representatives from each of these groups worked together, to negotiate an

arrangement which all felt was in the best interest of the land and the people who use it.

MULTIPLE USE STRESSED

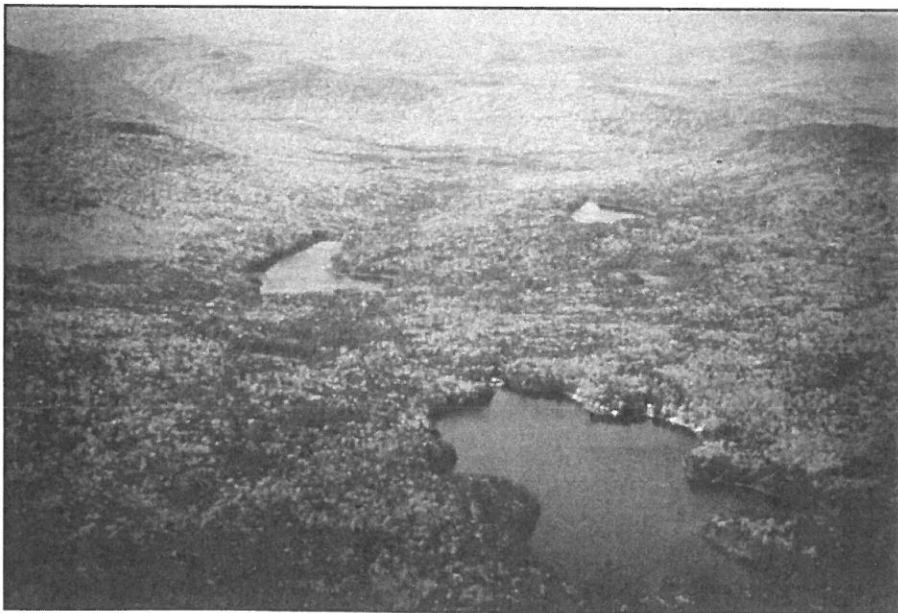
All of the groups involved in the purchase and future management of the Nash Stream Forest recognized the importance of protecting the Forest from development, as well as the importance of continuing to use the land in a "multiple-use" manner—for education and research; as a key watershed area; for fish and wildlife; recreation; scenic qualities; and as a sustainable timber resource. These mutual concerns led to the successful purchase of the property, and to a gubernatorially-appointed Advisory Committee to focus public input and provide technical expertise.

THE MANAGEMENT PLAN

Since December, 1989, this Committee has been hard at work, holding public listening sessions to gather input, working with a Technical Committee to review research on the past and present use of the Nash Stream Forest, and developing a working Management Plan. This final Plan will serve as a model of environmentally sound public land stewardship so that future generations may enjoy this unique property.

GATHERING PUBLIC INPUT

As has been done throughout the development of the draft Management Plan, we continue to seek public input from any group or individual interested in the Nash Stream Forest. Your input will help us formulate the final Management Plan, which will ultimately determine the future use of the Nash Stream Forest. For more information about the impact of public input on the Management Plan, see the article on page 6.



Whitcomb Pond, Little Bog (Fourteen and a Half) Pond and Lower Trio Pond in the Nash Stream Forest.

Nash NEWS
Stream

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Division of Forests and
Lands.

QUESTIONS & ANSWERS About The Nash Stream Forest

WHAT IS THE DIFFERENCE BETWEEN THE NORTHERN FOREST AND THE NASH STREAM FOREST?

The Nash Stream Forest is a 39,601 acre tract owned by the state of New Hampshire, managed by the Department of Resources and Economic Development, with a Conservation Easement held by the United States of America. The tract lies within a four-state region known as the Northern Forest that stretches from the coast of Maine, across northern New Hampshire and Vermont into New York, totaling 26 million acres. The Northern Forest is one of the largest expanses of continuously forested land in the nation with about 85% in private ownership. Forest-based economies, recreation, and environmental diversity are traditional to the area as are clean air and water.

The breakup of Diamond International Co. lands in 1988 led to both state acquisition of the Nash Stream Forest and national concern about the future of the Northern Forest lands. Congress authorized the U.S. Forest Service to study Northern Forest issues in cooperation with a four-state Governors' Task Force. Congress later created the Northern Forest Lands Council in 1990 to continue the work begun by the Task Force. The Council's report was released in the fall of 1994.

WILL THERE BE A FEE TO USE THE NASH STREAM FOREST?

Although allowed by the Conservation Easement, there are no plans to charge a fee for public entry or general use of the Nash Stream Forest.

WILL THE PROPERTY BE OPEN TO MOTOR VEHICLES?

Yes. Traditional vehicle access into the Forest is recommended in the Plan. The main gate will be opened each spring when road conditions allow for access by conventional motor vehicles to the Main Road (11.1 miles) and Fourteen and a Half Road (3.3 miles), and closed in early December. All other interior roads will be gated and maintained for controlled access to keep maintenance costs and safety risks down, to minimize disturbance to wildlife, and to provide for non-motorized recreation opportunities.

WILL THERE BE A VISITORS' CENTER OR GATE KEEPER AT THE ENTRANCE?

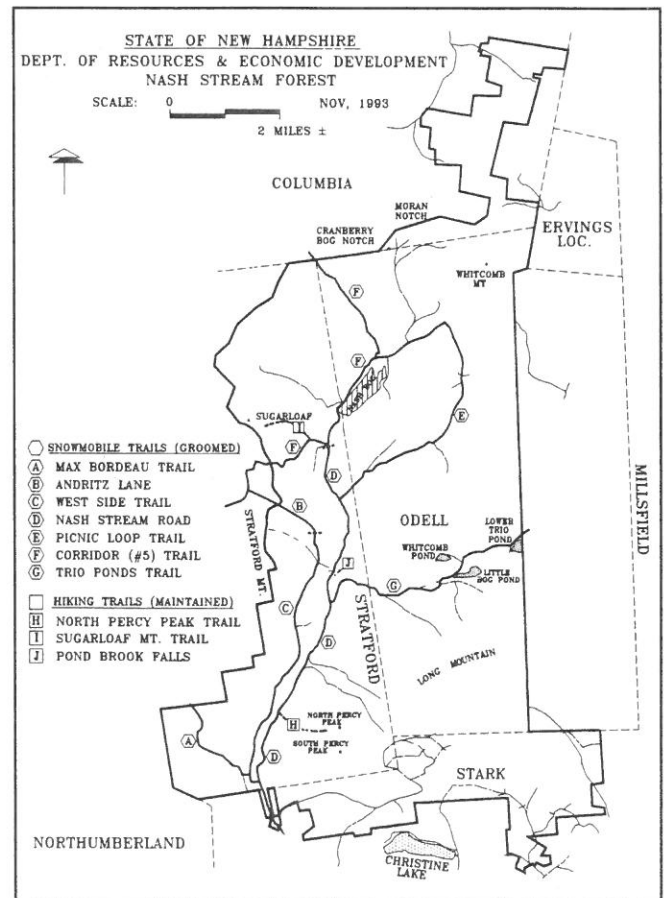
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

WILL THERE BE HANDICAPPED ACCESS?

Reasonable accommodations will be made to provide access to individuals with disabilities. Contact the Regional Forester, North Country Resource Center in Lancaster at (603) 788-4157.

CAN I USE MY ATV OR TRAIL BIKE AT NASH STREAM?

No. Snowmobiles are the only OHRVs permitted on roads and trails specifically designated for their use; there will be no off-trail, cross country use. Mountain bicycles are allowed on established roads and trails unless otherwise posted.



WHAT IS THE ROLE OF THE FEDERAL GOVERNMENT?

The Forest Supervisor, White Mountain National Forest (WMNF) is responsible for administering the Conservation Easement on behalf of the United States. The role of the Forest Service is to ensure that the terms and conditions of the Easement are satisfied and does not include active involvement with management. The WMNF staff serve as advisors to the state and provide assistance when needed, primarily with management support and technical advice.

ARE THERE ANY THREATENED OR ENDANGERED SPECIES ON THE PROPERTY?

There are 5 rare plant species identified on the property in as many locations. They are: Black Crowberry, Marsh Horsetail, Three-forked Rush, Broad-lipped Twayblade, and Millet-grass. Four of the five are listed as threatened by the NH Native Plant Protection Act. The other, Three-forked Rush, is relatively rare but is not state-listed. All of these plants occur within designated natural preserve areas.

No federally listed animal species are known to breed on the property. Peregrine Falcons and Bald Eagles nest within 20 miles of the property and may frequent the Forest from time to time. Several state listed animal species occur or potentially occur on the property. Common Loons nest regularly and Northern Harriers have nested in some years. Lynx and Marten may occur as transients if not residents.

WILL HUNTING AND TRAPPING BE ALLOWED?

Yes. Hunting and trapping will be permitted in accordance with state law.

WILL THERE BE ANY NEW (HIKING) TRAILS?

Only modest increases in the trail system are under consideration, such as adding a hiking loop via a short connector between the Percy Peak Trail and an old logging road (north of the Peak) that follows Long Mountain Brook down to Nash Stream. A Nash Stream Trails Advisory Group is recommended in the Management Plan to assess the current trail system, its condition and use, and recommend trail improvements. It is recommended that the Trails Advisory Group consist of representatives of hiking, dog sledding, cross country skiing, bicycling, hiking and snowmobiling to ensure adequate representation of these user groups.

WILL CAMPING BE ALLOWED?

Camping is not currently available. By department policy, camping is not allowed on any state

forest or park where overnight camping facilities are not available. The Management Plan does not recommend development of a campground or camping facilities. However, the Plan leaves open the possibility of future backcountry camping along selected hiking trails, subject to the availability of staff and funds for proper monitoring and maintenance.

ARE THERE PLANS TO STOCK FISH?

Yes. Stocking will occur where natural spawning is poor or non-existent. Lower Trio Pond, Little Bog Pond, and possibly Whitcomb Pond will be stocked annually with brook trout. Until the status of the wild trout population in Nash Stream can be determined, stocking of hatchery brook trout in the mainstem will continue. Nash Stream is unlikely to support a recreation fishery in the near future without an annual stocking program due to a current lack of pool habitat in the stream.

WILL THERE BE A CATCH-AND-RELEASE FISHERIES PROGRAM?

Fisheries management will emphasize natural populations of fish species consistent with habitat capabilities of the ponds and streams. Special fishing regulations such as catch-and-release, minimum fish lengths, and fishing gear restrictions may be implemented to protect spawning stock in order to maintain wild populations of brook trout.

HOW MUCH OF THE FOREST WILL BE NATURAL PRESERVE OR OTHERWISE PROTECTED?

About 46% (18,339 acres) of the Forest is considered ecologically significant, fragile or sensitive and will be preserved or under restricted management. Much of this area coincides with boundaries of areas on which the Conservation Easement prohibits logging (10,665 acres). Protection will be accomplished by several means as follows:

Natural preserves (8,113 acres) are areas of uncommon ecological significance that encompass 9 different natural communities and 1 pond located primarily on the side slopes and mountain tops of Sugarloaf, Whitcomb and Long Mountains and Percy Peaks. There will be no intentional disturbances to these areas.

Preserve buffers (5,115 acres) are lands surrounding natural preserves with soils and topography capable of serving as shock absorbers to protect natural preserves. Management activities will be limited in preserve buffers.

A corridor (515 acres) of pure softwood forest forms a natural drainageway connecting the natural preserves and buffer areas on Whitcomb and Long Mountains. This corridor is located just west of Little Bog Pond.

A 150 foot zone around each pond is protected from logging by the Conservation Easement. These zones total 55 acres.

Other high elevation sites above 2,700 feet elevation where logging is prohibited by the Conservation Easement and not otherwise protected total 49 acres. Other steep slopes of 35% or more where logging is prohibited by the Conservation Easement and not otherwise protected total 925 acres. Other wet, rocky or otherwise fragile soils not otherwise protected total 3,050 acres. And, other fragile mountain tops below 2,700 feet elevation total 516 acres.

<i>Natural Preserves and Other Protected Areas</i>	
DESIGNATION	ACRES
Natural Preserves	8,113
Natural Preserve Buffers	5,116
Corridor	515
150 ft. Pond Buffers	55
Other High Elevation >2,700 ft.	49
Other Mountain Tops <2,700 ft.	516
Other Steep Slopes >35%	925
Other Group II Soils	3,050
TOTAL	18,339

WHAT ARE CONTROL AREAS AND WHY ARE THEY NECESSARY?

One control area will be established in each natural community type under timber management for the purpose of comparing unmanaged (control) areas to ecologically similar areas subjected to logging. This provides a means of assessing the impact of timber management on ecological resources called for in the "Vision".

Although established under different criteria, control areas will also complement natural preserves because they will help preserve, for study, natural communities not represented in natural preserves. In this manner, control areas will help satisfy the "Management Vision" that calls for *"The system of core natural areas will include representatives of the full range of ecological communities..."*.

WHY ARE MOST OF THE NATURAL PRESERVES HIGH ELEVATION ECOSYSTEMS?

High elevation sites, more than any other locations, qualify for natural preserve designation by existing department standards. High elevation sites (above 2,700 feet elevation) remain the least impacted by human activity and contain rare elements or

exemplary natural communities that have retained most, if not all, of their natural character, and/or contain features of scientific and/or educational interest. A total of 8,113 acres of the Forest qualify as natural preserve, of which 8,099 acres are at high elevations on which the Conservation Easement prohibits logging.

HOW DOES THE EASEMENT AFFECT TIMBER MANAGEMENT?

The Conservation Easement protects and conserves resources with a primary emphasis on the sustained yield of forest products. Logging is prohibited on 27% (or 10,665 acres) of the forest which consists of steep slopes (2,462 acres), high elevation (8,148 acres), and buffers (55 acres) around Lower Trio Pond, Whitcomb Pond and Little Bog (Fourteen and a Half) Pond.

The Easement also requires that timber be managed on a sustained yield basis; clearcuts be no larger than 30 acres; clearcuts total less than 15% of the total easement area in any ten year period; logging on areas near streams, ponds and public highways are subject to the provisions of state law; logging shall be conducted in conformance with current federal and state laws and regulations, including use of "best management practices" for erosion control and other activities.

HOW MUCH OF THE FOREST WILL BE MANAGED FOR TIMBER?

More than half (52%) of the Nash Stream Forest will be managed under a multiple-use, sustained yield timber management program. Occasional and restricted timber cutting will be allowed on another 22% of the forest (e.g. buffers, corridors, Group II soils) but only to enhance non-timber values such as wildlife habitat or recreation resources. The remainder of the property is considered ecologically sensitive or protected from logging by the Conservation Easement.

HOW SOON WILL THE FIRST STATE TIMBER HARVEST TAKE PLACE?

It is hoped that the first commercial timber sale will be made within two years of formal adoption of the Management Plan. However, the immediate potential for significant sawlog harvests is low. A 1988 timber cruise identified only 11% (3,140 acres) of forest as sawtimber size (≥ 9.6 inches in diameter) with limited commercial value because it is widely scattered. However, there are significant widespread opportunities for commercial thinning operations over many areas, and since the Forest is restocking through growth, there is a bright future for long-term yield of timber products.

Q & A's (continued)

WILL THERE BE CLEARCUTTING?

Yes. Clearcutting is allowed by the Conservation Easement and the "Management Vision", but with restrictions. The practice will be used only when other cutting methods will not achieve timber and wildlife management goals and forest conditions defined in the "Vision."

WILL THE NASH BOG DAM BE REBUILT?

There were mixed views at the 1990 public listening sessions on whether or not to rebuild the dam. After the dam breached in 1969, a new dam was proposed at a cost of just under \$3.5 million in 1974 dollars. Lack of state and federal funding at the time caused the proposal to be shelved. The conservation easement would allow the dam to be rebuilt, at or in the immediate vicinity of the old Nash Bog Pond Dam, for fish and wildlife and recreation purposes only. However, the Management Plan does not call for rebuilding the dam.

WILL LOCAL COMMUNITIES BE PAID IN LIEU OF TAXES?

Yes. State and federal land reimbursement is authorized by RSA 219:32 which states "...any town in which national forest land and land held by the state for operation and development as state forest land are situated...may apply...for the payment of an amount not exceeding the taxes for all purposes which such town might have received from taxes on said lands...". The

amount of "taxes on said lands" is determined annually by the NH Department of Revenue Administration based on a formula. This amount is then reduced by payments towns receive from federal distributions generated from timber cuttings on the national forest system. Only White Mountain National Forest towns (Stark) receive this payment. For tax years 1990 and 1991, the state's payment, distributed to the towns of Stratford, Columbia, Stark and the unincorporated place of Odell, totaled just under \$110,000. Federal distributions for the same period totaled just under \$26,000.

HOW CAN I VOLUNTEER AS A SUPPORTER OF THE NASH STREAM FOREST?

Volunteers will be encouraged to participate in organized work projects or groups. Individuals and organizations should contact the North Country Resource Center in Lancaster and register their name, affiliation, and area of interest or expertise. Emphasis will be given to focused volunteer work days with logistical support from the department. Work areas for volunteers may include an appointed advisory committee, trail monitoring and maintenance, organized cleanup days, erosion control and restoration projects, natural interpretive programs, and specialized wildlife surveys to name a few. Department efforts will include maintaining a list of appropriate volunteer projects, providing safety and host training for volunteers, keeping a log of volunteer hours and accomplishments, and recognition of outstanding volunteer efforts.

DRAFT PLAN AVAILABLE

Copies of the (draft) Nash Stream Forest Management Plan are available for viewing at the following locations. Written comments on the Plan will be received **UNTIL FEBRUARY 28, 1995**.

- Bedford Public Library
- NH Technical College - Fortier Library and Berlin Public Library (Berlin)
- U.S. Forest Service - Ammonoosuc Ranger Station (Bethlehem)
- Merrimack County Ext. Office (Boscawen)
- Rockingham County Ext. Office (Brentwood)
- Fiske Free Library (Claremont)
- Colebrook Public Library
- NH Law Library and Concord Public Library (Concord)
- Carroll County Ext. Office (Conway)
- Strafford County Ext. Office (Dover)
- UNH - Diamond Library (Durham)
- Franklin Public Library
- U.S. Forest Service - Androscoggin Ranger Station (Gorham)
- Groveton Public Library
- Dartmouth College Library (Hanover)
- New England College - Danforth Library (Henniker)

- Keene State College - Mason Library and Cheshire County Ext. Office (Keene)
- Belknap County Ext. Office and Laconia Public Library (Laconia)
- Weeks Memorial Library and North Country Resource Center (Lancaster)
- Littleton Public Library
- Manchester City Library, St. Anselm College - Geisel Library, and NH College - Shapiro Library (Manchester)
- Hillsborough County Extension Office (Milford)
- Nashua Public Library
- Sullivan County Ext. Office (Newport)
- Peterborough Town Library
- Plymouth State College - Lamson Library (Plymouth)
- Portsmouth Public Library
- Stark Public Library
- North Country Office - NH State Library (Twin Mountain)
- Grafton County Ext. Office (Woodsville)

If you have comments or questions, please call the Division of Forests and Lands in Concord, NH (603) 271-3456, or write to:

Department of Resources and Economic Development
ATTN: Nash Stream Forest
Box 1856
Concord, NH 03302-1856

DRED
Division of Forests and Lands
P.O. Box 1856
Concord, NH 03302-1856

HOW THE MANAGEMENT PLAN ADDRESSES PUBLIC CONCERNS

Two earlier public listening sessions were held in Groveton and Concord. The key points which emerged from these public sessions were:

- Maintaining local influence;
- Keeping the Nash Stream Forest tract undeveloped;
- Eliminating the gravel mining rights of Rancourt Associates;
- Providing for multiple recreation uses;
- Restoring tax yield to local towns; and
- Stressing sound forestry management practices.

This input was factored into the development of a "Vision" statement, and Management Goals and Objectives for the Nash Stream Forest's Management Plan.

Following are some examples which show how specific concerns raised at these listening sessions were addressed and implemented in the draft Management Plan. These are just two of many examples showing how public concerns have been integrated into the Management Plan.

EXAMPLE #1

PUBLIC COMMENT: *"More local input into Forest (Tract) Management."*

MANAGEMENT PLAN RESPONSE: "A Citizen Advisory Group will be appointed and scheduled to meet regularly to serve as a focused source of public input and assistance. Public notification will be made for significant proposed management activities such as timber harvests, major recreation developments, and emergency closures. Local municipalities will be notified of any actions within its boundaries that directly affects that municipality."

EXAMPLE #2

PUBLIC COMMENT: *"Maintain and protect existing roads; no new roads or trails."*

MANAGEMENT PLAN RESPONSE: "The network of existing roads will be maintained. No new permanent roads are planned. Traditional public access by conventional motor vehicle will be continued on the Main Road and Little Bog (Fourteen and a Half) Road. All other interior roads will be gated and maintained for controlled access in order to provide for public safety and prudent resource utilization and protection."

Additional public input is being sought through written comments on the draft Nash Stream Forest Management Plan. These additional comments will be factored into the final Management Plan to be completed this winter.



TO ROUTE 26

Kelsey Notch Rd
(Section 15 Class VI)

BUNGY RD.

Private

New Road

Approx.
Kelsey Notch Rd
(Overgrown)

KELSEY NOTCH CONNECTION

DIXVILLE






ERVINGS LOCATION

GADWAH NOTCH

MORAN NOTCH

COLUMBIA
ODELL

LEGEND

-  PROPOSED TRAIL
-  TRAILS ON OTHER PROPERTIES
-  NASH STREAM FOREST
-  WEST SIDE RD. TRAIL
-  APPROX. STREAMS

SHEET #2-SKETCH MAP
 PROPOSED KELSEY NOTCH CONNECTION
 NASH STREAM FOREST
 COLUMBIA, NH

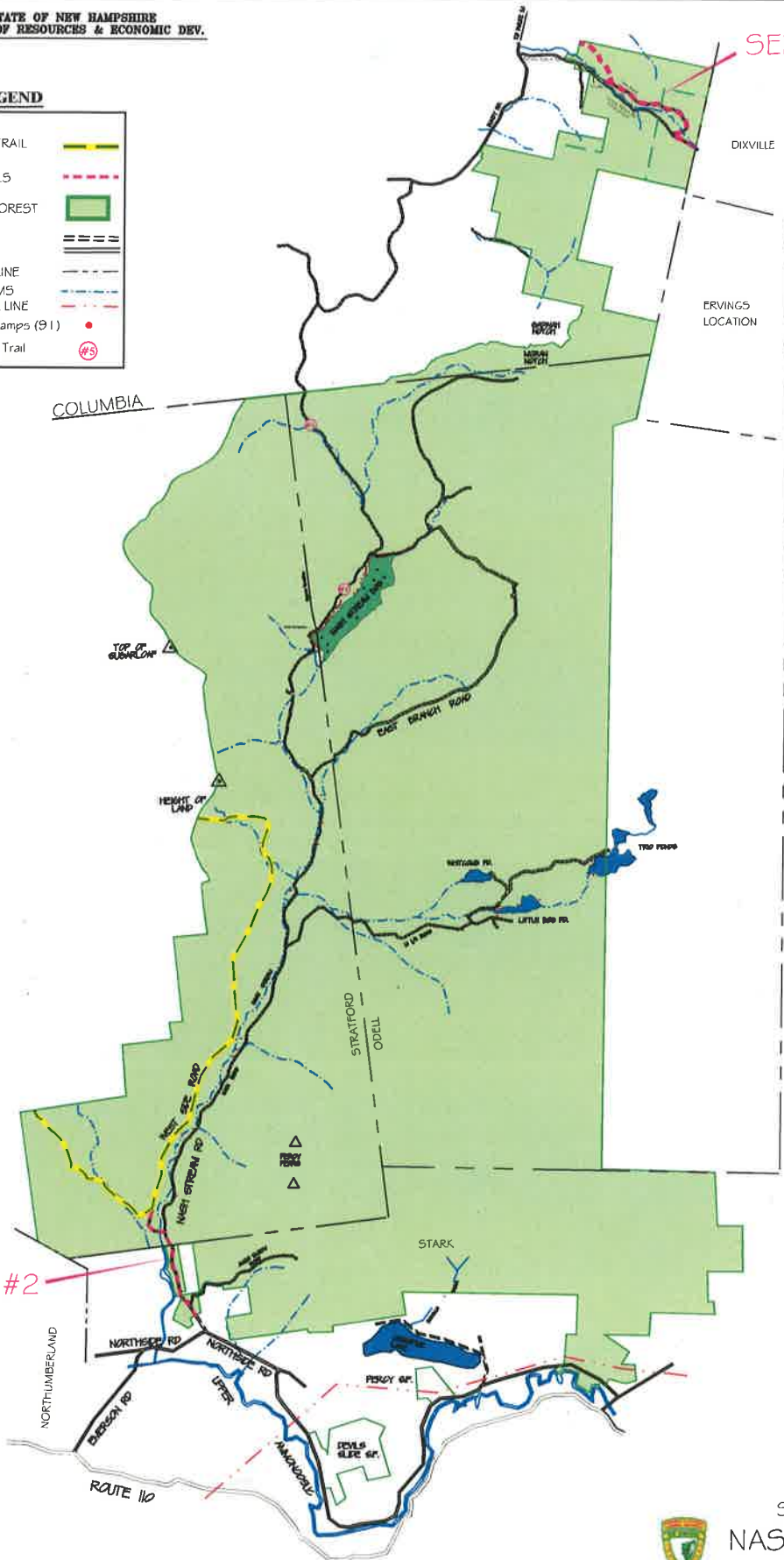




LEGEND

WEST SIDE RD. TRAIL	
PROPOSED TRAILS	
NASH STREAM FOREST	
ROADS	
APPROX. TOWN LINE	
APPROX. STREAMS	
APPROX. POWER LINE	
Existing Private Camps (91)	
Main Snowmobile Trail (Candler #3)	

SEE SHEET #3



SEE SHEET #2



SHEET #1 - SKETCH MAP OF
NASH STREAM FOREST
STARK/STRATFORD,
ODELL & COLUMBIA, NH
39,165 Ac±(Approx.)



THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION



CHARLES P. O'LEARY, JR. COMMISSIONER

JEFF BRILLHART, P.E. ASSISTANT COMMISSIONER

July 30, 2007

Ms. Kathy Laffey
Division Administrator
Federal Highway Administration
19 Chenell Drive, Suite One
Concord, NH 03301

OPTIONAL FORM 99 (7-90) FAX TRANSMITTAL
To: Andrew Walters
From: Leigh Levine
Phone #: 228-3657, 111
Fax #: 283-0301
GENERAL SERVICES ADMINISTRATION

Dear Ms. Laffey:

Enclosed is a letter dated July 17 from the Commissioner of the NH Department of Resources and Economic Development (NHDRED) requesting FHWA and the US Department of Transportation's concurrence regarding the definition of "snowmobile" and the use of all terrain vehicles (ATVs) on trails purchased or enhanced with federal Transportation Enhancement funding.

As you are aware there is interest from the public on both sides of the issue of ATV use on recreational trails. Your prompt attention to this matter is very much appreciated. Please call if you have questions.

Sincerely,

Charles P. O'Leary, Jr.
Commissioner

CPO:bpr
Attachment

- cc: The Honorable John H. Lynch, Governor
George M. Bald, Commissioner, NHDRED
Mark Hodgdon, Attorney General's Office
Anne Edwards, Attorney General's Office
Jeff Brillhart, NHDOT



GEORGE M. BALD
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411
FAX: 603-271-2629
E-MAIL: gbold@dred.state.nh.us

July 17, 2007

Charles P. O'Leary, Jr.
Commissioner
New Hampshire Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

RECEIVED
COMMISSIONERS OFFICE

JUL 18 2007

THE STATE OF NEW HAMPSHIRE
DEPT. OF TRANSPORTATION

**Subject: Snowmobile and All terrain Vehicle (ATV) use of Transportation
Enhancement (TE)-funded corridors in New Hampshire**

Dear Commissioner O'Leary:

This is in response to the February 13, 2007 letter from Federal Highway Administration (FHWA) requesting a definition of "snowmobile" under New Hampshire law and documentation supporting the winter use of all terrain vehicles (ATVs) on New Hampshire corridors purchased with Transportation Enhancement (TE) funds.

Additionally, the Department of Resources and Economic Development (DRED) requests that New Hampshire Department of Transportation (NHDOT) ask the Secretary of Transportation (Secretary) to deem DRED's long-standing policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

The following are the corridors at issue in this request. TE funds provided about eighty percent of the acquisition costs for these corridors:

Ashuelot, 21 miles long, acquired in 1995, project # 12133C
Cheshire, 42 miles long, acquired in 1995, project # 12133B
Conway, 13 miles long, acquired in 2001, project # 12632
Farmington, 7 miles long, acquired in 1997, project # 12631
Fort Hill, 9 miles long, acquired in 1994, project # 11896
Jefferson-Whitefield, 2 miles long, acquired in 2000, project # 12638
Monadnock, 9 miles long, acquired in 1999, project # 12706
Northern, 59 miles long, acquired in 1995, project # 12133A

DRED maintains the TE-funded corridors pursuant to maintenance agreements with NHDOT. As a preliminary matter, since acquiring these corridors, most more than 10

years ago, DRED has allowed ATV use with snow cover. Thus, DRED is not requesting FHWA approve a new policy. Rather, DRED is requesting that the Secretary confirm that DRED's long-standing policy is "appropriate."

The Definition of Snowmobile Under New Hampshire Law

Part of the reason for DRED's policy of allowing ATV use with snow cover lies in the history of the definition of "snowmobile" under New Hampshire law. Under section 23 U.S.C. § 217, snowmobiles are permitted on TE-funded corridors. The Federal law does not define "snowmobile." Therefore, we understand that FHWA looks to the states' definitions of that term.

Prior to July 1, 2006, RSA Chapter 215-A, the applicable New Hampshire law, did not have a definition of "snowmobile." Rather, the law used the term "snow traveling vehicles," which were defined to include ATVs as a type of off highway recreational vehicle (OHRV). For this reason, DRED's policy of allowing ATV use historically complied with Federal law.

As of July 1, 2006, the term "snow traveling vehicle" was removed from RSA 215-A. At that time, the term "snowmobile" was added to the law and it does not include ATVs. RSA 215-A:1, XIII. Accordingly, ATVs no longer fall within the general definition of snow traveling vehicles but are still included in the definition of OHRVs which recognizes they can travel on surfaces "covered by ice or snow." RSA 215-A:1, VI. For the following reasons, however, DRED requests that the Secretary deem DRED's policy of allowing ATV use with snow cover "appropriate," pursuant to 23 U.S.C. § 217 (h)(5).

Request for Determination That ATV Use With Snow Cover Is Appropriate

TE funds constituted about eighty percent of the aggregate acquisition costs for these corridors. The remaining twenty percent was funded through State and local funds. Moreover, the yearly maintenance of these corridors is funded almost entirely with State funds. More specifically, since the State acquired the corridors, TE funds have not been used for improvements, however TE funded projects are planned for 2.5 miles of the Ashuelot in FY 2008 and 8.3 miles of the Northern in FY 2010.

Thus, the State made, and continues to make, a major investment in these corridors. As such, it is appropriate to allow the State to manage the corridors in a manner that reflects the unique character and needs of the State while protecting the transportation interests in these corridors.

Since the State acquired the corridors, they have been successfully managed for multiple uses, while also preserving their function as transportation corridors. These corridors provide connectivity between communities. Under New Hampshire law, these rail corridors must also be operated and maintained in such a way that would not

unreasonably limit the ability to restore rail service. RSA 228:60-a. DRED has managed the corridors appropriately in accordance with this mandate.

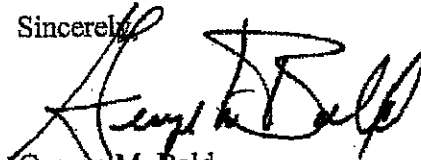
Additionally, winter ATV use does not cause environmental impacts beyond those caused by snowmobiles. There is no damage to the surface of the corridor as there is an intermediate surface of snow cover existing between the ATVs and the surface. Allowing continued use of ATVs with snow cover would not cause increased impact to other users of the corridors as ATVs have been using these corridors for 10 years.

Instituting a new policy prohibiting ATV use would certainly be disruptive to the current users of the corridors. It will also cause increased expenses for notifications, signage, and management responsibilities. Preventing ATVs in the winter will also pose an increased burden on law enforcement agencies as they would be required to enforce such a restriction.

For the foregoing reasons, DRED requests that the Secretary deem it appropriate for DRED to continue managing these corridors as it has since their acquisition to allow ATV use with snow cover.

We thank you for your consideration of our request. Please feel free to contact Bill Gegas (603-271-3254) at DRED or me if you have any questions or need additional information.

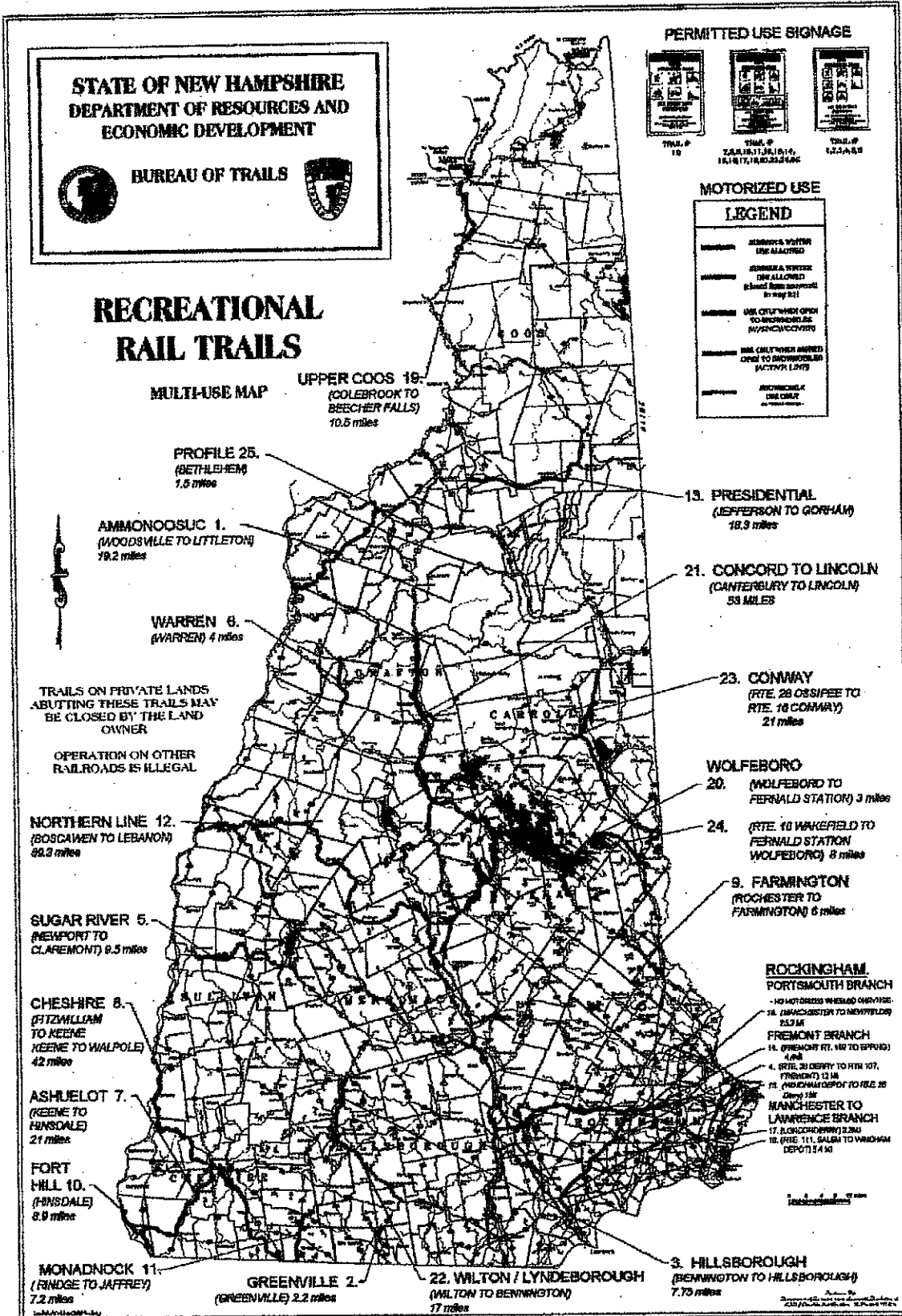
Sincerely,



George M. Bald
Commissioner

GMB:CG:lc
Enclosures

cc: His Excellency, John H. Lynch, Governor
Mark Hodgdon, Attorney General's Office
Anne M. Edwards, Attorney General's Office
Allison McLean, Director, Division of Parks and Recreation
Chris Gamache, NHDRED, Trails Bureau
Jim Moore, NHDOT
Christopher Morgan, NHDOT,
Ram Maddali, NHDOT



OPTIONAL FORM 99 (7-90)

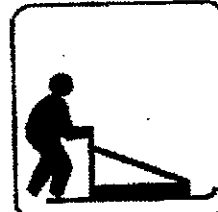
FAX TRANSMITTAL

of pages

To <i>Andrew Walters</i>	From <i>Leigh Levine</i>
Dept./Agency	Phone # <i>228-3057, 111</i>
Fax # <i>283-0301</i>	Fax # <i>(last page)</i>

NBN 7540-01-817-7368 5098-101 GENERAL SERVICES ADMINISTRATION

TRAIL PERMITTED USES



WINTER USE ONLY WITH SNOW COVER

ALL OTHER USES

PROHIBITED

RSA 215-A:3V & RSA 216-F:2 III

STATE OF NEW HAMPSHIRE

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

DIVISION OF PARKS AND RECREATION

BUREAU OF TRAILS

September 11, 2018

Jared Chicoine, Director (CORD Chair)
Office of Strategic Initiatives
Johnson Hall
107 Pleasant Street
Concord, NH 03301

Dear Director Chicoine;

The Department of Natural and Cultural Resources (DNCR) is seeking support from CORD for the agencies plan to reroute approximately 500 lineal feet of the West Side Road, in the Nash Stream Forest.

The West Side Road is a gravel forest management road, which runs south to north on the west side of Nash Stream. The road was already in existence when the State of New Hampshire acquired the property. The road is approximately 4 miles long and the reroute location is approximately 1.25 miles north of the intersection with the Nash Stream Road. Prior to state ownership the road was created and used for forest management activities. Since state ownership no timber sales or trucking have occurred on this section of road to this point, and the primary use has been as a designated snowmobile trail (Corridor 7) and a designated OHRV trail. This section of road has had several infrastructure failures in the past and has had to be repaired on 2 other occasions. The road at this proposed reroute location is a section of fill that spans a small, steep ravine. The existing culvert under the road is several sections of 8' diameter steel boiler laid next to each other. The ravine provides drainage to a relatively small area of the forest and does not have flowing water except for spring snow melt and rain events.

The culverts, installed prior to State acquisition, have slowly been failing and the steep banks of the road have had erosion issues for many years. Continued use of the road during the summer season has caused some increased erosion during rain events; however the road at this location was not sited correctly and will continue to cause erosion and management issues. The site of the surface erosion is at the base of a lengthy downhill section of road. The DNCR is proposing to relocate the gravel road approximately 200' west of the current road location. The relocation will get the road out of the steep ravine and site the road on more level terrain, in a location that will be more stable and manageable in the future. The increased occurrence of abnormally dry summer months, followed by heavier rain events is contributing to this issue.

Nash Stream Forest was acquired in 1988 using Land and Conservation Investment Program (LCIP) funds and as such CORD has management oversight in certain activities that occur on the property. The DNCR is bringing this project to you for review and input because this road is also an ATV trail within Nash

Stream Forest. The West Side Road was formally designated as an ATV trail in the forest in March of 2007, after a 5 year pilot project and legislative study committee was established for this ATV trail. The trail had 5 years of environmental study as well as being noted in legislation from 2002 (see attached summary letter from George Bald, DRED Commissioner 2007). The trail is designated as an approved ATV trail in the current Nash Stream Forest Management Plan, which CORD approved this past year.

It is of utmost importance to the agency to be able to perform this road relocation work this fall, to avoid having the trail closed during the snowmobile season.

The DNCR proposes the following:

1-reroute approximately 500' of West Side Road. Route will be cut, stumped and built as a gravel road with a travel way of 12' wide and appropriate ditch lines (total finished width of 20')

2-Remove current road bed within ravine, down to and including removal of steel boiler culverts. Ravine will be stabilized, seeded and mulched. Erosion control, as noted in Best Management Practices (BMP) manual.

3-all use of existing road, at this location, will cease and West Side Road will formally be noted in new location.

The proposal will not require any changes to the Nash Stream Forest Management Plan. Normally the reroute of a forest management road with exclusive use for forest management activities, or snowmobile trail construction, would not necessitate a CORD review, however in light of CORD's recent findings in regards to ATV use at Nash Stream the agency felt it would be appropriate to bring this project before CORD for their input and support.

Sincerely,

Sarah L. Stewart
Commissioner

Nash Stream Citizens Advisory Committee Meeting

May 21, 2015 Lancaster, N.H. 6:03 P.M. – 8:33 P.M.

Nash Stream Citizens Advisory Committee (**NSFCC**)

NSFCC members present:

Tom Bushey, Steve Sabre, Albert Cloutier, Norman Cloutier, Bill Noons, Mike Lynch, Ted Burns, Kevin Evans, Wink Lees, John Lanier, Mike Waddell

NSFCC members not present:

Rebecca Brown

Staff members present:

Maggie Machinist, Todd Caron, Brad Simpkins, Ken Desmarais, Clint Savage, John Accardi, Jeffrey Rose, Andrew Zboray, Bill Carpenter

Agenda Items:

- 1. Introductions** – Chairman John Lanier explained to the crowd that the meeting was not the public comment period yet and was a working meeting to go over the draft of the Nash Stream Forest Management Plan. He also explained that there would be a time for them to comment at the end of the meeting and eventually when the plan has been finished there would be an opportunity to comment on it.
- 2. Road Activities** - Maggie Machinist gave a brief explanation of the opening of the gate on Friday morning May 22. She explained that the 14 ½ (Trio Ponds) Road was originally supposed to remain closed because it was still too soft to drive on, but it would be opened after all because it had firmed up enough to travel on.
- 3. Chapter Reviews** –
Cultural Heritage
More information on the history of logging in Nash Stream Forest should be included. Currently it's lacking logging history and the tech team would like to include more because it has been such a big part of the history.

Kevin Evans suggested a map of how the Nash Stream Forest ownership was pieced together through history. He even said that he may have an old map showing the

history of ownership. Maggie said that there was a diagram in the old plan that showed just that and it would probably be included in the new plan.

Mike Waddell thought the maps in the old plan were hard to figure out. Forests and Lands GIS specialist will make all new maps and they will be fold outs and larger in size. Mike asked if the NSFCC members would have the opportunity to review the maps before the plan is completed. Steve Sabre also commented that he thought it was a good idea and the rest of the members agreed as well.

John Lanier asked if a historic site is ever recovered in Nash Stream Forest would it be protected. Brad Simpkins explained that it's written in chapter 5.15.2 under ***identification and protection*** that it will be protected.

Recreation History

The recreation history has been taken from the old plan and updated. Formerly ATV's weren't allowed in Nash Stream Forest, but the plan was revised in 2002 to include a pilot program with limited ATV use.

Mike Waddell questioned a sentence in the hiking section. It explained that in 1940 there was a trails map published which included a dozen trails on Nash Stream property. The current condition and use of many of these historic trails is unknown. He wanted to know if we really didn't know the conditions of the historic trails.

Cohos trail and lean-to shelters have also been added to the plan.

Wink Lees asked if any trapping takes place on the property. Maggie explained the trapping procedures and how the property is separated into five different units.

Jeffrey Rose asked if fish stocking occurred on the property. Yes stocking occurs.

Ted Burns asked if the Groveton Trail Blazers were still operating under an MOA and if the ATV MOA's are ever going to lapse. Maggie said MOA's are becoming more prevalent on state owned lands.

He was also concerned that ATV use is limited to when they can ride (1/2 hour before sunrise and 1/2 hour after sunset) and wanted to know why and if it was going to be addressed in the new plan. It will not be changed or addressed in the new plan.

Mike Lynch acknowledged that the old plan has a paragraph about allowing ATV access for individuals with disabilities along with written permission, use by officials and a legitimate case by case basis, but the new plan doesn't. Maggie noted that it must have been overlooked. *(The 2002 revisions had removed the section on Public Use Guidelines where that paragraph was originally)*

Wink Lees questioned how the conservation easement is overseen by the U.S. Forest Service and if ATV's should be allowed by what's written in it. Maggie explained that the Forest Service is not very involved.

Steve Sabre mentioned that the appendix should have a copy of the conservation easement.

Bill Noons said the plan should say OHRV instead of ATV and UTV. The Tech Team has discussed this numerous times and decided OHRV is too broad a term. ATV and UTV are used to limit what's allowed.

A brief discussion on weight limits occurred.

Ted Burns started a discussion about gates and Americans with Disabilities Act (ADA).

Other Uses

Brad Simpkins mentioned including canoeing and kayaking in the other uses section.

Hiking

Mike Waddell showed concern over a sentence explaining that no new hiking trails will be constructed. He wanted to know why. Maggie said in the next ten years there won't be any new trails. Mike said the door should be kept open just in case.

Kim Neilson of the Cohos trail would like to have the option to move trails so there is no conflict between hikers and motorized vehicles.

Ted Burns is concerned about saying no new trails. He doesn't want to be "painted into a corner". Ten years is too long to wait.

Ken Desmarais said there will be a process to amend, but we haven't come up with anything yet. There has to be a real exception to the rule.

Wink Lees said discretionary consent in conservation easements will help with the amendment process.

Steve Sabre explained that less well maintained trails are better than many trails not maintained.

John Lanier mentioned checking old trails to see if they are still in use.

Snowmobiling

Maintain current trails. No new trails are desired at this time.

ATV

Wink Lees asked about the condition of the Kelsey Notch trail. Ted Burns asked if it would still be a pilot trail. Maggie said it would become a trail with an MOA.

There was a discussion about an east-west connector trail.

Many expressed interest in snowmobile trail corridor 5 being used as an ATV trail and the possibility of adding it to the new plan.

Camp Licenses

Tom Bushey says he wanted to add new camps to historic campsites. Maggie explained that there were no plans to add new leases.

Ted Burns asked if camp owners would be allowed access to ATV trails. It's not planned. Tom Bushey liked the explanations of points of interests and mileage describing them in the old plan.

John Lanier wants one document before the final draft. Ken Desmarais says it should be edited first and then reviewed by the NSFCC.

4. **Next Meeting Date** – A new meeting date will be set once an edited version of the draft has been completed.
5. The meeting was adjourned at 8:33 P.M.

Kelsey Notch Trail Environmental Compliance Report 2018

Date Reviewed: September 6, 2018 (Clint, Maggie and Chris Holt)
October 8, 2018

In attendance: Will Staats, Clint Savage, Conor Quinlan and Maggie Machinist

Overview- The Department of Natural and Cultural Resources is required to complete and submit an environmental compliance report to CORD annually. This report is a requirement of the conditional approval to keep the Kelsey Notch Trail open.

Recommendations from 2017

There were a few recommendations that were made to minimize erosion in 2017:

-Additional culverts should be added to the trail leading to Colebrook to minimized scouring in the ditch line.

-During the summer of 2018 rubber water diversion devices will be added to the truck road, where the previous water bars were removed for graveling purposes.

Findings-

September

Clint, Chris Holt and Maggie walked the trail on September 9, 2018 to check the trail for any issues. We walked the first section that goes toward the northwest toward Diamond Peaks. There was some erosion on the trail, but just surface erosion. The water didn't seem to be getting into any of the water courses. We located places where there should be additional culverts added. The bridge decking was beginning to be a problem. The decking was broken in some spots on the two bridges and the approaches to the bridges were starting to erode.



Figure 1, 2 and 3- Shows the broken boards on the bridges and the eroding approaches.



Figure 4 and 5- Shows some of the wear on the trail heading toward Colebrook.

We continued up the trail toward Kelsey Notch. The steep section of this trail had some significant humps, which were caused by use. We had a discussion about installing water diversion flaps in this hill last fall and they had plans to install them this fall. There were waterbars in the hill previously but they were removed when the trail was graveled last fall.

There was a significant washout in the ditch that was caused by water overwhelming the culvert. This washout was found in the early summer, but was unable to be fixed. Additional culverts will help to divert water sooner, so that the ditches carry less water for a shorter distance.

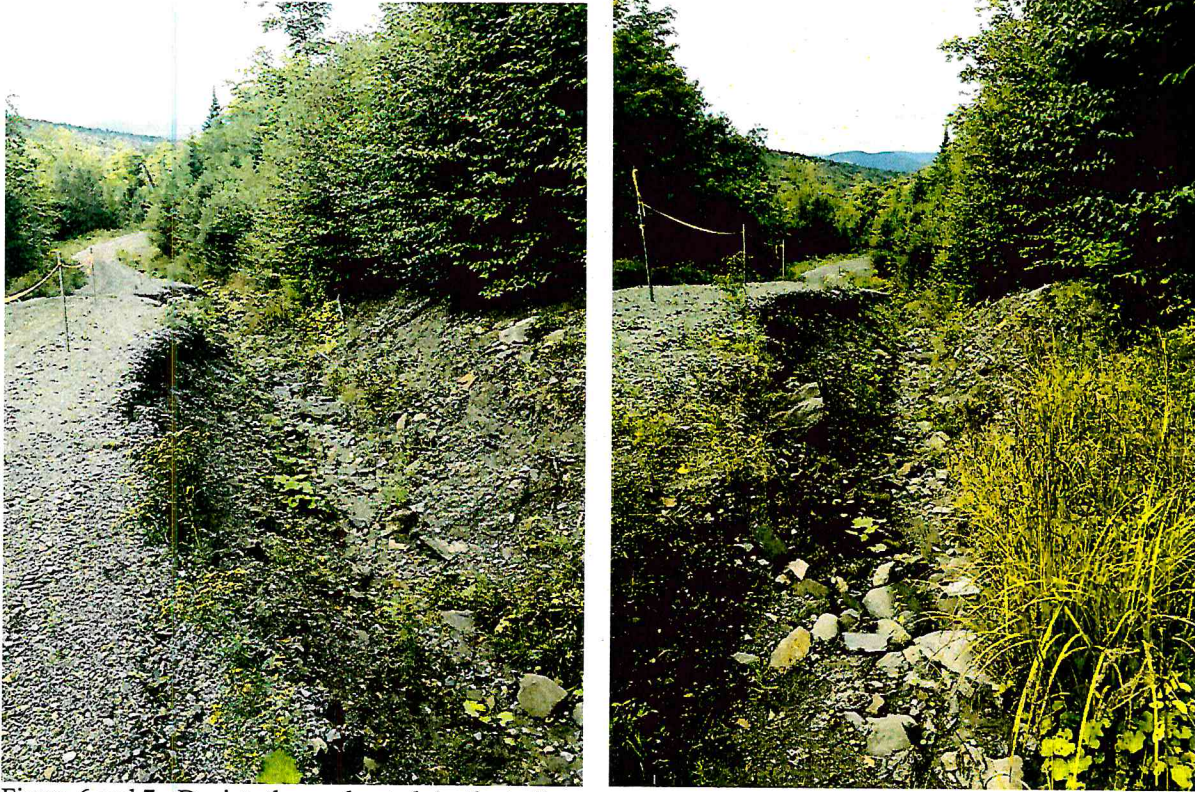


Figure 6 and 7- Depicts the washout along the trail.

The trail had seen a lot of wear and tear in the last few weeks, which had cause some damage to the trail and some erosion on the trail. None of the erosion appeared to be directly getting into the brooks. The Trails Bureau was planning on heading out in early October to fix these issues and continue with the graveling from last year.

October

On October 8, 2018 the Kelsey Notch trail was reviewed by the Trails Bureau District Supervisor-Clint Savage, Regional Wildlife Biologist- Will Staats, Regional Forester- Maggie Machinist and Forest Technician-Conor Quinlan as the official monitoring trip.

Section 1- The section of the trail that was monitored first was the trail that heads northwest toward Colebrook and Diamond Peaks. Five new culverts had been recently added as well as the trail shaped up. Installation of these new culverts was very good; they had good exits and headers. Most of the new culverts had already been seeded and mulched but there were 2 spots that needed additional mulch. The bridges still need to be re-decked and fascia boards should be added to eliminate silt from entering the brooks.

This section of the trail looked like it was in good condition following the repairs.

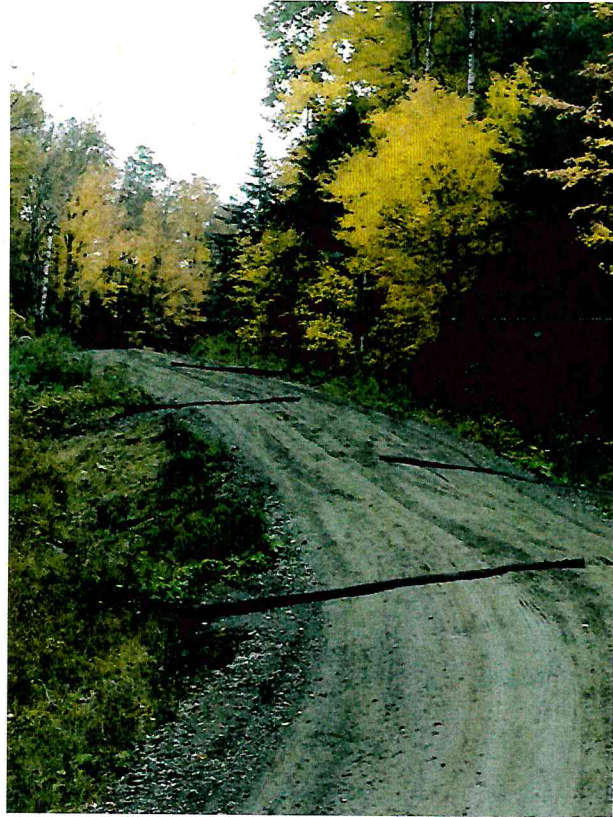


Figure 8 and 9- Picture on right shows the good exits of the newly installed culverts. Picture on left shows the rubber water diversion devices installed.



Figure 10- Depicts the repaired approach to the bridge, however, still shows the decking that needs replacing.

Section 2- Next we headed up toward Kelsey Notch and the boundary line. This main section had been re-shaped and water diversion devices (rubber flaps) had been installed on the main hill. The upper section of trail was currently being graveled while we were visiting. The significant washout that was previously noted from the last visit had been repaired and armored with rip-rap stone, which will help in the future. Four new culverts were added to this upper section above the washout.



Figure 11 and 12- Depicts the newly fixed and armored ditch where the washout was previously. Also shows a newly installed culvert.

All recommendations from last year were addressed this fall. There was a discussion about trying to get to some of the repairs before the end of the season; however, the Trails Bureau was concerned that funds wouldn't be available to complete repairs more than once a season.

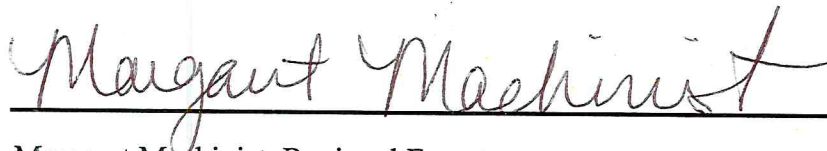
Recommendations-

There were a couple of recommendations that were made to continue to approve the trail:

- The bridges need to be re-decked to alleviate safety concerns
- Fascia boards should be added to the bridges to eliminate sediment getting into the brooks.

-There was a recommendation to seed two section on the lower trail; however, these sections have already been seeded since our visit.

Conclusion- The trail had just been re-shaped and graded from top to bottom, as well as graveled some of the upper sections, therefore the condition of the trail when we were there was very good. Based upon the multiple times staff visited these trails throughout the summer, there was significant use of the trail. There will always be a level of wear on these trails due to the nature of ATVs and the amount of traffic that this trail sees. Though there was minor erosion occurring on the surface of the trails it did not appear to be going into any brooks. The trail appears to be in compliance with expectations, however, it will be continued to be monitored next season. It would be beneficial to visit the trail earlier in the summer before annual maintenance is completed to see the level of use as well as a follow up after. The trail is closed for the season.



Margaret Machinist, Regional Forester

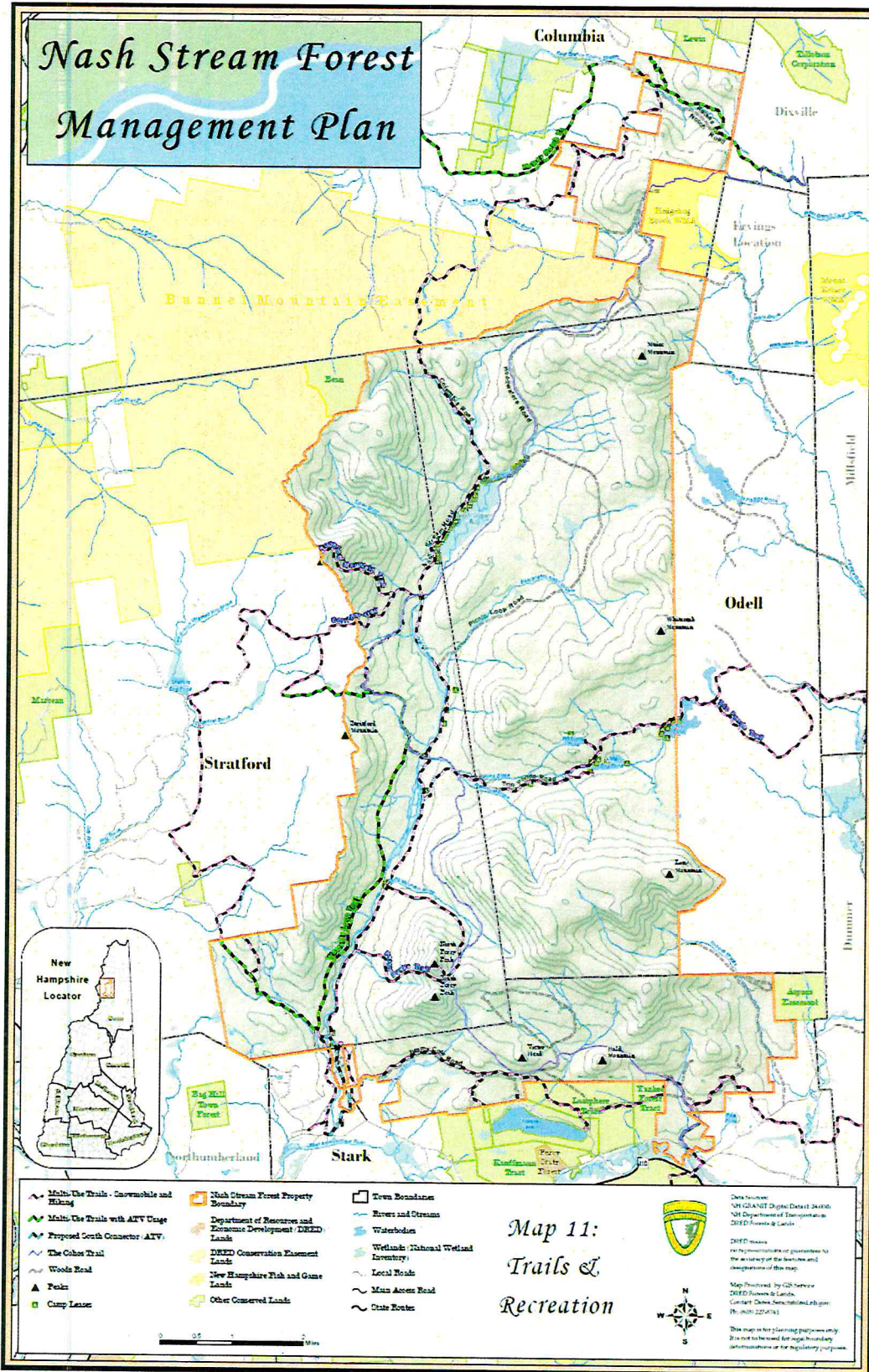


Clint Savage, Trails Bureau District Supervisor



Will Staats, Regional Wildlife Biologist

Nash Stream Forest Management Plan



Kelsey Notch Trail Environmental Compliance Report 2019

Date Reviewed: September 23, 2019

In attendance: Will Staats (NHFG) , Clint Savage (NH Trails Bureau), and Maggie Machinist (NH Forests and Lands)

Overview- The Department of Natural and Cultural Resources is required to complete and submit an environmental compliance report to CORD annually. This report is a requirement of the conditional approval to keep the Kelsey Notch Trail open.

Recommendations from 2018

-The bridges need to be re-decked to alleviate safety concerns

-Fascia boards should be added to the bridges to eliminate sediment getting into the brooks.

Worked completed in 2019

In mid-June, Chris Gamache, from the Trails Bureau, put out a trail counter on the Kelsey Notch Trail for the OHRV season. The information has not yet been gathered.

On August 8, Clint inspected the trail in Kelsey. The trail was in good shape. The bridges on the trail that heads towards Diamond Peaks need some work, including re-decking. The ATV Club did receive a GIA Grant from the Trail Bureau to rebuild 5 bridges. Unfortunately, due to the continuing resolution with the State budget the money for the project was unavailable. Once the budget passed, the materials for the bridges were ordered. However, at this point the bridges are planned to be installed in the spring.

On September 17, 2019, the Bureau of Trails began grading and rock raking the entire Kelsey Notch trail system.

On October 14, 2019, Clint checked the trail while the Trails Bureau was working on an abutting property. When the abutter's work was complete, the bulldozer dressed up the Kelsey Notch trail and addressed any issues now that the trail was closed for the season.

Findings

On September 23, 2019 the Kelsey Notch trail was reviewed by the Trails Bureau District Supervisor-Clint Savage, Regional Wildlife Biologist- Will Staats and Regional Forester-Maggie Machinist as the official monitoring trip.

The entire trail had been graded just days before our visit, so the trail was in good condition and there was little evidence of wear on the trails.

Section 1- The section of the trail that was monitored first was the trail that heads northwest toward Colebrook and Diamond Peaks. We walked out to the property line. Last year there was a recommendation to re-deck the bridges and add fascia boards to eliminate sedimentation. The Trails Bureau had plans to re-deck these bridges this past summer, however, due to the continued resolution and budget constraints they were unable to. The bridges are safety concerns and need to be addressed as soon as possible.

The first pitch on the trail right from the intersection is usually a trouble spot that has had erosion issues in the past, however, the trail was just recently graded and that section was repaired before our visit.

There was minor wear on the trail toward the end near the boundary line and some evidence of siltation in the ditches but overall this section of trail was in good condition following the maintenance.



Figure 1 and 2- Shows the broken boards on the bridges that need to be replaced.

Section 2- Next we headed up toward Kelsey Notch and the boundary line. This main section had been re-shaped and water diversion devices (rubber flaps) had been installed on the main hill last year. Due to the recent grading and trail maintenance, the trail was in good condition all the way to the boundary.

Recommendations-

There were a couple of recommendations made from last year that did not occur that need to be completed this upcoming season in order to continue to approve the trail:

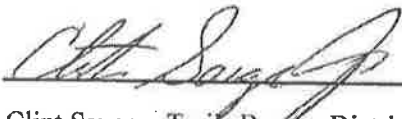
-The bridges need to be re-decked to alleviate safety concerns

-Fascia boards should be added to the bridges to eliminate sediment getting into the brooks.

Conclusion- The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good. It is imperative that the bridges be re-decked as soon as possible once the trail is opened. It will be interesting, once the data comes in from the counters to see how much usage the trail has throughout the season. The trail appears to be in compliance with expectations, however, it will be continued to be monitored next season. It would be beneficial to visit the trail earlier in the summer before annual maintenance is completed to see the level of use and visit several times throughout the season. The trail is closed for the season.



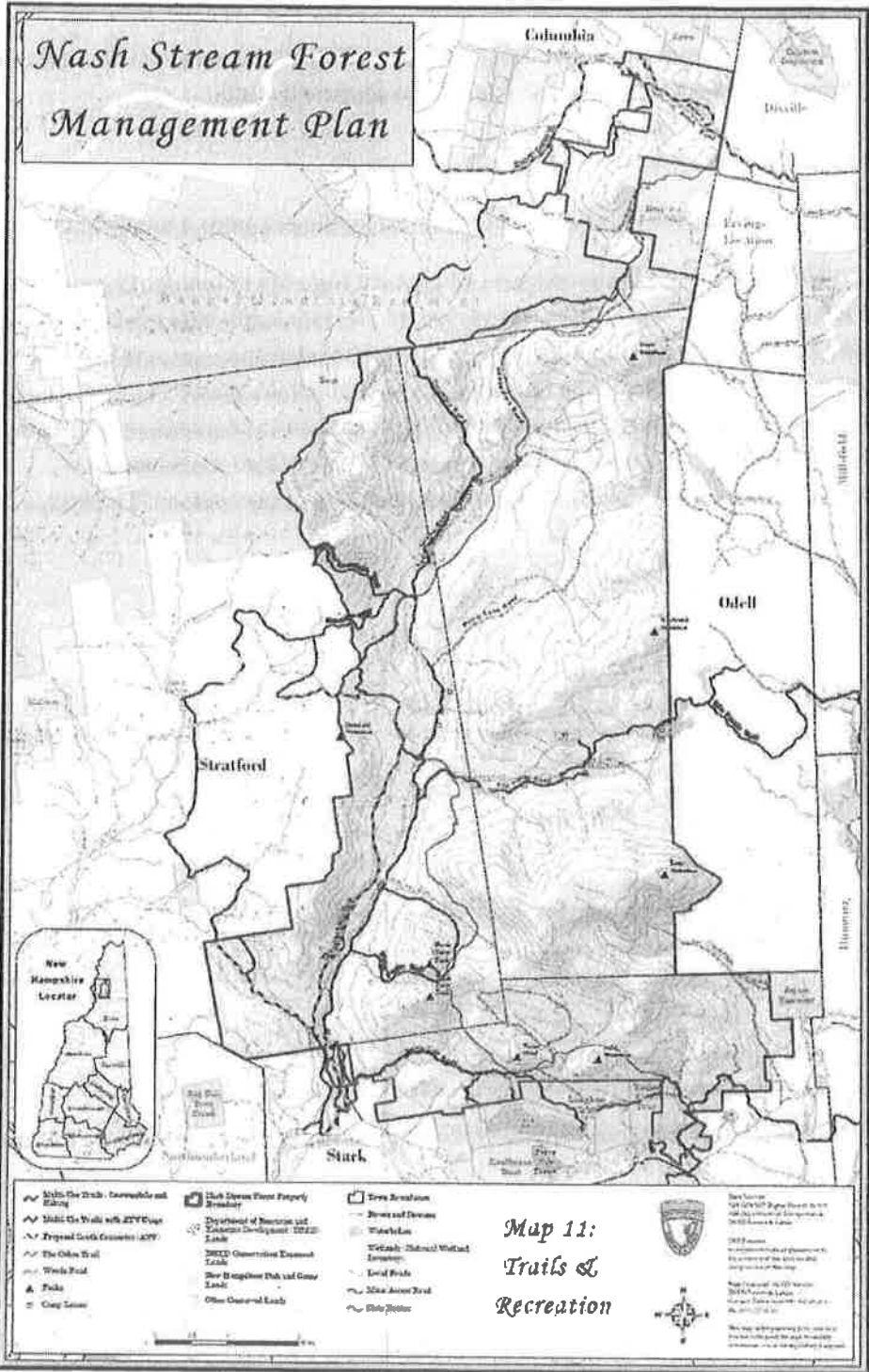
Margaret Machinist, Regional Forester



Clint Savage, Trails Bureau District Supervisor

Will Staats, Regional Wildlife Biologist (retired before this report was completed)

Nash Stream Forest Management Plan



STATE OF NEW HAMPSHIRE
FISH AND GAME DEPARTMENT

Intra-Department Communication

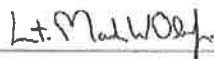
TO: Nash Stream Forest Citizens Committee
Council on Resources and Development

FROM: Lt. Mark W. Ober, Jr.
District One Chief

DATE: October 14, 2019

SUBJECT: 2019 NASH STREAM ENFORCEMENT MEMO

OHRV enforcement actions in the Kelsey Notch Pilot Trail and West Side Trails of the Nash Stream Forest was uneventful during the 2019 OHRV riding season. There was one documented warning to a rider who had operated from the Stratford Trail system to the West Side Trail when the trail was supposed to be closed. This violation occurred after the opening of the trail system, but Stratford delayed their opening and did not properly sign the trail closed. There were no reported accidents or crashes on these trails throughout the riding season.



Lt. Mark W. Ober, Jr.
District One Chief

Kelsey Notch Trail Environmental Compliance Report 2020

Date Reviewed: October 9, 2020

In attendance: Jake DeBow (NHFG) , Clint Savage (NH Trails Bureau), and Maggie Machinist (NH Forests and Lands)

Overview- The Department of Natural and Cultural Resources is required to complete and submit an environmental compliance report to CORP annually. This report is a requirement of the conditional approval to keep the Kelsey Notch Trail open.

Recommendations from 2019

- The bridges needed to be re-decked to alleviate safety concerns
- Fascia boards should be added to the bridges to eliminate sediment getting into the brooks.

There were a couple of recommendations made from last year that were completed, including re-decking the bridges and adding fascia boards. Partial fascia boards were added to the bridges, but in some spots, there was a little erosion occurring at the edge of the bridge.

Worked completed in 2020

In 2019, Chris Gamache, from the Trails Bureau, put out a trail counter on the Kelsey Notch Trail for the OHRV season, but the information was not available for the last monitoring report. The counter total came in at 2508 trips, but approximately 100 trips were from maintenance vehicles. The counters were out on the trail from July to October.

In August, the Trails Bureau re-built 5 bridges within the Kelsey Notch trail system. These bridges were supposed to be have built in 2018, but due to state budgets the money was not allocated until 2020. Their crew also spent 2 weeks completing trail maintenance with an excavator including re-shaping the trail, cleaning out the water diversion bars, cleaning out ditches where necessary, and general maintenance where needed.

Findings

Regional Forester, Maggie Machinist and Forester, Todd Caron, visited the trail in early August. The trail had not had any maintenance done for the year yet. This trail sees quite a bit of traffic and there is wear and tear on the trail at most times. Some of the hills had some washing and it was very bumpy (washboard), but none of it seemed to be getting into the larger streams, but there was evidence of erosion into the intermittent brooks and drainage ditches. It was obvious that the bridges were overdue to be re-decked and appeared to be dangerous.

On October 9, 2020 the Kelsey Notch trail was reviewed by the Trails Bureau District Supervisor-Clint Savage, Regional Wildlife Biologist- Jake DeBow and Regional Forester-Maggie Machinist as the official monitoring trip.

We stopped and looked at the two bridges nearest to the boundary and entrance, which were re-decked during the summer of 2020. These bridges were planned to be replaced in 2019, but the RTP funds were delayed and then there was a delay getting pressure treated wood. The bridges looked good and were built to standards to withhold a loaded log truck.



Figure 1- Newly built bridge

Then, we walked up the section of the trail that heads northwest toward Colebrook and Diamond Peaks. We walked out to the property line. Last year there was a recommendation to re-deck the bridges and add fascia boards to eliminate sedimentation. This project was finally completed after unexpected delays. Three new bridges were installed in this section of the trail, and they looked good. These bridges were made with steel I-beams and should last for a while. There was a small amount of silt washing on the approach to the bridge, hopefully, this does not continue. Some fascia boards seemed to be missing during installation.



Figure 2- Minor sediment washing on edge of bridge

There was wear on the trail toward the end near the boundary line (southwest section of trail) and some evidence of siltation in the ditches but overall this section of trail was in good condition and was a very hard packed trail.



Figure 3- Shows condition of trail

Section 2- Next we headed up toward Kelsey Notch and the boundary line. This main section had been re-shaped, ditches cleaned out and water diversion devices (rubber flaps) had been cleaned out. Due to the recent grading and trail maintenance, the trail was in good condition all the way to the boundary, however the rubber flaps were already filled with sedimentation again.

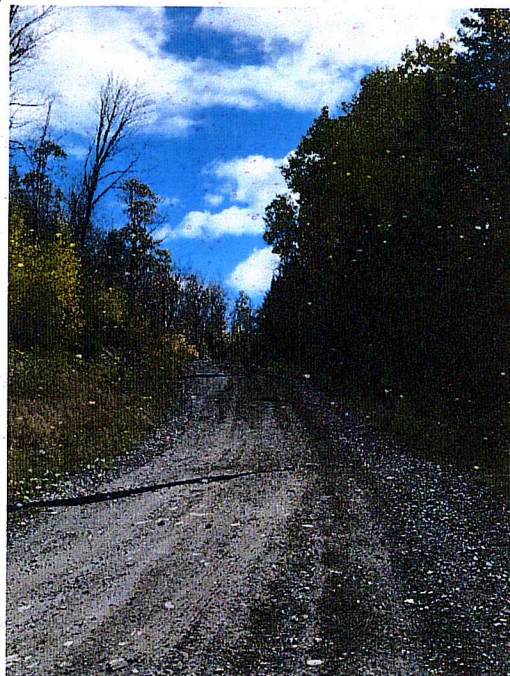


Figure 4- Showing the water diversion device

Each year, the sharp corner leading up to Kelsey Notch gets a significant berm. This happens from the dirt and rocks getting kicked out as the OHRVs turn and head up the hill, exacerbated with speed.

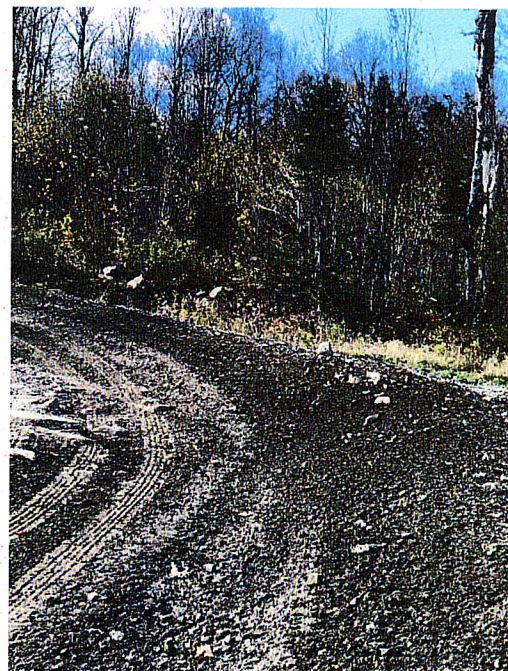


Figure 5- Shows berm on corner of trail

This year, we observed phragmites growing next to the trail in the ditch. This was not observed last year, but it may have been overlooked. There were a few spots that had small populations of this invasive species. It should be treated so that it is not spread. While the source of the invasive is not exactly known, it is logical to conclude that it was brought in either on equipment working on the trail or by ATV's.



Figure 6- Shows invasive species, phragmites

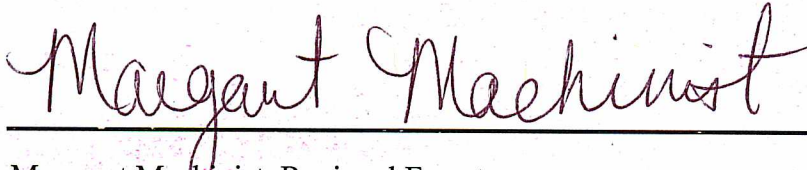
See additional attached comments from the Fish and Game Department.

Recommendations-

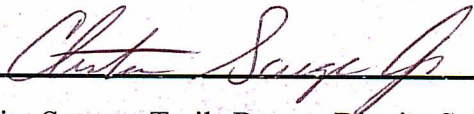
- Treat the invasive species with herbicide to minimize the spread. Flag those areas so that future road work and trail maintenance does not disturb those areas and spread the phragmites.
- Continue to monitor the amount of washing on the edge of the bridge
- Continue to monitor and clean out the rubber water diversion devices

Conclusion- The trail is in good shape though there is some minor erosion and sedimentation. The new bridges look great and will improve safety on the trail dramatically as well as reduce sedimentation. It was upsetting to find invasive species on the trail and it will be imperative to manage this with herbicide so that it does not get out of control. The trail appears to be in compliance with expectations, however, it will be continued to be monitored. It would be beneficial

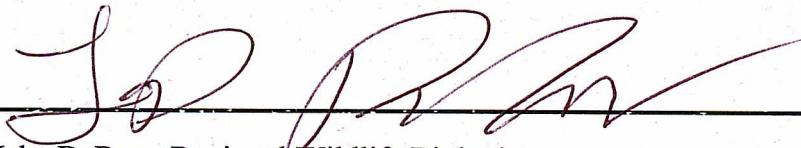
to visit the trail earlier several time throughout the season to see the level of use prior to maintenance. The trail is closed for the season.



Margaret Machinist, Regional Forester

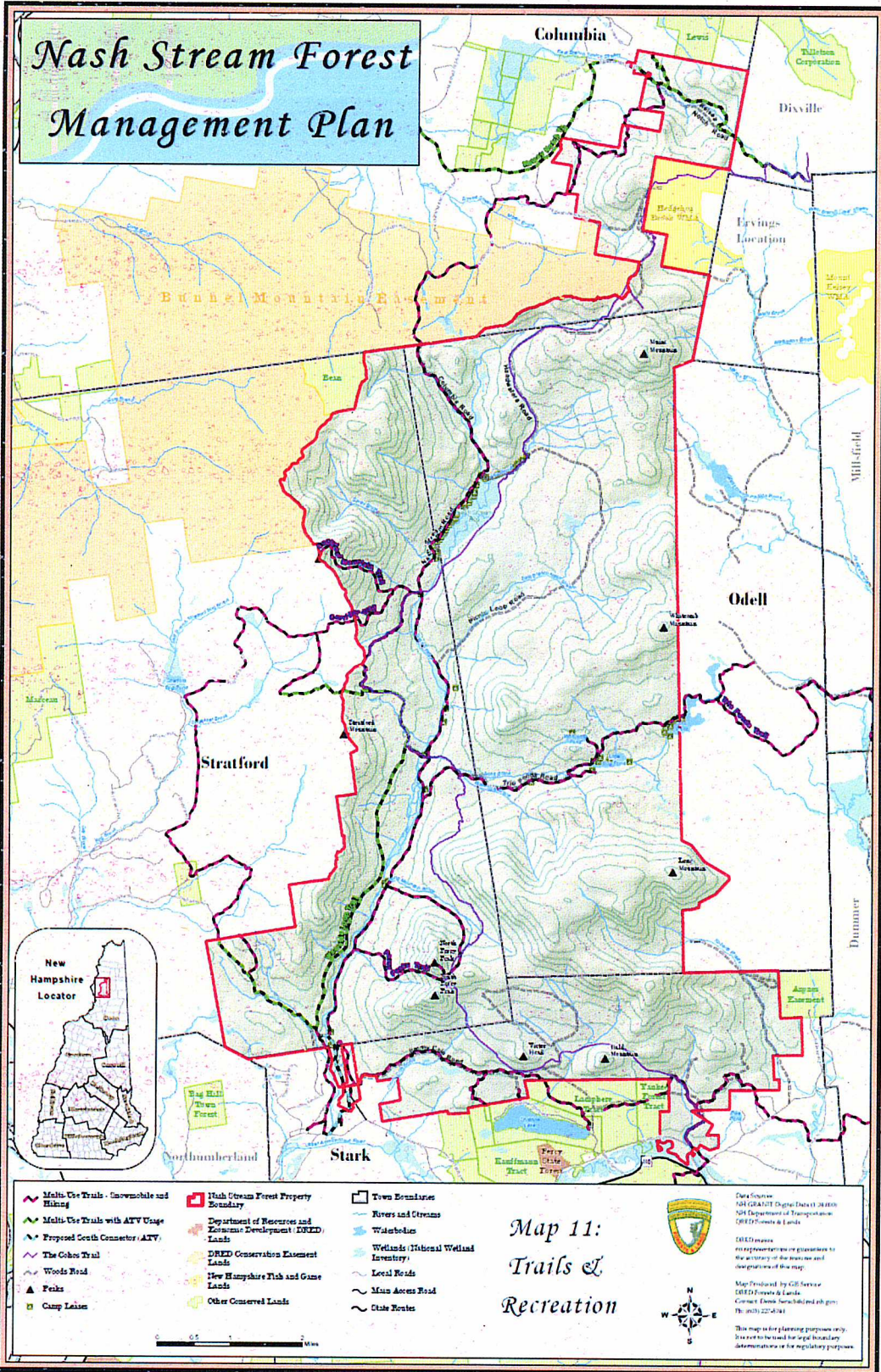


Clint Savage, Trails Bureau District Supervisor



Jake DeBow, Regional Wildlife Biologist

Nash Stream Forest Management Plan





New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500
(603) 271-3421
FAX (603) 271-1438

www.WildNH.com
e-mail: info@wildlife.nh.gov
TDD Access: Relay NH 1-800-735-2964

Attachment 1

New Hampshire Fish and Game **Kelsey Notch Trail Environmental Compliance Report 2020**

On Friday, October 9th, 2020 Regional Wildlife Biologist Jacob DeBow accompanied Maggie Machinist (NH Forests and Lands) and Clint Savage (NH Trails Bureau) to the portion of the Kelsey Notch Trail that crosses Nash Stream Forest for the annual monitoring visit. During this visit we viewed all of the approximate 3 miles of trail that occurs within the boundaries of the Nash Stream Forest.

On this section of trail we saw multiple steel beam bridges with wooden decking that were installed this previous summer. These bridges allow for the free flow of water within their natural channels and the movement of various reptile, amphibian, and small mammal species that may utilize the brooks. Some slight erosion is showing at the lip of two bridges. Sedimentation from runoff and settling dust from high trail use is of concern in these runoff streams for wildlife that require clean and clear water.

On the section of trail that we viewed minor erosion had occurred in no more than three sections of trail. Here minor erosion is defined as small grooves washed out of trail, into the ditch. The steepest section of trail that heads into Kelsey Notch proper showed signs of wash boarding. From what was witnessed the wear and tear on the trails is what would be expected of a high use ATV trail.

In summary, New Hampshire Fish and Game has continued concern surrounding the intensity of use on this section of trail and how increased use affects ecological integrity of Nash Stream Forest and the surrounding subwatersheds. The condition of the trail appeared adequate during the site review, but varied levels of use influences this ecosystem, as well as others, differently. In particular, sedimentation from OHRV's impacts terrestrial and aquatic habitat and increased noise pollution from higher traffic and loud machines is of concern as it displaces wildlife.

This section of trail crosses multiple first order streams, which form the headwaters of Simms Stream. The East Branch flows directly into Silvio Conte National Wildlife Refuge – Blueberry Swamp. Increased sedimentation in these upper waterbodies can be detrimental to lowland swamps and wetlands. Increased deposition can fill in high quality vernal pools and other important seasonal habitats. Sedimentation and turbidity within aquatic systems can alter food chains by depleting food sources at the highest trophic level, depress growth rates, and limit reproduction (Henley et al., 2000). Due to limited information on this section of trail we do not

REGION 1

629B Main Street
Lancaster, NH 03584-3612
(603) 788-3164
FAX (603) 788-4823
email: reg1@wildlife.nh.gov

REGION 2

PO Box 417
New Hampton, NH 03256
(603) 744-5470
FAX (603) 744-6302
email: reg2@wildlife.nh.gov

REGION 3

225 Main Street
Durham, NH 03824-4732
(603) 868-1095
FAX (603) 868-3305
email: reg3@wildlife.nh.gov

REGION 4

15 Ash Brook Court
Keene, NH 03431
(603) 352-9669
FAX (603) 352-8798
email: reg4@wildlife.nh.gov

know the level of sedimentation that enters these streams but assume it to present based on observations of other ATV trails during the summer months. Localized research would have to be completed to better address this concern.

In regards to the influence of noise on local wildlife we have concern about potential increases in flight behavior around active trails (Stankowich, 2008). While little research is available from New England trails, impacts from ATV use has been documented on western wildlife like Rocky Mountain elk, showing impacts up to 3000 meters from a trail (Preisler et al., 2006). There are several steep sections of this trail which inadvertently causes ATV's to increase RPM's, creating louder noise. 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.

Sincerely,



Jacob DeBow
Regional Wildlife Biologist

Citations:

Henley, W. F., et al. "Effects of sedimentation and turbidity on lotic food webs: a concise review for natural resource managers." *Reviews in Fisheries Science* 8.2 (2000): 125-139.

Preisler, Haiganoush K., Alan A. Ager, and Michael J. Wisdom. "Statistical methods for analysing responses of wildlife to human disturbance." *Journal of Applied Ecology* 43.1 (2006): 164-172.

Stankowich, Theodore. "Ungulate flight responses to human disturbance: a review and meta-analysis." *Biological conservation* 141.9 (2008): 2159-2173.



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

MEMORANDUM

DATE: September 21, 2020 FILE: 116286-0001
TO: R. Newcomb Stillwell
FROM: Ryan S. Duerring
SUBJECT: Appalachian Mountain Club – Nash Stream Forest ATV Trail Research

In connection with the request from Susan Arnold, Vice President for Conservation of the Appalachian Mountain Club (“AMC”), with respect to (1) the Conservation Easement Deed dated as of August 4, 1989, by and between the State of New Hampshire, as grantor, and the United States of America, as grantee, a copy of which is attached (the “Easement Deed”) and (2) the legal opinion regarding the Easement Deed from Gene Alan Erl, Deputy Associate Regional Attorney in the Office of the General Counsel of the Department of Agriculture, to Paul Stockinger, Director, Lands and Minerals, Eastern Region, Forest Service, a copy of which is also attached (the “Opinion”), at your request I have reviewed the Easement Deed, the Opinion and relevant New Hampshire law. 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 Opinion regarding the permitted use of 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.

Pursuant to paragraph II.C. of the Easement Deed, allowed uses of the Nash Stream Tract by the State of New Hampshire “are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities” and “[u]ses which are not *expressly reserved* [emphasis added] by the State shall be prohibited.” In relevant part, the State of New Hampshire expressly reserved for public recreation “[t]he construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, *trails (including cross country ski trails and snowmobile trails)* [emphasis added], internal access roads, picnic areas, boat launches, trailhead parking areas, visitors’ center, and ranger station.”¹ The Easement Deed contains no other references to trails or motorized vehicles.

The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile trails indicates that motorized use of trails is permitted. Thus, because both

¹ Easement Deed, para. II.C.1.

accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.”² This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire.³ Further, snowmobiles are expressly excluded from the definition of OHRV⁴ and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A.

The New Hampshire Supreme Court has repeatedly held that “when used . . . preceding a list of specified items . . . the term “including” similarly limits the items intended to be covered . . . to those of *the same type as the items specifically listed* [emphasis added].”⁵ Thus, the conclusion of the Opinion that the parenthetical “(including cross country ski trails and snowmobile trails)” in the Easement Deed inherently, and without reference to any applicable law, indicates that unfettered “motorized use of trails is permitted”⁶ and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”⁷ is incorrect. On the contrary, New Hampshire case law consistently holds that the use of “including” before a list of specified items limits the items intended to be covered to those of the same type of items as those specifically listed. ATVs and snowmobiles are separately defined and regulated under applicable New Hampshire law and accordingly should be considered not to be items of the same type. This view is further supported by New Hampshire’s actual practice: the State website lists approximately 6,900 miles of State sanctioned public snowmobile trails available throughout New Hampshire but a much more limited 1,200 miles of trails open for public ATV use.⁸ In light of the foregoing, the failure of the State to expressly include ATVs in the parenthetical in addition to snowmobiles indicates that the State did not intend to reserve the construction, operation, and maintenance of ATV trails as a permitted use within the Nash Stream Tract pursuant to paragraph II.C. of the Easement Deed.

² Opinion, para. 2.

³ See N.H. Rev. Stat. § 215-A:1 at XIII and N.H. Rev. Stat. § 215-C:1 at XV for the State’s definition of “snowmobile” and N.H. Rev. Stat. § 215-A:1 at I-b for the State’s definition of “All terrain vehicle (ATV).” For the avoidance of doubt, snowmobiles and ATVs were also separately defined under New Hampshire law at the time the Easement Deed was granted by the State.

⁴ N.H. Rev. Stat. § 215-A:1 at VI and N.H. Rev. Stat. § 215-C:1 at XV.

⁵ Conservation Law Found. v. New Hampshire Wetlands Council, 150 N.H. 1, 6, 834 A.2d 193, 197 (2003). See also Roberts v. Gen. Motors Corp., 138 N.H. 532, 538, 643 A.2d 956, 960 (1994).

⁶ Opinion, para. 2.

⁷ *Id.*

⁸ <https://www.wildlife.state.nh.us/ohrv/where-to-ride.html>

Schedule 1

Easement Deed

[Attached.]

COPY FOR YOUR
INFORMATION

NASH STREAM
CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252 f. Nash Stream
Advisory
Committee

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

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 the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE "

By: William G. Abbott
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966; recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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Schedule 2

Opinion

[Attached.]

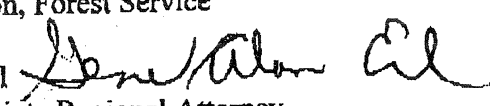


United States
Department of
Agriculture

Office of the
General
Counsel

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails...." (decd, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may

ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

(b)(5); Deliberative Process Privilege; Attorney-Client Privilege



-John V. 11/7/01

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service

FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
Deputy Associate Regional Attorney

(b)(5); Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege



(b)(5); Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege



cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

Kelsey Notch Trail Environmental Compliance Report 2021

Date Reviewed: October 15, 2021

In attendance: Jake DeBow (NHFG-Regional Wildlife Biologist), John Magee (NHFG-Fisheries Habitat Biologist), Clint Savage (NH Trails Bureau-Regional Supervisor), and Maggie Machinist (NH Forests and Lands-Regional Forester)

Overview- The Department of Natural and Cultural Resources is required to submit an environmental compliance report to CORP annually. This report is a requirement of the conditional approval, dated March 29, 2021, for the Kelsey Notch Trail.

Recommendations from the 2020 Report

- Treat the invasive species (*Phragmites australis*) with herbicide to minimize the spread. Flag those areas so that future road work and trail maintenance does not disturb those areas and spread the *Phragmites australis*.
- Continue to monitor the amount of washing on the edge of the bridge.
- Continue to monitor and clean out the rubber water diversion devices.

Worked completed in 2021

Trail Counters*

The trail was open from May 28, 2021 to October 11, 2021. There were 3 trail counters deployed from May 27, 2021 to October 15, 2021. Two of the counters had some malfunction during the season. The one on Corridor C (Figure 1) reported only 375 counts and clearly was not operating correctly. This was due to the counter being moved on August 13th after it was realized it had been tipped over and not working, and not reset properly. The other was on Corridor-C South, near the bridge over the East Branch of Simms Stream, but recorded counts (4,845) only from May 27 to September 11, 2021 at which time the battery failed. The counter on Corridor B worked properly the entire time and reported 12,293 counts. It is expected that this counter would have the most trips due to its location because it is where two trails intersect. As a reference, the trail counters were not deployed in 2020, and only one was deployed in 2019 on Corridor C-South (same location as 2021).

Kelsey Notch Trail – Corridor B: 12,293 trail counts

Date range: 5/28/21 to 10/15/21

Kelsey Notch Trail – Corridor C North: 375 trail counts

Date range: 5/28/21 to 5/29/21 (unit fell off mount and stop recording)

Kelsey Notch Trail – Corridor C South: 4,845 trail counts

Date range: 5/28/21 to 9/11/21 (battery died at end date)

*There was a previous report submitted that had different counter information. It was realized after submission that the reported values were the hours the counters had been functioning for the season, not the accurate trail count data. The amended report has the corrected values.

The trail was graded in July as part of annual maintenance. In the 2020 report, there was a note about sediment washing next to a corner of the bridge, this was repaired in 2021.

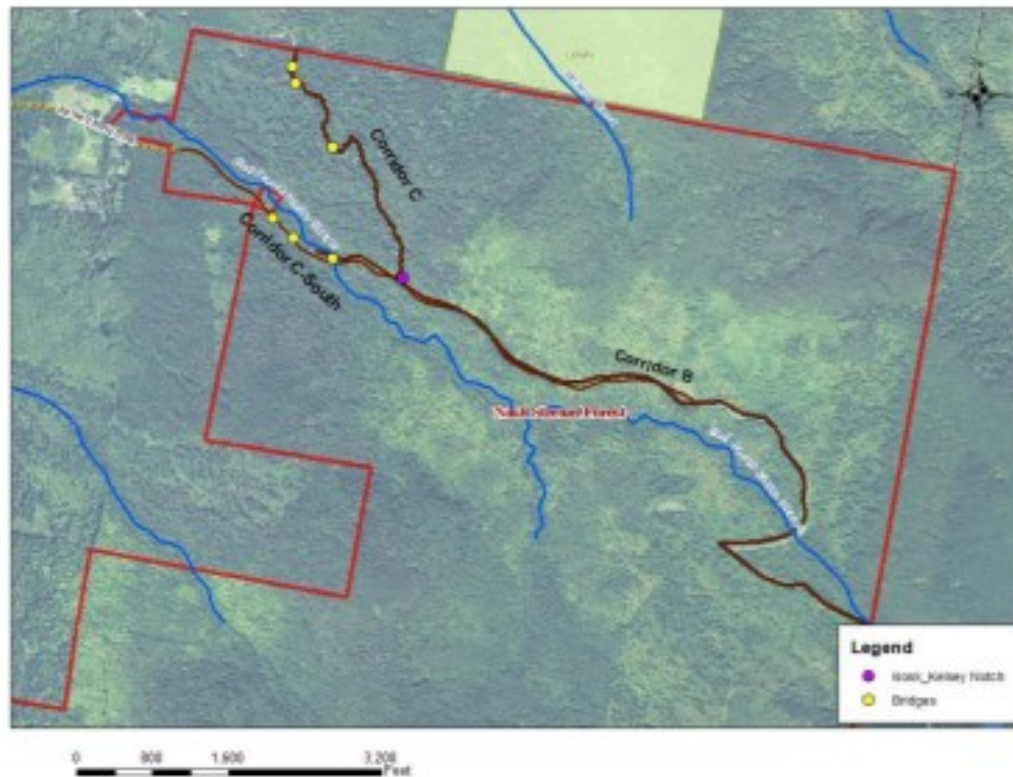


Figure 1- Map of the area showing the location of bridges, kiosk and trails labeled.

Findings

The trail was visited several times throughout the season both by Forests and Lands staff and by Trails Bureau staff. Forestry staff flagged the *Phragmites australis* on June 24, 2021 before the July trail maintenance grading and checked the condition of the trail on several dates during the OHRV season.

On October 15, 2021 the Kelsey Notch trail was reviewed by Jake DeBow (NHFG-Regional Wildlife Biologist), John Magee (NHFG- Fisheries Habitat Biologist), Clint Savage (NH Trails Bureau-Regional Supervisor), and Maggie Machinist (NH Forests and Lands-Regional Forester) as the official monitoring trip.

We started by looking at the bridges coming onto the property, as well as the large bridge over the East Branch of Simms Stream (Corridor C-South). All three appeared to be in good condition, and the first two especially since being replaced last year. There was no apparent sediment getting into the brooks that flowed underneath the bridges.



Figure 2- Shows the condition of the bridges

Next, we moved up to the kiosk looking at the hill on the way up. Heading toward Diamond Peaks (Corridor C), we walked out toward the boundary line. This trail was very hard packed. There was minor sedimentation on the trail, meaning there was evidence of sediment that had been washed away from trail but the trail was in good condition. We did not observe evidence of sediment from the trail entering the brooks. All of the bridges had fascia boards added when they were re-decked last year, except one which was noted in the 2020 report. During 2021, the last of the fascia boards were added, and appear to be precluding any sediment from getting into the brooks.



Figure 3- Shows condition of trail and the newly added fascia boards.

Within Nash Stream Forest, near the boundary line on the trail heading toward diamond peaks (Corridor C) there was a mud hole on the trail and there was some ATV's driving in the ditch, but there was no mud getting into the stream (Figure 4).



Figure 4- Mud on trail and ATV tracks in ditch and minor sedimentation on trail from water.



Figure 5- Shows condition of trail

Section 2- Next, we headed up toward Kelsey Notch and the boundary line (Corridor B). This main section had been graded throughout the summer. The trail was in good condition. There

was one location where some sediment was running down the trail and getting into the brook next to the rock/culvert (Figure 6). There was discussion about re-grading the road on that section to grade it away from the stream and culvert.



Figure 6- Depicting the area where the water is eroding around the culvert.



Figure 7 -Shows some off trail riding

Each year, the sharp corner leading up to Kelsey Notch gets a significant berm. This happens from the dirt and rocks getting kicked out as the OHRVs turn and head up the hill, exacerbated with speed.



Figure 8- Shows berm on corner of trail

| In 2020, we found a few patches of *Phragmites australis*. These were located and flagged throughout the year to identify their locations and so they could be avoided by the Metallik ATV club performing maintenance.. These areas were treated on September 3, 2021 with glyphosate by Fish and Game staff who are licensed pesticide applicators.



Figure 9- Shows invasive species, phragmites

Recommendations-

- Fix the mud hole near the property line toward Diamond Peaks (Figure 4).
- Place a culvert before the bridge at the end to address the sitting water near the mud hole (Figure 4) .
- Fix culvert header where it is washing, and slope the road away from the outlet of the culvert (Figure 6).
- Continue to monitor and clean out the rubber water diversion devices that are in various locations on the trails.
- Continue to monitor and treat the invasive species. It will take many seasons to eradicate the phragmites australis, and should be treated each year during the growing season.

Conclusion- The trail is in good shape though there is some minor erosion and sedimentation. There was some sediment leaving the trail, but most of it was being contained, either naturally in vegetation or in constructed sediment basins, and not entering into the brooks. There were some minor issues that should be addressed in the upcoming year. Fish and Game continues to have concern regarding wildlife impact of ATV noise during high volume trail use days. Three of the four patches of the invasive species were treated in 2021 and all four will be treated in 2022. The trail is currently closed for the season until the spring of 2022, when conditions allow, after May 25.

Margaret Machinist, Regional Forester

Clint Savage Jr.

Clint Savage, Trails Bureau District Supervisor

Jake DeBow, Regional Wildlife Biologist

John A. Magee

John Magee, Fisheries Habitat Biologist



TO ROUTE 26

Kelsey Notch Rd
(Section 15 Class VI)

BUNGY RD.

Private

New Road

Approx.
Kelsey Notch Rd
(Overgrown)

KELSEY NOTCH CONNECTION

DIXVILLE






ERVINGS LOCATION

GADWAH NOTCH

MORAN NOTCH

COLUMBIA
ODELL

LEGEND

-  PROPOSED TRAIL
-  TRAILS ON OTHER PROPERTIES
-  NASH STREAM FOREST
-  WEST SIDE RD. TRAIL
-  APPROX. STREAMS

SHEET #2-SKETCH MAP
 PROPOSED KELSEY NOTCH CONNECTION
 NASH STREAM FOREST
 COLUMBIA, NH



Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF