



## **New Hampshire Council on Resources and Development (CORD) Meeting**

Date: Thursday, March 9, 2023  
Time: 2:00-4:00 P.M.  
Location: Department of Motor Vehicles  
Auditorium  
23 Hazen Drive  
Concord, NH 03301

### **FINAL AGENDA**

#### **I. ROLL CALL AND INTRODUCTIONS**

#### **II. MINUTES**

- A. Approval of January 12, 2023, draft minutes

#### **III. SURPLUS LAND REVIEW**

- A. 2023 SLR 003  
Request from the Department of Environmental Services (NHDES) to sell its York Dam and Canal Dike on the Contoocook River, its easements at the Rolfe Canal Entrance and Outlet, and its associated flowage and water rights and access easements to Briar Hydro Associates. The property is located off Island Road and Electric Avenue and near Washington Street in Concord, NH.
- B. 2023 SLR 004  
Request from the New Hampshire Department of Natural and Cultural Resources (NHDNCR) to dispose of the State property known as Allen State Forest. The forest is comprised of one 30-acre parcel and is located on Warner Road in Concord, NH.

#### **IV. LAND CONSERVATION INVESTMENT PROGRAM (LCIP)**

- A. Nash Stream Forest – Kelsey Notch trail.
  - i. Overview of CORD’s responsibilities and decisions
  - ii. Agency input
  - iii. Public input
  - iv. Discussion and decision

#### **V. OTHER BUSINESS**

- A. Next Meeting: May 11, 2023, from 3:00 to 4:00 P.M.

**Parking & Building Access Instructions:**

Persons utilizing the DMV Auditorium at 23 Hazen Drive must park in the employee parking lot located in the rear of the building. Please utilize the driveway to the right of the DMV building to access the employee parking lot. The employee parking lot is the first lot on the right, and the entrance is the second driveway on the right (see photo below)

Once you have parked, please use the sidewalk furthest to your left as you approach the DMV building. This sidewalk will take you around the left end of the building to the front customer sidewalk. Please be advised that walking disability permit holders may park in designated parking spots in the customer parking lot in the front of the building.

Enter the building through the main entrance located in the front center of the building.

If you need assistance, please see a DMV customer representative at the customer service counter.



## **II. MINUTES**

### **A. Approval of January 12, 2023, draft minutes**





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**New Hampshire Council on Resources and Development**

**DRAFT MINUTES – January 12, 2023**

**MEMBERS PRESENT**

- Taylor Caswell, Chair, Commissioner, NH Department of Business and Economic Affairs.
- John Martin, Designee, NH Department of Health and Human Services
- Mark Doyle, Designee, Department of Safety
- Jack Ruderman, Designee, NH Housing Finance Authority
- Shawn Jasper, Designee, Department of Agriculture
- Jared Nylund, Designee, NH Department of Administrative Services
- Stephen Labonte, Designee, NH Department of Transportation
- Betsey McNaughten, Designee, NH Fish & Game
- Patrick Hackley, Designee, NH Department of Natural and Cultural Resources
- Amy Clark, Designee, Department of Education
- Mark Sanborn, Department of Environmental Services

**OTHER PARTICIPANTS**

- Stephanie Verdile, NH Office of Planning and Development (CORD Staff)
- Jennifer Gilbert, Director, NH Office of Planning and Development
- Allen Brooks, CORD Attorney, NH Department of Justice
- Paula Bellemore, Executive Director of Land & Community Heritage Investment Program (LCHIP)
- Steven Walker, NH Conservation Land Stewardship Program
- Charlotte Harding, NH Conservation Land Stewardship Program
- Larry Gomes, Milan Trail Huggers ATV Club trailmaster
- Jamie Sayen, Stratford Citizens Nash Stream Committee
- Louis Barker, NH Department of Transportation
- Corey Clark, NHDES Dam Bureau
- Craig Rennie, NH Department of Natural and Cultural Resources
- Clinton Savage, NH Department of Natural and Cultural Resources
- Jim O'Brien, The Nature Conservancy
- Patrick Bell, NH Department of Environmental Services
- Matt Leahy, Forest Society

**ROLL CALL AND INTRODUCTIONS**

The meeting was opened at 3:03 P.M. by Chair Caswell. Council members and guests then introduced themselves.

**MINUTES**

**A. Approval of November 10, 2022, draft minutes**

**MOTION:** On a motion by Mr. Martin, seconded by Mr. Doyle, the November 10, 2022, minutes were approved by a unanimous vote in favor.



51 **LAND & COMMUNITY HERITAGE INVESTMENT PROGRAM (LCHIP)**

52  
53 **A. Paula Bellemore, Executive Director of Land & Community Heritage Investment**  
54 **Program (LCHIP). Request for distribution of Community Conservation**  
55 **Endowment monitoring funds.**  
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57 Paula Bellemore, Executive Director of LCHIP, stated LCHIP annually comes before the Council  
58 (CORD) to seek approval to expend monies from the Community Conservation Endowment  
59 (CCE) fund. In 2022, LCHIP deposited \$409,000 into the CCE. She continued that LCHIP  
60 respectfully requests CORD approve disbursement of \$207,026.00 for the purpose of funding  
61 fiscal year 2023 comprising up to \$156,000 for the purpose of awarding FY23 Stewardship  
62 Grants and \$51,026 for the purpose of supporting LCHIP’s annual monitoring and stewardship  
63 program.  
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65 Ms. Bellemore provided a brief update on the status after a question from Mr. Caswell.  
66

67 **MOTION:** Motion made by Mr. Jasper, seconded by Ms. McNaughten to approve the requested  
68 expenditure from the LCHIP Community Conservation Endowment fund in the amount of and up  
69 to \$207,026.00, comprising up to \$156,000 for the purpose of awarding FY23 Stewardship  
70 Grants and \$51,026 for the purpose of supporting LCHIP’s annual monitoring and stewardship  
71 program. The approval is contingent upon LCHIP Board of Directors approval.  
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74 **LAND CONSERVATION INVESTMENT PROGRAM (LCIP)**

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76 **A. Nash Stream Forest Reports**  
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- 78 **1. 2022 West Side Trail Monitoring Report**  
79 **2. 2022 Kelsey Notch Trail Environmental Compliance Report**  
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81 Chair Caswell introduced Patrick Hackley from NH Department of Natural and Cultural  
82 Resources who was there to present the reports. Mr. Hackley provided an update on general  
83 overview of Nash Stream, which is the largest state conservation property. It was acquired in  
84 1988 and is approximately 40 thousand acres. It encompasses three townships and has about  
85 90 seasonal cabins. The property is the Division of Forests and Lands North Region office  
86 based in Lancaster. Mr. Hackley introduced his colleagues from DNCR, Bureau of Trails –  
87 Craig Rennie and Clint Savage who were also present to answer questions.  
88

89 The issue of Nash Stream with off-highway recreation vehicles (OHRV) started in 2002-2003.  
90 There are two OHRV trails in the Nash Stream Forest. One is West Side Trail, established in  
91 2002, which is approximately 9 miles long and parallels to Nash Stream on west side. Over the  
92 years, it became part of an OHRV in the Nash Stream Forest Management Plan in 2017  
93 (updated every 10 years). Kelsey Notch Trail is 1.5 miles long and cuts across the northern  
94 side of Nash Stream Forest. It was opened in 2013. Unlike West Side Trail, it has been debated  
95 and discussed for quite some time and CORD has oversight on this trail due to it being acquired  
96 with LCIP funding. Kelsey Notch Trail was given a 3-year pilot period and 2-year extension in  
97 2021. These periods were given to monitor and understand the impacts of the trail on water  
98 quality, soil compaction, erosion, wildlife, etc. There were multiple reports provided to give  
99 information about the condition of the trail which were made available to CORD. Today is a five-  
100 year culmination of reports. CORD received the recent reports on both trails. Mr. Hackley  
101 concluded the Kelsey Notch report is a more comprehensive one and asked the members if

102 they would like to take some time to review it and if that was the case it could be deferred to a  
103 later meeting.

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105 Chair Caswell stated the reports provided were designed to address the issues that were raised  
106 during the pilot project. Mr. Hackley responded that the memo from December 2016 triggered  
107 the commencement of the pilot project which began in 2017. There has been much effort made  
108 to understand the nature of the trail.

109

110 Chair Caswell asked if there are any components of the report he can discuss today. Mr.  
111 Hackley focused on the Kelsey Notch. Due to an administrative policy change in hiring  
112 private contractors, DNCR was unable to conduct its annual trail repair and  
113 maintenance at the end of the riding season. As a result, the annual report depicts trail  
114 compaction and erosion issues that were not addressed this fall. The maintenance  
115 work will be scheduled in the spring prior to new riding season. Mr. Hackley added in  
116 2021, CORD asked for seven additional report requirements and those have been added to this  
117 report and deficiencies were also identified.

118

119 Chair Caswell asked members for questions.

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121 Mr. Martin asked what the implications were of not closing out the trails for the season, like  
122 safety issues, etc. Mr. Hackley said at this moment it is a snowmobile trail, and they are hoping  
123 to fix the issues in the spring. Mr. Savage corroborated the trails could be opened in the spring  
124 as is, but the hope is to have them returned to their original shape and doing so by springtime.  
125 He also added there were no issues observed with water quality, surface water or wetlands.

126

127 Mr. Ruderman asked about a note about wildlife impacts from ATV noises noted on page 24 of  
128 the report and what Mr. Hackley's take was on concerns, given that there is not a lot of  
129 data/information. Mr. Hackley deferred to Ms. McNaughten. She said Fish & Game always had  
130 a concern about that, but she is not a biologist so she suggested that her supervisor and Jake  
131 Devoe are the best people to answer the question and she can follow up with them. Mr.  
132 Ruderman said he would be interested in follow up information. Ms. McNaughten noted there  
133 have been studies that have been used in the discussion of Nash Stream Forest. Mr. Hackley  
134 corroborated that in the 2020 report a study is mentioned that documented impact on wildlife but  
135 it was not done at Kelsey Notch. He also added since this is an active trail, there was no  
136 opportunity to compare active versus inactive state to study it. Ms. McNaughten added there is  
137 a program, People in Wildlife, that has studies.

138

139 Chair Caswell opened the floor to the public.

140

141 Jamie Sayen, on behalf of himself of Stratford and Citizens Nash Stream Committee, spoke  
142 about the following:

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144 Mr. Sayen's involvement with the property goes back to the original sale when Diamond  
145 International Corporation sold it in 1988 and that he was the reporter who broke the story on it  
146 then and has been involved with it ever since. Mr. Sayen said Diamond International  
147 Corporation had a ban on ATV use back then. He added that the State has adopted,  
148 maintained, and perpetuated that ban. Mr. Sayen noted the easement does not mention ATV  
149 use at all and added there was an active ban on ATVs at the time of the purchase. In 1999  
150 Nash Stream Advisory Committee, which drafted the first Management Plan, wanted to keep the  
151 ban of the ATVs. In 2001 it was opened up. There was a study committee in the Legislation and

152 in its findings, it stated that Fish & Game cannot keep up with enforcement. Regardless, the  
153 trails were opened up but there were conditions made on the trails such as regular monitoring  
154 for the impacts of ATVs and the fact that Fish & Game cannot enter into a memorandum of  
155 understanding unless it can guarantee safety and monitoring. Fish & Game biologist requested  
156 a season without ATV use for the West Side Trail to do a base line study, which he was unable  
157 to complete as the trail was opened that same season. There was no monitoring of West Side  
158 Trail until this year, the studies were inconclusive and never done properly. When Kelsey Notch  
159 opened up, Jim Oehler submitted a report in January 2013 where he expressed concerns about  
160 monitoring and that Fish & Game did not have the capability of either monitoring or  
161 enforcement. The trail was opened without any studies and there was no monitoring until 2016  
162 when CORD required it. John Magee went up there and noted there was tremendous erosion  
163 there. It did not get addressed until late fall of 2017 when many truckloads of fill were brought in  
164 to fill in erosion. In 2017 the monitoring began, and it was done after fall maintenance, therefore,  
165 not looking at the ATV impacts but in fact looking at the quality of the maintenance job. ATVs  
166 are high impact machines. Maggie Machinist recommended monitoring before the end of  
167 season which is how it was done since then until 2020. It is still done after the maintenance,  
168 although this year there was no maintenance. Erosion issues are found but there were no  
169 studies on water quality. Mr. Sayen asked for such a study but was told it was too expensive.  
170 ATV counters were put in after all. Given the concern with ATV noise in breeding/reading  
171 season during May to June there were 1056 ATVs counted over May 28-29.  
172 There is inadequate monitoring, reports, no baseline data, no studies, violation of RSA 215-  
173 A:42.I(B) and the easement does not bring much comfort in justifying this. The Board needs to  
174 at least take a site visit. There is no reason for ATV use in Nash Stream Forest except for  
175 satisfying the very vocal lobby. When the State opened up the Ride the Wilds there was no  
176 master plan, and it has been a 'wild wild west' out there since then. The Coos County is really  
177 suffering and not getting the economic benefit from the ATVs use.

178  
179 Ms. Sayen concluded with urging CORD to kill the Kelsey Notch ATV trail use and revisit  
180 legitimacy of West Side ATV trail use.

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182 Chair Caswell noted that Mr. Sayen spoke for 6 minutes and offered other public members to  
183 address the Board keeping in mind the other agenda items. He noted Nash Stream will possibly  
184 be discussed again in a future meeting as well.

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186 Larry Gomes, Trail master for Milan Trail Huggers ATV Club who has also been involved with  
187 Nash Stream for many years, spoke about the following:

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189 There was a local citizens committee involved with the Nash Stream Forest for all the years that  
190 it has been open. Approving the trails did go through a process and were approved by CORD.  
191 When Nash Stream Forest was purchased, it had three stated goals:

- 192 1. Ensure that the property continues to contribute to forest economy through the sale of
- 193 wood products;
- 194 2. Provide continued public access for recreation; and
- 195 3. Protect the area's natural beauty and ecological values.

196 Nash Stream has always been a working forest, and access to public recreation has been  
197 provided before the trails were opened. The trails do not impact the heart of the forest being  
198 only on the northern and western sides. Kelsey Notch trails are a very small part of the forest  
199 but are very critical in providing a riding link to other trails systems, such as Stratford on the  
200 west, Pittsburgh and Colebrook on the north, and Millsfield on the east. That is why there is a lot  
201 of traffic due to Kelsey Notch linking areas. There are economic impacts due to closures of  
202 businesses in the area as summertime has proven difficult for them. With the ATV's coming in,



203 there has been a big difference in the economy of the North Country and there is a study on  
204 ATVs that is included in packet that corroborates that ATV's are a very big part of the economy  
205 now. There were no ATV restrictions when the State bought the property, and the easement  
206 does not mention anything about ATVs. Motorized vehicle recreation is allowed.

207 Mr. Gomes asked the Board to take all that into consideration.

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209 Chair Caswell asked if there was any other discussion.

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211 Mr. Sanborn had a procedural question on what the Board has to vote on. Chair Caswell  
212 echoed his sentiment and asked related question. Chair Caswell said West Side trail has been  
213 around longer than Kelsey Notch and it began its existence as a pilot trail much like Kelsey  
214 Notch trail now. He then asked how did West Side trail become recognized and not Kelsey  
215 Notch?

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217 Mr. Savage said CORD adopted West Side Trail after it had been a pilot program and it was  
218 included in Management Plan.

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220 Mr. Hackley stated in 2002 they were part of DRED (Department of Resources and Economic  
221 Development) and a lot of attention was given to the North Country economic state and  
222 businesses and ATV influence on them and that played into the CORD's decision at that time.

223

224 Chair Caswell referenced the 2016 CORD findings that were contained in the packet and said  
225 that it was the last time CORD took official action, short of receiving the annual monitoring  
226 reports and allowing the pilot project to continue. He compared this process to someone  
227 applying for a permit or variance. He then asked Mr. Hackley how often the Management Plan  
228 gets updated and whether there is any opportunity for the public input during that process, to  
229 which he said was every 10 years and yes to the public input.

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231 Commissioner Caswell then asked Attorney Brooks for his insight on what CORD's role is in this  
232 situation.

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234 Mr. Hackley said the 2016 legal memo, provided by CORD Attorney Aslin, provided a very good  
235 overview of what CORD's role in this, and added the monitoring period is over and it is time for  
236 a decision, which does not have to happen today. He added if CORD members would like to  
237 have a site visit, it could be arranged, although it may postpone the decision. Mr. Martin said  
238 that this would be really helpful.

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240 Attorney Brooks said there was a site visit awhile back and it was very helpful, albeit very long.  
241 There were no current CORD members who were on CORD back then.

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243 Chair Caswell offered to have OPD staff to prepare a historic document for CORD members  
244 and to work with Attorney Brooks on legal questions for the next meeting. He said if CORD  
245 determines that a road trip is needed, it could be decided then. He added there might be some  
246 other issues to address before visiting.

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248 Mr. Jasper stated said he would like to see what has happened, can the trails continue to be  
249 maintained to remain in the same condition and are not deteriorating. He added as much as he  
250 prefers land and trail to remain pristine, he understands the importance of economic benefits.

251 Ms. McNaughten stated she would like an opportunity to talk to Mr. Hackley as Mr. Sayen  
252 brought up a lot of things that she remembered but would need to confirm them. She suggested  
253 having John Magee to come to talk more about it.

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Chair Caswell said there is nothing to table and a decision will have to be made at some point. He urged members to read the 2016 CORD findings as earlier CORD is telling the current/future CORD on what needs to be done. Then members will decide on the agenda and plan to discuss this in March.

Mr. Ruderman asked about when the second 2-year extension ends. Mr. Hackley said that it is still in the zone. Mr. Savage said that OHRV season opens on May 23, 2023.

Chair Caswell thanked the members of the public for providing information. Mr. Sayen said he has prepared the chronology of events and will send it to Ms. Verdile.

**B. Steve Walker, Director Conservation Land Stewardship Program (CLS) update.**

Chair Caswell introduced Mr. Walker’s update for the Conservation and Stewardship Program. Mr. Walker stated they wanted to be more part of the process and asked for any suggestions for what CORD may want from CLS. He added Ms. Harding will put an educational PowerPoint together on the program for CORD members. Mr. Walker also mentioned that LCIP and LCHIP are different and that this conversation was about LCIP.

Chair Caswell said it would be good to discuss these items at some point.

**SURPLUS LAND REVIEW**

**A. 2023 SLR 001  
Request from the New Hampshire Department of Transportation (NHDOT), to lease 375 feet of water frontage on Lake Winnisquam at the site owned Concord-Lincoln Railroad Corridor to the Town of Belmont to an abutter for installation, use, and maintenance of a dock in accordance with RSA 228:57-a. The proposed lease is for five (5) years with an option for five (5) year renewal. The property is located at US Route 3, Belmont, NH.**

Chair Caswell asked Ms. Verdile to present the details. Ms. Verdile provided a brief summary of SLR request. Louis Barker NHDOT provided information on the application. He said the request was received in the summer of 2022 and NHDES and Attorney General’s Office both concurred that this is a legal use that meets NHDES criteria. A dock application will be needed. The request is deemed fair and legal by the Agency. Mr. Barker than answered questions from the Board about crossing the railroad track, lease cost per foot, market rate, etc.

**MOTION:** *Mr. Sanborn made a motion, which was duly seconded by Mr. Doyle to recommend the proposed lease of 375 feet of water frontage on Lake Winnisquam at the site owned Concord-Lincoln Railroad Corridor to the Town of Belmont to an abutter for installation, use, and maintenance of a dock in accordance with RSA 228:57-a. The proposed lease is for five (5) years with an option for five (5) year renewal. The property is located at US Route 3, Belmont, NH.*

*This recommendation is contingent upon any recommendations/conditions made by:*

- *The Public Water Access Advisory Board.*
- *The Lakes Management and Protection Program, through the Rivers and Lakes Program Coordinator.*
- *The Rivers Management and Protection Program, through the Rivers and Lakes Program Coordinator.*

305 *Motion carried by a majority vote in favor with Mr. Labonte abstaining.*

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**B. 2023 SLR 002**

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**Request from the New Hampshire Department of Environmental Services (NHDES) to transfer ownership of the Weeks Crossing Dam and associated property and easements to the Town of Warren. The dam is a 113-foot long, 14-foot-high concrete structure with earth abutments. The associated property and easements total 0.42 acres. The dam and property are located on Black Brook off Gould Hill Road in Warren, NH.**

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Chair Caswell asked Ms. Verdile to present the details. Ms. Verdile said Corey Clark from NHDES Dam Bureau was there to request the SLR to be tabled. Mr. Clark requested the Warren SLR be tabled as there are still issues like ownership and deed issues that need to be addressed. He said in 2017 a dam washed out in Warren and after that, rebuilding was discussed, and the town put in a culvert. In discussions with Fish & Game it was determined that it was not an important ecological resource, so it was not in state's best interest to rebuild it. The Town on the other hand was very interested in rebuilding it. The State started drafting the agreement with the Town but never finalized it and the agreement was that the State would rebuild it with the help of funds from FEMA and then turn over to the Town. Currently NHDES is working the Town Selectboard on the details of the transfer. Mr. Clark asked if CORD would like a warrant article or signed letter from the Selectboard?

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There were some comments that a warrant article is needed and follow up questions on the town budgeting process. Mr. Clark said he is working with the Town on the budgeting aspect of this transaction.

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Chair Caswell suggested Mr. Clark send an email with that question to OPD staff so they could ask CORD Attorney to provide the answer.

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**OTHER BUSINESS**

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**A. Next Meeting: March 9, 2023, from 3:00 to 4:00 P.M.**

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Ms. Verdile updated the members on the 30-day deadlines for SLR and administrative deadlines for the 2023 meetings. She added the list of deadlines will be posted on the website soon.

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Mr. Sanborn suggested to extend the length of meetings to address those issues that take longer instead of making people who are waiting for action come back to the next meeting. There was discussion for a need to make the meetings longer and to have deadlines given the Nash Stream Forest discussion and how much time and information it involves.

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Then members discussed there was nothing on the table for CORD to decide on regarding Nash Stream Forest as CORD is going to need to make a decision on CORD requirements. Mr. Hackley said there are legal opinions from US Fish & Game and CORD Legal Counsel that this is a legitimate use of the trails, but it is up to CORD to make that decision. He added that there is a briefing paper that can help with history and Mr. Sayen offered to draft a chronology.

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Mr. Sanborn asked Attorney Brooks if he could give CORD some guidance on what they need to do. Mr. Hackley said there was a legal memo (2016) written by Attorney Aslin in the legal guidance on page 6.

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Attorney Brooks provided a brief background and said Nash Stream was delegated to DRED, which is now DNCR to manage since it is under LCIP. Consensus was Kelsey Notch and West Side was a such a big issue that CORD wanted to see how things are going. That is why DNCR is asking CORD to look at how they are maintaining the property and to approve it. He said that he will put together a memo for CORD members for some clarity. Need to have on agenda that discussion will be made.

Mr. Ruderman said a link was sent by OPD staff to CORD members in the past with the background information on the issue and he was wondering if it could be sent again.

Chair Caswell said CORD would need to make a substantial decision at the next meeting if this issue is to be discussed and members should have more knowledge about it. He also said that CORD would need to include public comment.

Mr. Sanborn said that he would like to get more information on the ATV networks and the economic impact. He added that it would be nice to hear from these groups as well.

Mr. Ruderman said that he is not sure that it can all be done in one meeting with inclusion of public comment especially. He suggested to do a half day meeting.

Attorney Brooks said that the ATV affiliated groups presented information in the past.

Chair Caswell said that there is a number of key documents that would need to be distributed to everyone soon. Depending on the key topics CORD can see if it can invite the right people to speak about those issues at the meeting, rather than relying on who shows up. There will have to be time allotted for public comment.

There were suggestions to move up time of the meeting and use bigger space. Another suggestion was to learn more about statutory CORD authority.

Chair Caswell said that CORD has time to meet with its attorney before the next CORD meeting and that this meeting should be focused on what CORD's authority is, what its responsibilities are, and get answers to things that are relevant to the mission of CORD.

Mr. Jasper said there was a real focus on what CORD authority was. He added that to his recollection previous CORD wanted to know if there was any degradation of trails and he was under the impression that this is what CORD would be looking at this time. He reiterated that he thought that CORD had to look at whether the trails and the land they are on were on the trajectory of being destroyed or is the maintenance sufficient for the trails to remain in good condition. Have the crossings been addressed and wetlands impacted.

There was discussion on what CORD needs to vote on and whether it is on a permanent basis or needs to be revisited.

Mr. Caswell said that members will hear back from staff on the extended meeting date and a meeting with the Attorney prior to that. A draft agenda will be sent to everyone with items for Kelsey Notch discussion to make sure that all issues are captured on it. He added that CORD will need to make a decision.

Ms. Brooks said that he can meet with any member individually or with everyone together to address any legal questions and these are not subject to the Right-To-Know law.

**MOTION:** After a motion by Mr. Sanborn the meeting was adjourned at 4:40 PM.

Kelsey Notch discussion to make sure that all issues are captured on it. He added that CORD will need to make a decision.

Ms. Brooks said that he can meet with any member individually or with everyone together to address any legal questions and these are not subject to the Right-To-Know law.

***MOTION:*** *After a motion by Mr. Sanborn the meeting was adjourned at 4:40 PM.*

**From:** [Verdile, Stephanie](#)  
**To:** [Snegach, Alvina](#)  
**Subject:** FW: Correction to January 12, 2023 CORD Minutes  
**Date:** Thursday, March 2, 2023 11:43:53 AM  
**Attachments:** [Corrections for Draft January 12, 2023 CORD Minutes.docx](#)

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**From:** Jamie Sayen [REDACTED]  
**Sent:** Friday, February 17, 2023 10:02 AM  
**To:** Verdile, Stephanie <[stephanie.n.verdile@livefree.nh.gov](mailto:stephanie.n.verdile@livefree.nh.gov)>; Hackley, Patrick [REDACTED]  
**Subject:** Correction to January 12, 2023 CORD Minutes

**EXTERNAL:** Do not open attachments or click on links unless you recognize and trust the sender.

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Dear Ms. Verdile,

I would like to correct several incorrect or confusing items in the draft minutes for January 12 CORD meeting that summarize the comments I delivered.

When I addressed CORD, I identified myself as a resident of Stratford and a member of the Nash Stream Citizens Committee. I expressly emphasized that I was speaking only as a private citizen and not as an authorized representative of the Nash Stream Citizens Committee.

The Draft Minutes read:

"Jamie Sayen, on behalf of himself of Stratford and Citizens Nash Stream Committee, spoke about the following:"

Please correct this to read as "Jamie Sayen of Stratford spoke about the following."

I was not authorized to speak for the NSCC, and I explicitly stated I was not speaking as its designated representative.

I also attach my requested edits to the section that summarized my comments to CORD that day.

Thank you for correcting the record.

Jamie Sayen



Chair Caswell opened the floor to the public.

Jamie Sayen, ~~on behalf of himself of Stratford and Citizens Nash Stream Committee, a resident of Stratford,~~ spoke about the following:

Mr. Sayen's involvement with the property goes back to the original sale when Diamond International Corporation sold it in 1988 and that he was the reporter who broke the story on it then and has been involved with it ever since. Mr. Sayen said Diamond International

3

**Council on Resources and Development DRAFT Minutes January 12, 2023**

Corporation had a ban on ATV use back then. He added that the State ~~has~~ adopted, maintained, and perpetuated that ban. Mr. Sayen noted the easement does not mention ATV use at all and added there was an active ban on ATVs at the time of the purchase. In ~~1999-1995~~ the Nash Stream Advisory Committee, which drafted the first Management Plan, ~~wanted to keep~~ wrote the ban of the ATVs ~~into the Nash Stream Management Plan~~. In 2002 ~~it was~~ DRED opened up ~~the Nash Stream to ATVs~~. There was a 2001 study committee in the ~~Legislation-Legislature that~~ and in its findings, it stated that Fish & Game cannot keep up with enforcement. Regardless, the trails were opened up but there were conditions made on the trails such as regular monitoring for the impacts of ATVs and ~~the fact~~ RSA 215-A:42.I(b) states that Fish & Game cannot enter into a memorandum of understanding unless it can guarantee safety and monitoring. In 2002, ~~a~~ Fish & Game biologist requested a season without ATV use for the West Side Trail to do a base-line study, which he was unable to complete as the trail was opened that same season. There was no monitoring of West Side Trail until ~~this year~~ 2022. ~~T~~, the studies ~~conducted by the state prior to opening the Nash Stream to ATVs~~ were inconclusive and never done properly. ~~When~~ Prior to opening the Kelsey Notch ~~opened~~ Trail, Jim Oehler submitted a report in January 2013 where he expressed concerns about monitoring and that Fish & Game did not have the capability of either monitoring or enforcement. The trail was opened without any studies and there was no monitoring until ~~2016 when~~ CORD required it in December 2016. In November 2015, John Magee of Fish and Game ~~went up there~~ visited the Kelsey Notch Trail and noted there was tremendous erosion there. It did not get addressed until late fall of 2017 when ~~many~~ 105 truckloads of fill were brought in to fill in erosion. In 2017 the monitoring CORD required began, and it was done after fall maintenance, therefore, not looking at the ATV impacts but in fact looking at the quality of the maintenance job. ATVs are high impact machines. Maggie Machinist recommended monitoring before the end of ~~the~~ season ~~which is how it was done since then until 2020~~. Kelsey Notch Monitoring ~~it~~ is still done after the maintenance, although ~~this year~~ in 2022 there was no maintenance. Erosion issues are found but there were no studies on water quality. Mr. Sayen asked for such a study but was told it was too expensive. ATV counters were put in ~~after all~~ for the 2021 season. ~~Given the~~ Fish and Game is especially concerned with ATV noise in breeding/~~reading~~ rearing season during May to June. ~~T~~ there were 1056 ATVs counted ~~on the Kelsey Notch Trail~~ over May 28-29, 2022. There is inadequate monitoring, reports, no baseline data, no ~~wildlife impact~~ studies, violation of RSA 215- A:42.I(b) and the 1989 easement does not ~~bring much comfort in justifying this~~ authorize ATVs in the Nash Stream. The Board needs to at least take a site

**Commented [JS1]:** Delete this statement. It is untrue. The monitoring of Kelsey Notch from 2017-2022 has only been conducted after fall maintenance has been completed.

visit. There is no reason for ATV use in Nash Stream Forest except for satisfying the very vocal lobby. When the State opened up the Ride the Wilds there was no master plan, and it has been a 'wild wild west' out there since then. ~~The Coos County's~~ economy is really suffering, and no credible economic study has demonstrated that the benefits of ATVs are greater than the ecological, economic, and social costs of ATVs in Coos County. ~~not getting the economic benefit from the ATVs use.~~

Ms. Sayen concluded with urging CORD to kill the Kelsey Notch ATV trail use and revisit legitimacy of West Side ATV trail use.

### **III. SURPLUS LAND REVIEW**

#### **A. 2023 SLR 003**

**Request from the Department of Environmental Services (NHDES) to sell its York Dam and Canal Dike on the Contoocook River, its easements at the Rolfe Canal Entrance and Outlet, and its associated flowage and water rights and access easements to Briar Hydro Associates. The property is located off Island Road and Electric Avenue and near Washington Street in Concord, NH.**





## New Hampshire Council on Resources and Development

### MEMORANDUM

TO:	<p>CORD Members and Other Interested Parties</p> <p><i>Via Email Distribution Lists (Bcc)</i></p>	<p>Merrimack County Board of Commissioners c/o Mr. Ross Cunningham, County Administrator 333 Daniel Webster Highway, Suite #2 Boscawen, NH 03303</p> <p><i>Via Email (<a href="mailto:rcunningham@merrimackcounty.net">rcunningham@merrimackcounty.net</a>)</i></p>
	<p>City of Concord, NH C/o Thomas J. Aspell, Jr., City Manager 41 Green Street Concord, NH 03301</p> <p><i>Via Email (<a href="mailto:citymanager@concordnh.gov">citymanager@concordnh.gov</a>)</i></p>	<p>Michael Tardiff, Executive Director Central NH Regional Planning Commission 28 Commercial Street, Suite #3 Concord, NH 03301</p> <p><i>Via Email (<a href="mailto:mtardiff@cnhrpc.org">mtardiff@cnhrpc.org</a>)</i></p>

FROM: Stephanie N. Verdile, Principal Planner, Office of Planning and Development

DATE: February 6, 2023

SUBJECT: *State Owned Surplus Land Review, York Dam, Concord, NH  
2023 SLR 003*

RESPONSE DEADLINE: **Wednesday March 1, 2023**

Please review the attached information to determine if your organization has any interest in this transaction. If there is an interest, please provide this office with any comment(s) in writing by the response deadline indicated above. Responses may be emailed to [stephanie.n.verdile@livefree.nh.gov](mailto:stephanie.n.verdile@livefree.nh.gov)

Information regarding CORD and its meetings may be obtained at:  
<https://www.nh.gov/osi/planning/programs/cord/index.htm>.



The State of New Hampshire  
**Department of Environmental Services**

**Robert R. Scott, Commissioner**



December 27, 2022

Commissioner Taylor Caswell, Chair  
NH Department of Business and Economic Affairs  
100 North Main Street  
Suite 100  
Concord, NH 03301

**Re: Sale of York Dam and associated water rights and easements in Concord to Briar Hydro Associates**

Dear Commissioner Caswell:

The Department of Environmental Services (NHDES) proposes to sell its York Dam and Canal Dike on the Contoocook River, its easements at the Rolfe Canal Entrance and Outlet, and its associated flowage and water rights and access easements to Briar Hydro Associates. Briar Hydro Associates currently leases this property from NHDES under a 50-year lease that started on February 20, 1986, and has nearly 13 years remaining until its expiration.


York Dam and the Canal Dike divert water from the Contoocook River into the Rolfe Canal which feeds the hydropower generating facilities of Briar Hydro Associates at the downstream end of the canal. In addition, as allowed under the lease, Briar Hydro Associates has constructed and operates and maintains the Rolfe Canal Gates Dam on a NHDES-owned easement at the inlet of the canal, as well as the Rolfe Canal Penstock Intake Dam near the outlet of the canal. All of these properties are part of the Rolfe Canal Hydropower Project licensed by the Federal Energy Regulatory Commission (FERC) to Briar Hydro Associates under FERC License No. P-3240.

Briar Hydro Associates has offered NHDES \$600,000 to purchase the property, which is an amount consistent with the market value of the property as determined in an appraisal of the property performed by the Public Utility Appraiser at the New Hampshire Department of Revenue Administration.

NHDES seeks to sell the property to free the State of New Hampshire from liability associated with ownership of York Dam, the failure of which could inundate homes and businesses downstream, overtop State Route 3 and impact downstream dams. In addition, the certainty of the revenue from the sale is preferable to the uncertain revenue stream from rent over the remaining term of the lease. During the remaining years of the lease, the rent, which is a percentage of the revenue that Briar Hydro Associates receives from power generated at the project, can now be reduced based on the operation and maintenance costs of the project.

Please submit this proposal to the Council on Resources and Development (CORD) for review at its next meeting. If you have any questions, please contact Corey Clark at (603) 271-8871.

Sincerely,



Robert R. Scott  
Commissioner

cc: Stephanie N. Verdile, Principal Planner, Office of Strategic Initiatives

[www.des.nh.gov](http://www.des.nh.gov)  
29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
(603) 271-3503 • Fax: 271-2867 • TDD Access: Relay NH 1-800-735-2964

**Council on Resources and Development**  
**REQUEST FOR SURPLUS LAND REVIEW ACTION**

**Name of Requesting Agency:** Department of Environmental Services

**Agency Contact Person:** Corey J. Clark

Address: 29 Hazen Drive, Concord, NH

Phone Number: 603-271-8871

E-Mail: Corey.J.Clark@des.nh.gov

**Applicant Contact Person:** \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Location of Property:** Off Island Road and Electric Avenue and near Washington Street in Concord, NH

**Acreage:** None

**Requested Action:** Sale of the state's Fee Simple Interest in the York Dam (aka Contoocook River Park Dam) and Canal Dike on the Contoocook River, its easements for the Rolfe Canal Entrance Gate and Canal Dam(removed), and all associated flowage and water rights, and access easements along with public access for boat ramp to the Contoocook River.

**Term of Lease or Easement:** n/a

.....  
Please complete ALL questions below, submit one digital copy, one hardcopy with original signatures, and three photocopies of the completed application to:

NH Bureau of Economic Affairs  
NH Office of Planning & Development  
100 North Main St, Suite #100,  
Concord, NH 03301  
Attn: Stephanie N. Verdile, Principal Planner [stephanie.n.verdile@livefree.nh.gov](mailto:stephanie.n.verdile@livefree.nh.gov)

**1. What is the current use of this property?**

The property is currently leased to Briar Hydro Associates, the proposed purchaser of the property, to divert water from the Contoocook River into the Rolfe Canal to their hydropower plant located at the outlet of the canal in Penacook.

**2. What is the proposed use of this property if surplus?** Please note if proposed use is intended to create a public benefit.

The use of the property will remain the same.

**3. Does the proposed use of this property entail new development?**  Yes  No

a. If yes, is it consistent with adjacent and existing development?  Yes  No

b. Please describe how the proposed new development differs from or is similar to its surroundings. Also indicate how it may initiate a future change in the use of the property or its surroundings.

**4. Are there any structures located on this property?**  Yes  No



- a. If yes, please describe the structures including how many and what kind?

There are three structures built and one former structure on five easements that the state holds on property owned by the City of Concord for the purpose of constructing, reconstructing, repairing, maintaining, operating, inspecting and accessing the dams. The first structure is the York Dam (NH Dam No. D051002) located on the Contoocook River, which is owned by NHDES and is currently leased to Briar Hydro Associates. The second structure is the Canal Dike (NH Dam No. D051045) across the entrance of Dry Brook from The Contoocook River. That structure is also owned by NHDES and is currently leased to Briar Hydro Associates. The third structure is the Rolfe Canal Gates Dam (NH Dam No. D051043) at the inlet of Rolfe Canal that was built by Briar Hydro Associates in 1988, under the terms of the lease of the property between NHDES and Briar Hydro Associates, on an easement held by NHDES. The fourth easement was for Rolfe Canal Dam (NH Dam No. D051003) which was removed in 1980. This dam existed approximately 850 feet upstream on the canal from where Briar Hydro Associates built the Rolfe Canal Intake Dam in 1986. Pictures of the structures are provided in Figures 4 through 7.

**5. Are there historical architectural or archaeological resources identified on this site?**

Yes  No

- a. If yes, describe the resource(s)?

NHDES does not believe that there are historical resources on the property. The oldest structure is the York Dam, which was acquired by the State from the City of Concord in 1967 and completely rebuilt by the State's Dam Maintenance Crew in 1968. The construction replaced a timber crib dam, which dated back to at least 1886, with a reinforced concrete gravity dam. In 1970 the State Dam Maintenance Crew added concrete in the crest of the dam to raise the elevation of the crest by 2 feet. The Rolfe Canal Dam was removed in 1980 when the site was redeveloped for hydropower use.

- b. If no, contact the NH Division of Historical Resources prior to application submission.

**6. Is there any existing development or structures on adjacent sites?**  Yes  No

- a. If yes, describe the use and number of structures of adjacent sites.  
If no, where is the nearest development? (Describe distance, use, and number)

There are no structures adjacent to York Dam or the Canal Dike. The right abutment of York Dam (looking downstream) is on the City of Concord's Contoocook River Park and the left abutment is on conservation land owned by the City of Concord. The Dry Canal Dike is within the Contoocook River Park. The easement on which the Rolfe Canal Gates Dam was constructed is just upstream of the Island Road Bridge where it crosses the Rolfe Canal. The easement for the Boat Ramp is upstream of the Island Road Bridge across on the north side of the Rolfe Canal near a residential area.

**7. Does the site represent the entire state property in this location?**  Yes  No

- a. If no, please describe its relationship to the entire state holding (percentage of total acreage, percentage of overall rail length, etc.).

**8. Is access to this property available?**  Yes  No

- a. If yes, how is the site accessed? (from rail, water, across applicant's property, etc.)

The left side of York Dam (looking downstream) is accessed by way of an easement from Elm Street through conservation land owned by the City of Concord, on which the state has the right to travel on foot or by vehicle to construct, reconstruct, repair, maintain and operate the dam. The right side of York Dam (looking downstream) and

Canal Dike are accessed from easement over trails through the Contoocook River Park off Electric Avenue and from Island Road on which the state has the right to travel on foot or by vehicle to construct, reconstruct, repair, maintain and operate the dam and dike. The easement on which the Rolfe Canal Gates were constructed is accessed from Island Road. The easement on which the now removed Rolfe Canal Dam was accessed from Washington Street or Electric Avenue.

b. If yes, is there a potential for public access interruption?  Yes  No

9. Are there water resources related to this property, such as:  
 Lakes/Ponds -  Yes  No **OR** Rivers -  Yes  No **OR** Wetlands -  Yes  No?

a. If yes, please indicate the size or extent of such resources.

The York Dam across the Contoocook River creates a 250-acre impoundment upstream and diverts water into the Rolfe Canal. The Rolfe Canal is approximately 4,300-feet-long from its entrance on the Contoocook River to the Penstock Intake Dam owned by Briar Hydro. From there, it is another 2,900 feet to its confluence with the Contoocook River.

b. If yes, briefly describe how the requirements of RSA 483-B (Shoreland Water Quality Protection Act) apply to potential development of this property:

There can be no additional development of the property. The use of the easements is limited to the construction, reconstruction, repair, maintenance and operation and inspection of dams that have already been constructed on the easements.

c. If yes, briefly describe how any municipal zoning requirements for buffers or setbacks from lakes, rivers or wetlands apply to potential development of this property:

There can be no additional development of the property. The easements granted to the state from the City of Concord limit their use to the construction, reconstruction, repair, maintenance and operation and inspection of dams that have already been constructed on the easements.

d. Is the property within 250 feet of a lake/pond or river/stream?  Yes  No

e. If lakes or rivers are related to this property, describe current public or private access from the site to the water body?  Public  Private  No Access Available

Description: The access to the Contoocook River and Rolfe Canal is public through the City of Concord's Contoocook River Park. In addition there is a public boat ramp owned by the City of Concord on the Contoocook River at the entrance to the Rolfe Canal. See Figure 8&9.

f. How would the proposal affect the access opportunities described in e?

No effect

10. Please identify any other significant resources or sensitive environmental conditions known to be located on or adjacent to this property.

	Yes (property)	Yes (adjacent property)	No
a. Steep slopes .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Wetlands (Prime and NWI) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Threatened or endangered species .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Wildlife Action Plan Critical Habitats .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Increased impervious surface .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Potential stormwater flow changes.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



- g. Agricultural soils of prime, statewide, or local importance .....  .....  .....
- h. Potential river channel change .....  .....  .....
- i. Other special designations .....  .....  .....

Please provide a description for any "yes" responses to question #10.

National Heritage Bureau Data Check Tool inquiry indicates the presence of rare or natural communities in the adjacent area.

**11. Attach photographs and maps of the property. Maps should highlight the requested property location and help to adequately place the property within the town.**

- a. Municipal tax map copy showing all abutters
- b. General location map with scale, north arrow, nearby roads, and water bodies/features\*
- c. Aerial Photograph\*
- d. Any site plans for new or proposed development prepared at the time of application
- e. Maps depicting rail lines, wetlands, conservation lands, rare species and exemplary natural communities, or topographic features are welcome but not required

**Area of Properties**



Figure 1. Location Map





Figure 2. Location of Properties

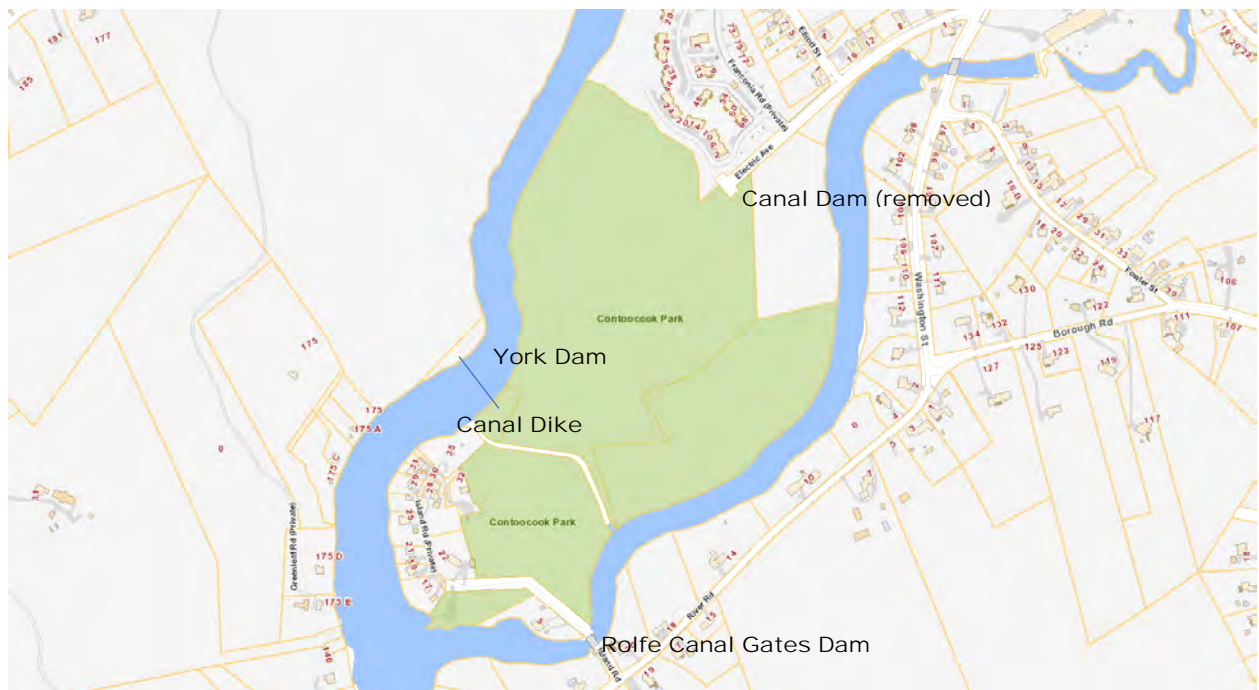


Figure 3. Municipal Tax Map





Figure 4. York Dam



Figure 5. Canal Dike





Figure 6. Rolfe Canal Gates



Figure 7. Rolfe Canal Dam (circa 1934 – removed in 1980)





Figure 8. Boat Ramp upstream of Rolfe Canal Dam



Figure 9. Boat Ramp sign near ramp



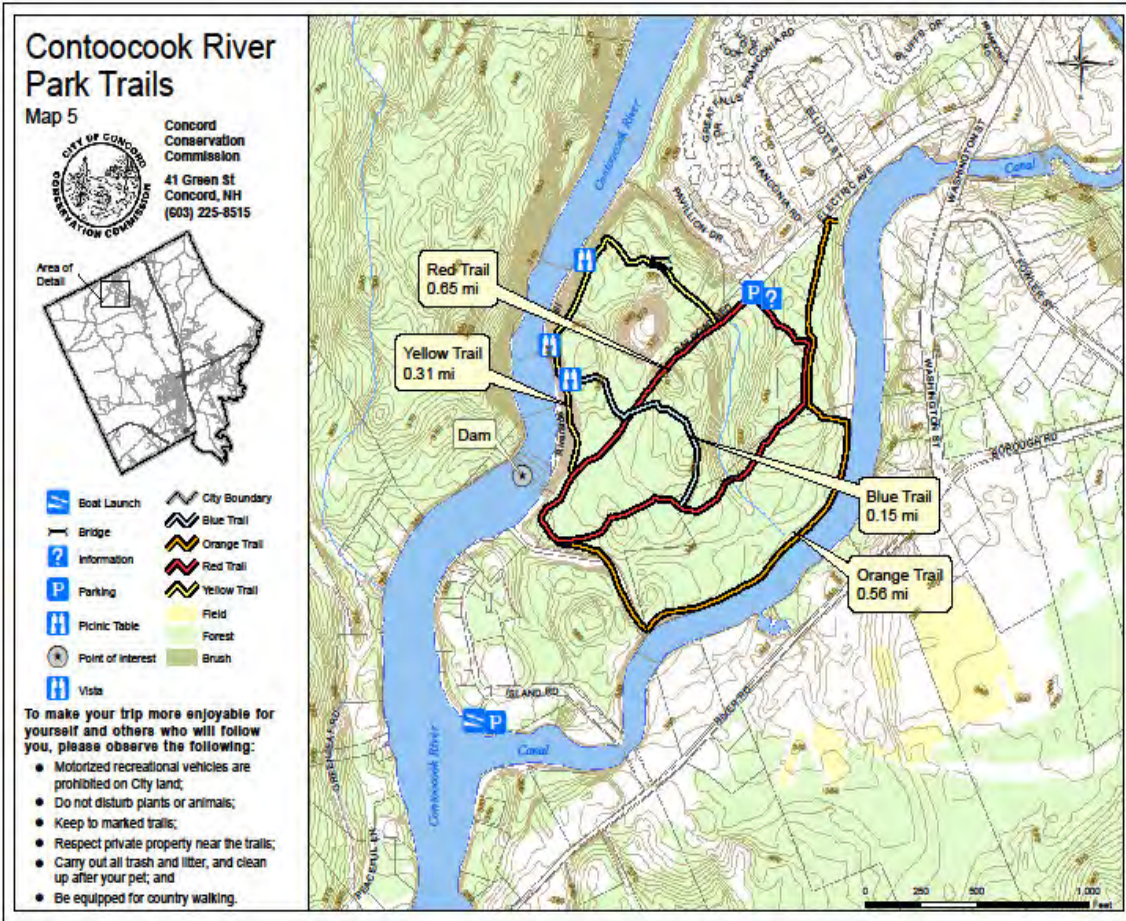


Figure 10. Contoocook River Park Trails Map showing public access to waterbodies



**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: York Dam transfer  
**Date:** Friday, February 24, 2023 4:43:07 PM

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**EXTERNAL:** Do not open attachments or click on links unless you recognize and trust the sender.

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Corey – these changes are consistent with our phone call. I am satisfied with the updated deed and application.

Andrew

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**From:** Clark, Corey <[REDACTED]>  
**Sent:** Thursday, February 23, 2023 2:28 PM  
**To:** Andrew Locke <a[REDACTED]>  
**Cc:** Bell, Patrick <[REDACTED]>  
**Subject:** RE: York Dam transfer

Hi Andrew,

I've attached a revised deed for your review that includes the boat ramp and clarifies that the Rolfe Canal Dam referenced is now removed. I've also attached a copy of the original deed with a highlighted section that calls out the boat ramp and a copy of our revised application to CORD. Let me know if you have any questions.

Thank you,

Corey

Corey J. Clark, P.E.  
Chief Engineering & Construction Engineer  
NH Department of Environmental Services  
Water Division  
Dam Bureau  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095  
Tel: (603) 271-8871  
Fax: (603) 271-6120  
[REDACTED]

---

**From:** Clark, Corey  
**Sent:** Thursday, February 23, 2023 11:37 AM  
**To:** [REDACTED]

**Cc:** Bell, Patrick <[REDACTED]>

**Subject:** York Dam transfer

Hi Andrew,

As we were preparing for the March 9<sup>th</sup> meeting with CORD group we realized there are a few minor changes that we have to make to the deed. Unfortunately our system is down so I cant email the deed right now but feel free to call to discuss. 6 [REDACTED]

Thank you,

Corey

Corey J. Clark, P.E.  
Chief Engineering & Construction Engineer  
NH Department of Environmental Services  
Water Division  
Dam Bureau  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095  
Tel: (603) 271-8871  
Fax: (603) 271-6120  
[REDACTED]

## *Quitclaim Deed*

Return to:

NH DES Dam Bureau  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

**Know all persons by these presents**, that the State of New Hampshire, by the Department of Environmental Services, having a mailing address of P.O. Box 95, 29 Hazen Drive, Concord, NH 03302, in consideration of the sum of \_\_\_\_\_, to it paid does hereby grant and convey, pursuant to the authority granted to the Commissioner under **RSA 481:3 IV**, to **Briar-Hydro Associates**, a limited partnership, with a principal place of business at 99 North State Street, Concord, County of Merrimack, State of New Hampshire,

With **Quitclaim Covenants**,

1. The Contoocook River Park Dam (NH Dam No. D051002, FERC No. P-3240-NH), including all flowage and water rights that the State may have in said dam on the Contoocook River and at the removed dam formerly located on the Outlet (or Canal) (NH Dam NO. D051003).

2. Tracts No. 2, No. 4, and No. 5 deeded by the City of Concord to the grantor by deed recorded in Merrimack County Registry of Deeds Volume 1015 Page 0435, dated October 10, 1967. These tracts are perpetual easements for the purpose of constructing, reconstructing, repairing, maintaining, operating and inspecting dams and dikes on the Contoocook River, canal, and Outlet (or Canal).

3. The right to construct, maintain, repair and operate a water control structure just upstream of the Island Road Bridge crossing of the Outlet (or Canal) (NH Dam No. D051043, FERC No. P-3342-NH). This easement lies near lots No. 7424-C, No. 7424-D, No. 7430-C and No. 7430 as noted on the City Assessor's map. All of this easement lies within the road right of way.

4. An access road easement of the above noted deed from Elm Street to Lot No. 5 of the Merrimack Manufacturing Co., Inc. land now owned by the City of Concord. This easement shall include the right to pass and repass on foot or by vehicle to the said Lot No. 5 to construct, reconstruct, repair, maintain, inspect and operate the Contoocook River Park dam.

5. A perpetual easement over property now or formerly of Merrimack Manufacturing Company, Inc., deeded by Alfred L. Bolduc and Beatrice Bolduc to the grantor by deed dated June 21, 1967, recorded in Merrimack County Registry of Deeds Volume 1015 Page 0437, on October 10, 1967.

6. A perpetual right and easement to construct, repair, inspect, maintain, and operate a dike over and across Dry Brook (NH Dam No. D051045), leading from the Contoocook River to the Canal, together with the right to store various equipment used in connection with and during the pursuit of said activities as deeded by Alfred L. Bolduc and Beatrice Bolduc to the grantor by deed dated June 21, 1967, recorded in Merrimack County Registry of Deeds Volume 1015 Page 0437, on October 10, 1967.

7. Tract No. 1 deeded by the City of Concord to the grantor by deed recorded in Merrimack County Registry of Deeds Volume 1015 Page 0435, dated October 10, 1967. This easement is for public access to Contoocook River and lies on Lot No. 7430.

The above-described tracts and easements being the same as described in the lease agreement executed between the State of New Hampshire, by the Department of Environmental Services and its' predecessors, and Briar-Hydro Associates dated February 20, 1986.

This conveyance is made subject to all liens or other encumbrances of record against the property and subject to any leases, easements, or other encumbrances of record.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2023

By \_\_\_\_\_

Robert R. Scott,  
Commissioner  
New Hampshire Department of Environmental Services

*State of New Hampshire*  
*Merrimack, SS*

The foregoing document was acknowledged by the said Robert R. Scott before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_

Notary Public/Justice of the Peace  
My Commission expires: \_\_\_\_\_

Approved by the Council on Resources and Development by majority vote at a meeting on \_\_\_\_\_ (RSA 4:40)

Approved by the Legislative Long Range Capital Planning and Resources Committee, by a majority vote on \_\_\_\_\_ (RSA 4:40)

Approved by the Governor and Executive Council on \_\_\_\_\_ (RSA 4:40)

Form and execution approved by the Office of the Attorney general on \_\_\_\_\_

**From:** [REDACTED]  
**Subject:** RE: CORD Surplus Land Review Application  
**Date:** Monday, February 27, 2023 9:13:49 AM  
**Attachments:** [image001.jpg](#)

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Dear Stephanie,

On behalf of the Rivers Management Advisory Committee (RMAC) and the Contoocook and North Branch Rivers Local Advisory Committee (CNBRLAC), thank you for the opportunity to comment on 2023 CORD SLRs 003 and 004 in Concord. The RMAC called a special meeting on February 21, 2023 to discuss these two proposed disposals of state owned land. CNBRLAC discussed these properties during their regular meeting on February 20, 2023.

For 2023 CORD SLR 003, the sale of the York Dam on the Contoocook River with associated water rights and easements, CNBRLAC had no concerns. Given CNBRLAC's lack of concern and their own discussions, the RMAC voted to recommend the sale of the York Dam to Briar Hydro Associates as proposed. The vote was 4-0 with one abstention due to a conflict of interest.

For 2023 CORD SLR 004, the proposed sale of the Allen State Forest in Concord, a portion of this property is located within the corridor of the designated Contoocook River. CNBRLAC questioned if the property had a conservation easement or if the property could be permanently maintained as Open Space. The RMAC concurred with CNBRLAC's desire to maintain this property as undeveloped land and voted unanimously to support the sale of the Allen State Forest but with the recommendation that a conservation easement be placed on the parcel prior to any sale.

Please feel free to reach out to me or to RMAC Chair Michele L. Tremblay at [REDACTED] or [REDACTED] if you have any questions.

Sincerely,  
Tracie Sales

Tracie Sales  
Rivers & Lakes Programs Administrator  
NH Department of Environmental Services  
(603) 271-2959

---

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Subject:** CORD Surplus Land Review Application

Good afternoon,

The attached proposal will be on the agenda for the March 9, 2023, meeting.

The meeting will be held from **2:00-400 PM and will be held in the NH DMV Auditorium at 23 Hazen Drive, Concord.** These meetings are open to the public and are in person.

If you have specific questions about the application, please reach out to the Agency Contact person:

Corey J. Clark, P.E.  
Chief Engineering & Construction Engineer  
NH Department of Environmental Services  
Water Division Dam Bureau  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095 Tel: (603) 271-8871



If you have questions about the meeting, please feel free to reach out to me.

Thank you.

Stephanie N. Verdile  
Principal Planner  
Department of Business and Economic Affairs  
Office of Planning and Development  
State of New Hampshire  
Phone (603) 271-1765  
[Stephanie.N.Verdile@livefree.nh.gov](mailto:Stephanie.N.Verdile@livefree.nh.gov)  
[nheconomy.com](http://nheconomy.com) // [choosenh.com](http://choosenh.com) // [visitnh.gov](http://visitnh.gov)







## NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Natural and Cultural Resources 603-271-3483  
19 Pillsbury Street, Concord, NH 03301-3570 603-271-3558  
Voice/ TTY RELAY ACCESS 1-800-735-2964 FAX 603-271-3433  
<http://www.nh.gov/nhdhr> [preservation@nh.gov](mailto:preservation@nh.gov)

February 14, 2023

Stephanie N. Verdile  
NH Office of Planning and Development  
100 North Main Street, Suite 100  
Concord, NH 03301

Re: State Owned Land, Surplus Land Review, York Dam, Concord, NH  
2023 SLR 003 (DHR# 14646)

Dear Ms. Verdile:

In accordance with RSA 227C-9, the Division of Historical Resources (DHR) has been asked to comment on the parcel of state-owned land referenced above.

The DHR does not object to the proposed sale by the NH Department of Environmental Services of its York Dam and Canal Dike on the Contoocook River, its easements at the Rolfe Canal entrance and outlet, its associated flowage, water rights and access easements. Based on a review of DHR records, it has been determined that there are no previously identified historic properties within the proposed sale limits.

Should you have any questions regarding these comments, please feel free to contact David Trubey, Review & Compliance Coordinator, at 271-2813.

Sincerely,

Nadine Miller  
Deputy State Historic Preservation Officer

NM/dwt

### **III. SURPLUS LAND REVIEW**

#### **B. 2023 SLR 004**

**Request from the New Hampshire Department of Natural and Cultural Resources (NHDNCR) to dispose of the State property known as Allen State Forest. The forest is comprised of one 30-acre parcel and is located on Warner Road in Concord, NH.**



### New Hampshire Council on Resources and Development

## MEMORANDUM

TO:	<p>CORD Members and Other Interested Parties</p> <p><i>Via Email Distribution Lists (Bcc)</i></p>	<p>Merrimack County Board of Commissioners c/o Mr. Ross Cunningham, County Administrator 333 Daniel Webster Highway, Suite #2 Boscawen, NH 03303</p> <p><i>Via Email (<a href="mailto:rcunningham@merrimackcounty.net">rcunningham@merrimackcounty.net</a>)</i></p>
	<p>City of Concord, NH C/o Thomas J. Aspell, Jr., City Manager 41 Green Street Concord, NH 03301</p> <p><i>Via Email (<a href="mailto:citymanager@concordnh.gov">citymanager@concordnh.gov</a>)</i></p>	<p>Michael Tardiff, Executive Director Central NH Regional Planning Commission 28 Commercial Street, Ste. 3 Concord, NH 03301</p> <p><i>Via Email (<a href="mailto:mtardiff@cnhrpc.org">mtardiff@cnhrpc.org</a>)</i></p>

FROM: Stephanie N. Verdile, Principal Planner, Office of Planning and Development

DATE: February 6, 2023

SUBJECT: *State Owned Surplus Land Review, Allen Forest, Concord, NH  
2023 SLR 004*

RESPONSE DEADLINE: **Wednesday March 1, 2023**

Please review the attached information to determine if your organization has any interest in this transaction. If there is an interest, please provide this office with any comment(s) in writing by the response deadline indicated above. Responses may be emailed to [stephanie.n.verdile@livefree.nh.gov](mailto:stephanie.n.verdile@livefree.nh.gov)

Information regarding CORD and its meetings may be obtained at:  
<https://www.nh.gov/osi/planning/programs/cord/index.htm>.



STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
OFFICE OF THE COMMISSIONER

172 Pembroke Road Concord, New Hampshire 03301  
Phone: 271-2411 Fax: 271-2629  
TDD ACCESS: Relay NH 1-800-735-2964

January 23, 2023

Taylor Caswell, Commissioner  
Business and Economic Affairs  
100 North Main Street, Suite 100  
Concord, NH 03301

RE: Surplus of State Land in Concord, NH (Allen State Forest) open market sale.

Dear Commissioner Caswell,

The Department of Natural and Cultural Resources is seeking CORD approval to dispose of the State property known as Allen State Forest. The Forest is comprised of one 30-acre parcel. Due to the parcels inherently difficult access, and small size, the Forest is not an economically viable working forest. Therefore, DNCR desires to sell it on the open market for fair market value as determined by an appraisal.

Please submit this proposal to the Council on Resources and Development (CORD) for review at its next meeting. If you have any questions, please contact Bob Spoerl at (603) 271-2765.

Sincerely,

Sarah L. Stewart  
Commissioner

**Council on Resources and Development**  
**REQUEST FOR SURPLUS LAND REVIEW ACTION**

**Name of Requesting Agency:** Department of Natural and Cultural Resources

**Agency Contact Person:** Robert Spoerl  
Address: 172 Pembroke Road, Concord, NH, 03301  
Phone Number: 603-271-2214  
E-Mail: Robert.spoerl@dncr.nh.gov

**Applicant Contact Person:** same  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**Location of Property:** Warner Road, Concord, NH

**Acreage:** 30 acres

**Requested Action:** Review for sale at fair market value

**Term of Lease or Easement:** Fee simple sale In perpetuity

.....

Please complete ALL questions below, submit one digital copy and one hardcopy original of the complete application to the Office of Strategic Initiatives, Johnson Hall, 3<sup>rd</sup> Floor, 107 Pleasant Street, Concord, NH 03301, michael.klass@osi.nh.gov.

**1. What is the current use of this property?**

Managed forest

**2. What is the proposed use of this property if surplused?** Please note if proposed use is intended to create a public benefit.

Maintain conservation integrity but as it will be a Private sale, unknown

**3. Does the proposed use of this property entail new development?**  Yes  No

a. If yes, is it consistent with adjacent and existing development?  Yes  No

b. Please describe how the proposed new development differs from or is similar to its surroundings. Also indicate how it may initiate a future change in the use of the property or surroundings.

Private individual would like to add it to other holdings in the area for conservation related activities.

**4. Are there any structures located on this property?**  Yes  No

a. If yes, please describe the structures including how many and what kind.

\_\_\_\_\_

**5. Are there historical architectural or archaeological resources identified on this site?**

Yes  No

a. If yes, describe the resource(s)?

\_\_\_\_\_



b. If no, contact the NH Division of Historical Resources prior to application submission.

6. Is there any existing development or structures on adjacent sites?  Yes  No

a. If yes, describe the use and number of structures of adjacent sites.  
If no, where is the nearest development? (Describe distance, use, and number)

Nearest homes are 800 feet from property lines, also a mobile home park is within 1000 feet.

7. Does the site represent the entire state property in this location?  Yes  No

a. If no, please describe its relationship to the entire state holding (percentage of total acreage, percentage of overall rail length, etc).

8. Is access to this property available?  Yes  No

a. If yes, how is the site accessed? (from rail, water, across applicant's property, etc)

Does have a deeded right of way that is not developed but does not have actual road frontage. There is also wetlands/drainage issues that would need to be dealt with to use this access.

b. If yes, is there a potential for public access interruption?  Yes  No

9. Are there water resources related to this property such as:

Lakes/Ponds -  Yes  No Rivers -  Yes  No Wetlands -  Yes  No

a. If yes, please indicate the size or extent of such resources.

As shown on the Topo map there is a drainage the cuts across the access and then parallels it to the town road.

b. If yes, is the property located within 250 feet of a lake/pond or river?

No

c. If yes, please describe any municipal regulations and/or Shoreland Water Quality Protection Act (RSA 483-B) provisions that apply to the development of the property.

N/A

d. If there are water resources, please describe current public or private access from the site to the water body.  Public  Private  No Access Available

N/A

e. How would the proposal affect the access opportunities described in d?

N/A



**10. Please identify any other significant resources or sensitive environmental conditions known to be located on or adjacent to this property.**

	Yes (property)	Yes (adjacent property)	No
a. Steep slopes .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Wetlands (Prime and NWI) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Threatened or endangered species .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Wildlife Action Plan Critical Habitats .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Increased impervious surface .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Potential stormwater flow changes.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Agricultural soils of prime, statewide, or local importance .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Potential river channel change .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i. Other special designations .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please provide a description for any "yes" responses to question #10.

See attached map or reports. In addition DNCR has been collaborating with Fish and Game regarding issues related to threatened or endangered species on adjacent lands.

**11. Attach photographs and maps of the property. Maps should highlight the requested property location and help to adequately place the property within its municipality.**

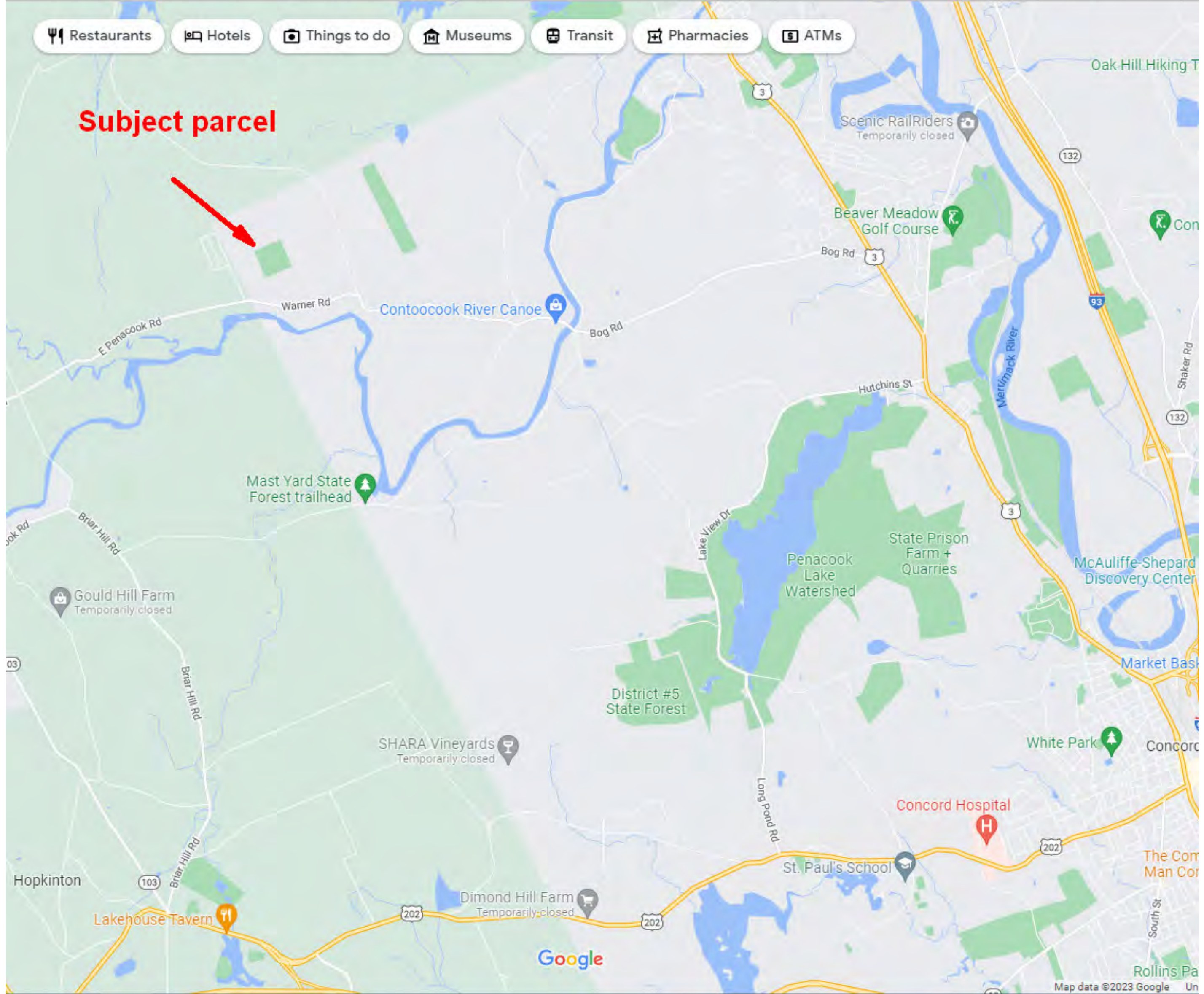
- a. Municipal tax map copy showing all abutters
- b. General location map with scale, north arrow, nearby roads, and water bodies/features\*
- c. Aerial Photograph\*
- d. Any site plans for new or proposed development prepared at the time of application
- e. Maps depicting rail lines, wetlands, conservation lands, rare species and exemplary natural communities or topographic features are welcome but not required

\* Maps can be created with GIS, Google, NH GRANIT, or any other readily available mapping service.

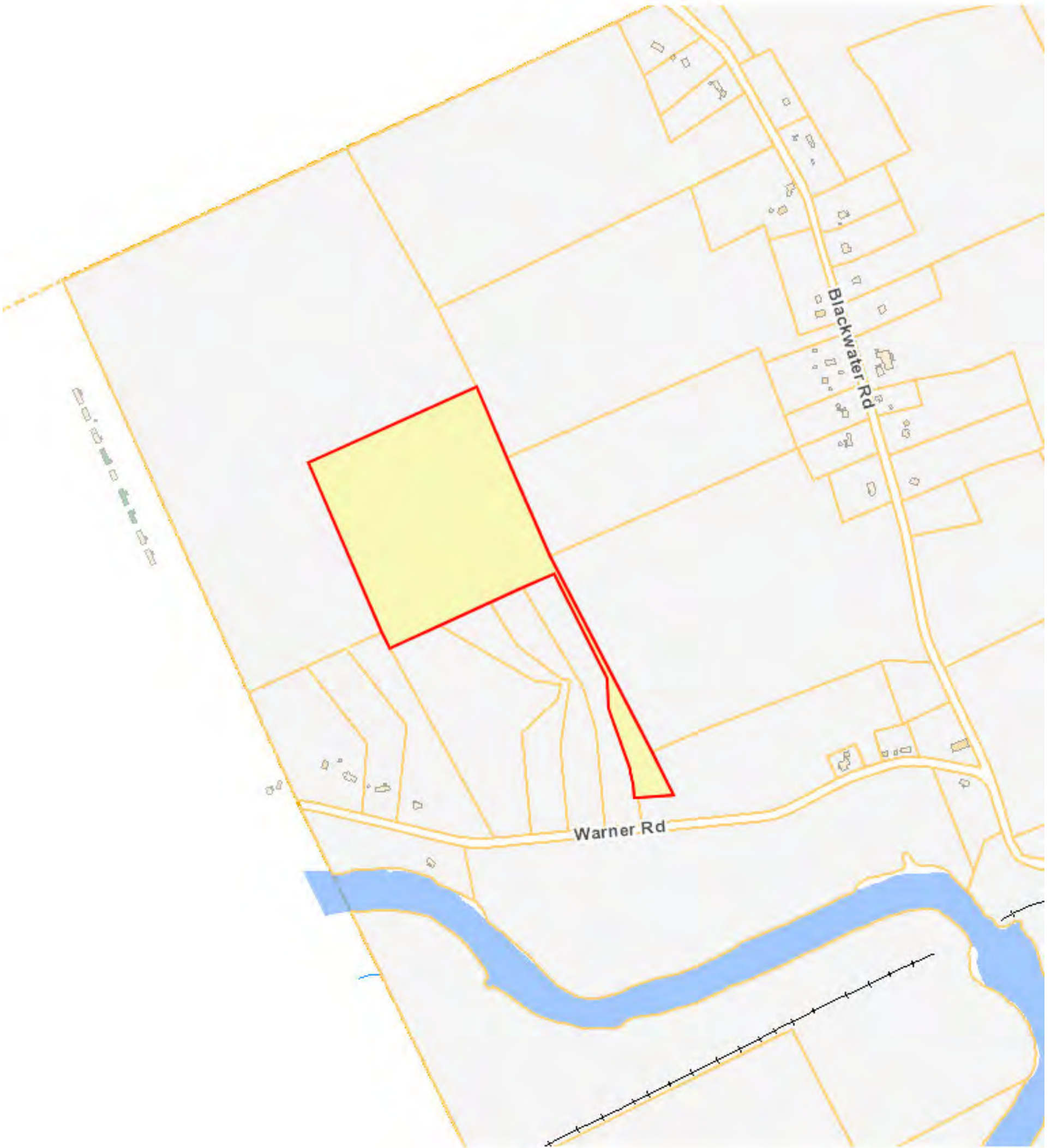
Please paste any maps and photographs submitted as part of this application here.

- Restaurants
- Hotels
- Things to do
- Museums
- Transit
- Pharmacies
- ATMs

**Subject parcel**











**From:** [REDACTED]  
**Subject:** RE: CORD Surplus Land Review Application  
**Date:** Monday, February 27, 2023 9:13:49 AM  
**Attachments:** [image001.jpg](#)

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Dear Stephanie,

On behalf of the Rivers Management Advisory Committee (RMAC) and the Contoocook and North Branch Rivers Local Advisory Committee (CNBRLAC), thank you for the opportunity to comment on 2023 CORD SLRs 003 and 004 in Concord. The RMAC called a special meeting on February 21, 2023 to discuss these two proposed disposals of state owned land. CNBRLAC discussed these properties during their regular meeting on February 20, 2023.

For 2023 CORD SLR 003, the sale of the York Dam on the Contoocook River with associated water rights and easements, CNBRLAC had no concerns. Given CNBRLAC's lack of concern and their own discussions, the RMAC voted to recommend the sale of the York Dam to Briar Hydro Associates as proposed. The vote was 4-0 with one abstention due to a conflict of interest.

For 2023 CORD SLR 004, the proposed sale of the Allen State Forest in Concord, a portion of this property is located within the corridor of the designated Contoocook River. CNBRLAC questioned if the property had a conservation easement or if the property could be permanently maintained as Open Space. The RMAC concurred with CNBRLAC's desire to maintain this property as undeveloped land and voted unanimously to support the sale of the Allen State Forest but with the recommendation that a conservation easement be placed on the parcel prior to any sale.

Please feel free to reach out to me or to RMAC Chair Michele L. Tremblay at [REDACTED] or [REDACTED] if you have any questions.

Sincerely,  
Tracie Sales

Tracie Sales  
Rivers & Lakes Programs Administrator  
NH Department of Environmental Services  
(603) 271-2959

---

**From:** Verdile, Stephanie <Stephanie.N.Verdile@livefree.nh.gov>  
**Sent:** Monday, February 6, 2023 1:06 PM  
[REDACTED]  
[REDACTED]  
**Subject:** CORD Surplus Land Review Application

Good afternoon,

The attached proposal will be on the agenda for the March 9, 2023, meeting.

The meeting will be held from **2:00-400 PM and will be held in the NH DMV Auditorium at 23 Hazen Drive, Concord.** These meetings are open to the public and are in person.

If you have specific questions about the application, please reach out to the Agency Contact person:

Corey J. Clark, P.E.  
Chief Engineering & Construction Engineer  
NH Department of Environmental Services  
Water Division Dam Bureau  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095 Tel: (603) 271-8871

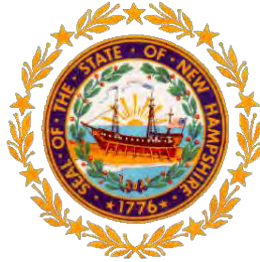


If you have questions about the meeting, please feel free to reach out to me.

Thank you.

Stephanie N. Verdile  
Principal Planner  
Department of Business and Economic Affairs  
Office of Planning and Development  
State of New Hampshire  
Phone (603) 271-1765  
[Stephanie.N.Verdile@livefree.nh.gov](mailto:Stephanie.N.Verdile@livefree.nh.gov)  
[nheconomy.com](http://nheconomy.com) // [choosenh.com](http://choosenh.com) // [visitnh.gov](http://visitnh.gov)





## State Conservation Committee

PO Box 2042 • Concord NH 03302-2042  
nh.gov/SCC

NH Council on Resources and Development  
c/o Stephanie N. Verdile, Principal Planner  
Office of Planning and Development

February 21<sup>st</sup>, 2023

Subject: State Conservation Committee Review of Surplus Land Review, Allen Forest (2023 SLR 004)

Ms. Verdile,

At our meeting on February 16<sup>th</sup>, 2023 the New Hampshire State Conservation Committee reviewed the information provided for the sale of the Allen Forest property (Concord, NH).

The Committee adopted a motion to provide the following response:

*The State Conservation Committee recommends that a developmental deed restriction be included as part of any sale of the property due to the wetland and agricultural resources associated with the site.*

Please reach out to me with any questions.

Thanks,

A handwritten signature in black ink, appearing to read "Ian Hanley".

Ian Hanley  
Executive Director  
NH State Conservation Committee

Cc: Donna Hepp, SCC Chair





## NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Natural and Cultural Resources 603-271-3483  
19 Pillsbury Street, Concord, NH 03301-3570 603-271-3558  
Voice/ TTY RELAY ACCESS 1-800-735-2964 FAX 603-271-3433  
<http://www.nh.gov/nhdhr> [preservation@nh.gov](mailto:preservation@nh.gov)

February 14, 2023

Stephanie N. Verdile  
NH Office of Planning and Development  
100 North Main Street, Suite 100  
Concord, NH 03301

Re: State Owned Land, Surplus Land Review, Allen State Forest, Concord, NH  
2023 SLR 004 (DHR# 14645)

Dear Ms. Verdile:

In accordance with RSA 227C-9, the Division of Historical Resources (DHR) has been asked to comment on the parcel of state-owned land referenced above.

The DHR does not object to the proposed open market sale of the 30-acre Allen State Forest currently owned by the Department of Natural and Cultural Resources. Based on a review of DHR records, it has been determined that there are no previously identified historic properties or areas of archaeological sensitivity within the existing parcel.

Should you have any questions regarding these comments, please feel free to contact David Trubey, Review & Compliance Coordinator, at 271-2813.

Sincerely,

Nadine Miller  
Deputy State Historic Preservation Officer

NM/dwt

**From:** [REDACTED]  
**To:** [Verdile, Stephanie](#)  
**Cc:** [Winters, Shelley](#)  
**Subject:** RE: CORD Surplus Land Review Application - Allen Forest  
**Date:** Thursday, March 2, 2023 10:00:07 AM  
**Attachments:** [image001.jpg](#)  
[2023\\_004 Allen Forest SLR Review Cover Memo.docx](#)  
[CORD Request 2023\\_004 SLR Sale of Allen Forest.pdf](#)

---

Good morning Stephanie,  
The NH Department of Transportation's Bureau of Rail & Transit appreciates the opportunity to review this. The Bureau does not need this property now or in the foreseeable future for railroad or transit purposes.

Thanks,

Maggie Baldwin, P.E.  
Administrator, Bureau of Rail and Transit  
NH Department of Transportation  
JOM Building, 7 Hazen Drive  
Concord, NH 03302  
(603) 271-3497 (Direct)

[REDACTED]

 Please consider the environment before printing this e-mail!

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[REDACTED]

[REDACTED]

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[REDACTED]

Good afternoon,

The attached proposal will be on the agenda for the March 9, 2023, meeting.

The meeting will be held from **2:00-400 PM and will be held in the NH DMV Auditorium at 23 Hazen Drive, Concord.** These meetings are open to the public and are in person.

If you have specific questions about the application, please reach out to the Agency  
Contact person:

Robert (Bob) Spoerl  
Land Agent  
NH Forests and Lands  
603-271-2765  
[REDACTED]

If you have questions about the meeting, please feel free to reach out to me.

Thank you.

Stephanie N. Verdile  
Principal Planner  
Department of Business and Economic Affairs  
Office of Planning and Development  
State of New Hampshire  
Phone (603) 271-1765  
[Stephanie.N.Verdile@livefree.nh.gov](mailto:Stephanie.N.Verdile@livefree.nh.gov)  
[nheconomy.com](http://nheconomy.com) // [choosenh.com](http://choosenh.com) // [visitnh.gov](http://visitnh.gov)

DTTD\_livefree\_email[1]



## **IV. LAND CONSERVATION INVESTMENT PROGRAM (LCIP)**

### **A. Nash Stream Forest – Kelsey Notch trail.**

**i. Overview of CORD's responsibilities and decisions**

**ii. Agency input**

**iii. Public input**

**iv. Discussion and decision**

## **CORD Members Information Packet for Kelsey Notch Trail Discussion at March 9, 2023 Meeting**

- Summary of CORD meetings and decisions about Kelsey Notch Trail
- CORD 2016 Letter and Findings
- CORD 2021 Letter regarding additional monitoring requirements
- Maps of Kelsey Notch (within Nash Stream Forest and as part of the Ride the Wild ATV trails)

# Council on Resources and Development (CORD) Summary of Kelsey Notch Trail Discussions and Decisions

Prepared by: NH Department of Business and Economic Affairs – Office of Planning and Development

## 2013

- **March 14, 2013** – CORD Meeting – DRED presented a proposal for 2 additional ATV trails in Nash Stream.
- **April 11, 2013** – CORD Meeting – DRED and ATV Club representatives presented more information about proposal to construct one additional ATV trail (Kelsey Notch Trail).

## 2015

- **July 18, 2015** – CORD Meeting – DRED provided an update and overview of status of management plan update. It was pointed out that RSA 215-A:42 requires an MOU between state agencies; none appeared to be in place.
- **September 10, 2015 – CORD Meeting** – Update provided on status of Management Plan.
  - September 9, 2015 – Letter to CORD from SPNHF expressing concerns about expanding ATV trail use beyond the West Side Trail in the Management Plan update.

## 2016

- **May 5, 2016** – Letter to CORD from SPNHF, AMC, and TNC expressing concerns about legal status of two existing ATV trails and that they are not in compliance with state law.
  - Also noted that the 2002 Management Plan specifically prohibits any additional trails being developed on the property.
  - Requested that CORD determine whether the existing ATV trail system is in compliance with state law and if not, what appropriate remedy is.
  - CORD has a statutory obligation to administer and manage LCIP land and a key component is ensuring that activities being carried out on these lands are in compliance with state law.
  - **May 12, 2016** – CORD Meeting – briefly discussed letter from SPNHF, AMC, and TNC.
  - **July 6, 2016** – DRED Commissioner Rose’s letter to CORD response to May 5, 2016 letter from SPNHF, AMC, and TNC.
  - **July 14, 2016** – Follow up letter from SPNHF, AMC, and TNC, who continue to have substantial concerns regarding existing ATV trails on property. Reiterated May 5 request that CORD determine whether the existing ATV trail system is in compliance with state law.
- **August 15, 2016 – CORD Site Visit to Nash Stream State Forest**
- **October 13, 2016 CORD Meeting Summary:**
  - Purpose of meeting was to discuss and determine if the existing ATV trails in Nash Stream Forest are in keeping with the requirements of RSA 162-C, specifically 162-C:6, I-III. CORD has the responsibility for management of the state-owned lands acquired through LCIP. Management responsibility for LCIP properties was transferred to CORD by way of legislation in 1995.
  - AG’s office provided confidential memo dated October 10, 2016 to CORD. Chairperson Merrill provided a brief summary of the AG’s document, which reiterates that CORD’s responsibility is to determine whether a proposed project or plan meets the statutory requirements of RSA 162-C.
  - Discussion was tabled.



- **November 2, 2016** – Letter to CORD from SPNH, AMC, and TNC expressing concerns about discussion at the October 13, 2016, meeting.
  - Recognized that it is unlikely that CORD would vote to disestablish either of the two existing trails and expressed disappointment.
  - Offered recommendations on list of “conditions” to accompany CORD approve of Management Plan.
- **December 8, 2016 CORD Meeting Summary:**
  - CORD **voted** to adopt findings, which included general findings for any ATV use in Nash Stream Forest, as well as Findings specific to West Side Trail and to Kelsey Notch Trail.
  - CORD laid out criteria by which the Kelsey Notch Trail would be provisionally re-opened for ATV use. The criteria included:
    - a coarse and fine filter assessment of the trail,
    - an inter-agency MOA between Fish and Game, DNCR Trails Bureau and the Division of Forest and Lands, and
    - an MOA between DNCR and the local trail club.
  - A three-year pilot for Kelsey Notch during which CORD requested an annual report, addressing trail degradation and water quality issues from current ATV use and also enforcement issues. After three years of assessment which began in 2017, CORD is required to make a determination concerning use of Kelsey Notch Trail.
  - In a December 14, 2016 letter to DRED, Chairperson Merrill detailed CORD’s discussions and findings.

## 2017

- **January 12, 2017 CORD Meeting Summary**
  - DRED provided an update to CORD regarding MOUs and coarse and fine filter analysis which has been updated with additional comments. Also provided an update on draft Management Plan Recreation chapter, which includes three objectives for future ATV/UTV policy in Nash Stream.
- **March 9, 2017 CORD Meeting Summary**
  - **Voted** that the submissions from DRED were sufficient to reopen the trail.
  - DRED provided update on public meetings and comments on Draft Management Plan. Plan will include the CORD General Findings in the appendix section.
- **November 16, 2017 CORD Meeting Summary**
  - DNCR (formerly part of DRED) provided an update on the 10-Year Nash Stream Forest Management Plan. Recreation Chapter includes the process established by CORD’s December 2016 Findings for the establishment and use of ATV/UTV trails.
  - CORD **voted** that they found the September 2017 final draft Nash Stream Forest Management Plan, prepared by DNCR, to be consistent with the principles of RSA 162-C and that the Council accepts the Management Plan.

## 2021

- **January 14, 2021 CORD Meeting Summary**
  - CORD **voted** to grant the request of DNCR for 2 additional years to study OHRV use in the Kelsey Notch Trail, as long as the existing conditions of CORD’s 2016 findings continue to be met.
- **March 11, 2021 CORD Meeting Summary**
  - CORD **voted** to require additional reporting requirements for DNCR’s Kelsey Notch Trail annual reports.

- In a March 29, 2021 letter to DNCR Commissioner, Chairman Chicoine detailed the reporting requirements that CORD voted to require for the annual Kelsey Notch reports.

## **2022**

- **January 20, 2022 CORD Meeting Summary**

- DNCR stated that the Council's approval of OHRV use on Kelsey Notch Trail was effective until January 2023. At that time the Council will have to decide whether to close the trail to OHRV use, allow the trail to remain open to OHRV use or request additional information.

# New Hampshire Council on Resources and Development

NH Office of Energy and Planning  
107 Pleasant Street, Johnson Hall  
Concord, NH 03301  
Phone: 603-271-2155  
Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

December 14, 2016

Brad W. Simpkins, Director  
New Hampshire Division of Forests and Lands  
NH Department of Resources and Economic Development  
[Brad.Simpkins@dred.nh.gov](mailto:Brad.Simpkins@dred.nh.gov)

Chris Gamache, Chief  
NH Trails Bureau  
Department of Resources and Economic Development  
Division of Parks and Recreation  
[Christopher.Gamache@dred.nh.gov](mailto:Christopher.Gamache@dred.nh.gov)

Dear Director Simpkins and Chief Gamache:

On December 8, 2016 the Council on Resources and Development made several decisions regarding ATV trail use in Nash Stream Forest and whether such use is consistent with the principles set forth in RSA 162-C:6 for management of LCIP lands.

Concerns about the establishment of the two existing Nash Stream ATV trails – West Side Trail and Kelsey Notch Trail – were brought to the Council’s attention by the Appalachian Mountain Club, the Society for the Protection of New Hampshire Forests and The Nature Conservancy in a letter dated May 5, 2016.

In response, the Council adopted the enclosed Findings, which includes General Findings for any ATV use in Nash Stream Forest, as well as Findings specific to West Side Trail and to Kelsey Notch Trail.

In addition, the Division of Forest and Lands submitted a Nash Stream Forest OHRV Briefing Paper and requested guidance from the Council on three proposed ATV trail options for

inclusion in the 2016 revision of the Nash Stream Management Plan. The Council's guidance is based on consistency with the principles of RSA 162-C:6 for the management of LCIP lands.

The Council determined that both Options 1 and 2, as proposed in the Briefing Paper, are consistent with the principles set forth in RSA 162-C:6, with West Side Trail and Kelsey Notch Trail each subject to the specific conditions outlined in the Council's December 8, 2016 Findings. The Council further determined that Option 3, as proposed in the Briefing Paper, is not consistent with the management vision for Nash Stream Forest nor with the principles set forth in RSA 162-C:6.

The Council's motion regarding the proposed options for the Nash Stream Management Plan is enclosed at the end of this document.

Please be in touch with questions or concerns.

Best wishes,



Amanda A. Merrill  
Director, Office of Energy and Planning  
Chair, Council on Resources and Development

cc:   CORD Members  
      Jeffrey Rose, Commissioner, Department of Resources and Economic Development  
      Phil Bryce, Director, Division of Parks and Recreation, DRED  
      Christopher G. Aslin, Assistant Attorney General, Department of Justice  
      Susan Arnold, Vice President for Conservation, Appalachian Mountain Club  
      Matt Leahy, Public Policy Manager, Society for the Protection of New Hampshire Forests  
      Jim O'Brien, Director of External Affairs, The Nature Conservancy  
      Will Abbott, Vice President for Policy and Reservation Stewardship, Society for the  
      Protection of New Hampshire Forests  
      Larry Gomes, Nash Stream OHRV Task Force

# New Hampshire Council on Resources and Development

NH Office of Energy and Planning  
107 Pleasant Street, Johnson Hall  
Concord, NH 03301  
Phone: 603-271-2155  
Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

## **FINDINGS REGARDING ATV/UTV USE IN NASH STREAM FOREST ADOPTED BY CORD ON DECEMBER 8, 2016 (8-0)**

### **General Findings:**

The Council finds that in order to perform its statutory duty to manage LCIP lands, members must review and find that any use of ATV/UTVs, as currently defined by statute, within Nash Stream Forest is consistent with the principles set forth in RSA 162-C:6 prior to implementation.

CORD further finds that any ATV/UTV use in Nash Stream Forest must be limited to specific ATV/UTV trails approved by CORD in advance. In order to be consistent with the principles set forth in RSA 162-C:6, CORD finds that each proposed ATV/UTV trail must meet the following conditions: (1) the trail must be designed, sited, and used so that it preserves and does not adversely impact natural resources and conservation attributes of the property and does not interfere with or detract from the other uses of Nash Stream Forest; (2) the trail must be authorized in a current management plan, which has been reviewed by CORD for consistency with RSA 162-C:6 and has had appropriate public and state agency input; (3) the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV and environmental regulations and standards, and the state's most recently adopted best management practices for trail construction and erosion control; (4) after construction, the trail must be continually managed to protect natural resources and conservation attributes and to limit interference with other uses of Nash Stream Forest; (5) CORD must be adequately informed on an ongoing basis of the status of management, maintenance, and enforcement efforts related to ATV/UTV use, as well as impacts of ATV/UTV trails on the Nash Stream Forest; and (6) CORD reserves the right to periodically reassess whether ATV/UTV use in the Nash Stream Forest, or on any of the trails therein, remains consistent with RSA 162-C:6 and reserves the right to temporarily or permanently close trails if necessary as circumstances change over time.

### **West Side Trail:**

The Council finds that the use of ATV/UTVs on the West Side Trail, as currently managed, is consistent with its management obligations under RSA 162-C:6 as long as: (1) the memoranda of agreement required by RSA 215-A:42 relating to monitoring, maintenance, and enforcement

remain up-to-date and contain sufficient detail and safeguards to ensure that the trail is maintained in a safe and environmentally appropriate manner; and (2) conditions and use of the trail do not change in such a way that makes continued use of ATV/UTVs on the West Side Trail inconsistent with the requirements of RSA 162-C:6 as determined by CORD.

**Kelsey Notch Trail:**

The Council finds that, based on current available information, it is not able to determine at this time whether continued use of ATV/UTVs on the Kelsey Notch Trail is consistent with CORD's management obligations under RSA 162-C:6. In order to assist in this determination, CORD requests the following additional information regarding the use, maintenance, and impacts of ATV/UTVs at this location:

1. By the January 12, 2017 CORD meeting, DRED shall submit to CORD for review the following:
  - a. An updated coarse and fine filter analysis of the Kelsey Notch Trail, pursuant to RSA 215-A:43;
  - b. An interagency memorandum of understanding, pursuant to RSA 215-A:42; and
  - c. Written agreements between DRED and a local ATV/UTV club, pursuant to RSA 215-A:42.
2. At such time that CORD has reviewed the information above and determined that it is sufficient for the Kelsey Notch Trail to provisionally re-open for ATV/UTV use, DRED shall then submit the following to CORD for review as they become available:
  - a. The annual reports required pursuant to the interagency memorandum of understanding; and
  - b. Such additional reasonable and appropriate studies, data, and information as CORD may require to adequately assess whether the continued use of ATV/UTVs on the Kelsey Notch Trail is consistent with RSA 162-C:6.
3. CORD will assess this additional information for three years (beginning in 2017) and at the end of this time period, or at any other time as circumstances dictate, CORD shall determine, based on available information:
  - a. That additional information and assessment is necessary to determine whether the use of ATV/UTVs on the Kelsey Notch Trail is consistent with RSA 162-C:6; or
  - b. That use of ATV/UTVs on the Kelsey Notch Trail is consistent with RSA 162-C:6, subject to the general conditions for any ATV/UTV use in Nash Stream Forest; or
  - c. That ATV/UTV use on the Kelsey Notch Trail is not consistent with RSA 162-C:6 and the trail shall cease to be open for ATV/UTV use.
4. During the pendency of CORD's review of the Kelsey Notch Trail no expansion of the area of disturbance for ATV/UTV use shall be permitted without prior CORD approval.



**MOTION ON GUIDANCE TO DRED REGARDING ATV TRAIL OPTIONS  
FOR 2016 REVISED NASH STREAM FOREST MANAGEMENT PLAN**

“In looking at the three options presented to CORD from DRED, and given the preliminary findings of the Technical Team, Option 3 would not be consistent with both the management vision as well as RSA 162-C:6. Both Option 1, keeping the status quo, and Option 2, keeping OHRV use consistent with the 2002 Management Plan amendment, would be consistent with both the management vision and CORD’s LCIP responsibilities. However, Option 1 needs to reflect CORD’s determination earlier in today’s meeting.”

**Adopted by Council on Resources and Development (7-0)  
December 8, 2016**

# New Hampshire Council on Resources and Development

NH Office of Strategic Initiatives  
107 Pleasant Street, Johnson Hall  
Concord, NH 03301  
Phone: 603-271-2155  
Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

*Via Email (Sarah.L.Stewart@dncr.nh.gov)*

March 29, 2021

Sarah Stewart, Commissioner  
Department of Natural and Cultural Resources  
172 Pembroke Road  
Concord, NH 03301

Re: Kelsey Notch Trail Assessment - Additional Reporting Requirements

Dear Commissioner Stewart:

I send this letter as Chair of the Council of Resources and Development (CORD).

As you know, at its January 14, 2021 meeting, CORD voted to grant the request of the Department of Natural and Cultural Resources (DNCR) for two (2) additional years to study OHRV use in the Kelsey Notch Trail, as long as the existing conditions of CORD's 2016 findings continue to be met and with the caveat that CORD would be subsequently discussing additional annual reporting requirements.

At its March 11, 2021 meeting, CORD voted to require the following additional reporting requirements for DNCR's annual Kelsey Notch reports:

1. Identify and discuss any invasive species and all related treatment plans;
2. Identify and discuss any trail erosion issues and all restoration plans;
3. Include annual trail count information;
4. Discuss relevant adequacy of staffing and budget issues;
5. Identify the opening and closing date of trail;
6. Invite Fish and Game Fisheries biologist to DNCR's site visit; and
7. The annual report shall be filed with CORD on or before December 15th each year.

Thank you and please contact me if you have any questions.

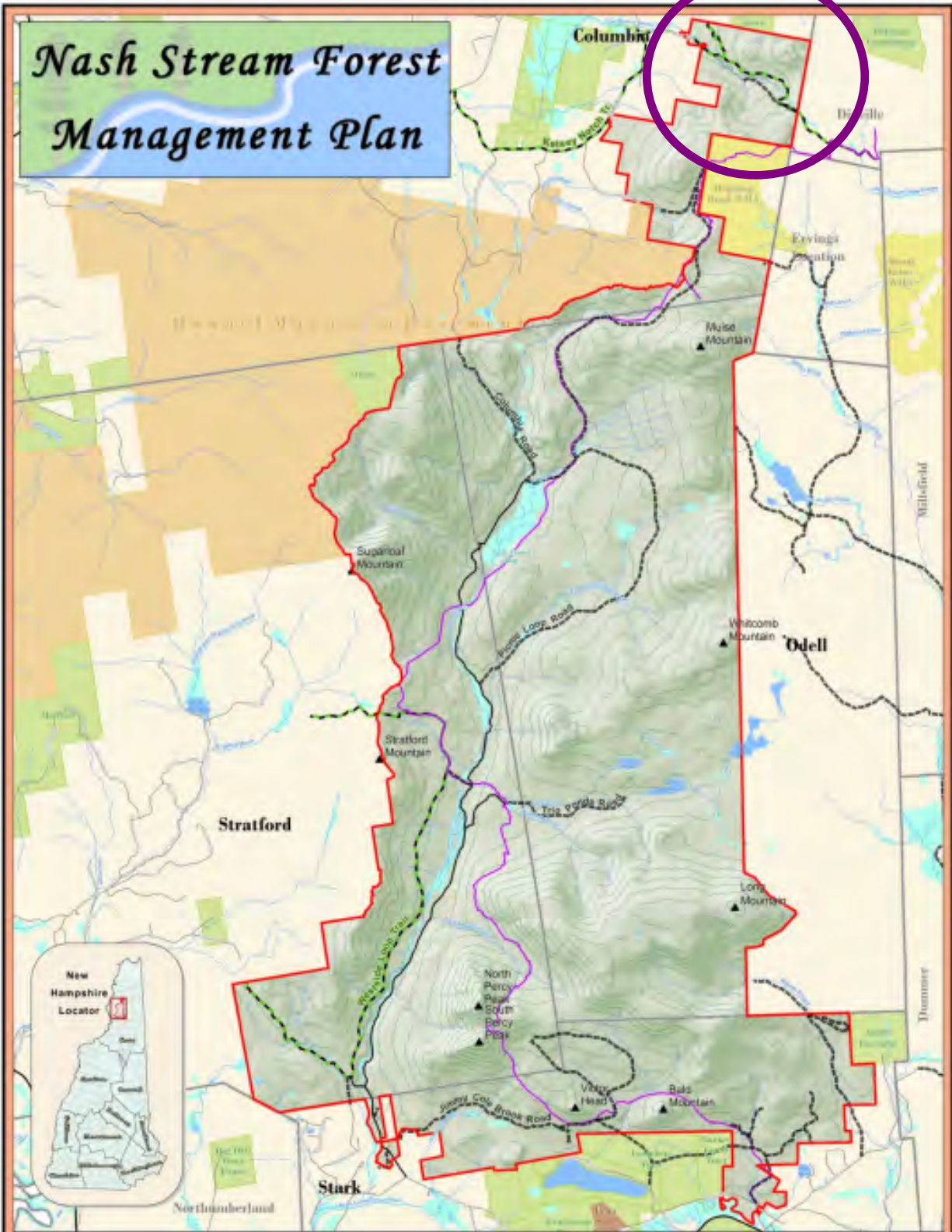
Best,

A handwritten signature in blue ink that reads "Jared Chicoine". The signature is written in a cursive style with a horizontal line extending to the right.

Jared Chicoine, Chair  
Council of Resources and Development

Cc:   CORD Members (via email)

# Nash Stream Forest Management Plan



- ~ State Routes
- ~ Local Roads
- ~ Main Access Road
- ~ Multi-Use Trails with ATV Usage
- ~ The Cohos Trail
- ▲ Peaks
- ▭ Nash Stream Forest Property Boundary
- Dept of Natural and Cultural Resources (DNCR) Lands
- DNCR Conservation Easement Lands
- NH Fish and Game Lands
- Other Conserved Lands
- ▭ Town Boundaries
- Rivers and Streams
- Waterbodies
- Wetlands

Map 1:  
Nash Stream Forest



Data Sources:  
NH GRANET Digital Data (1:24,000)  
NH Department of Transportation  
DNCR Forests & Lands

DNCR makes no representations or guarantees as to the accuracy of the features and designations of this map.

Map Produced by GIS Service  
DNCR Forests & Lands  
Contact: Lisa Scottelli, GIS  
Ph: (603) 271-2114 Ext. 321

This map is for planning purposes only. It is not to be used for legal boundary determinations or for regulatory purposes.



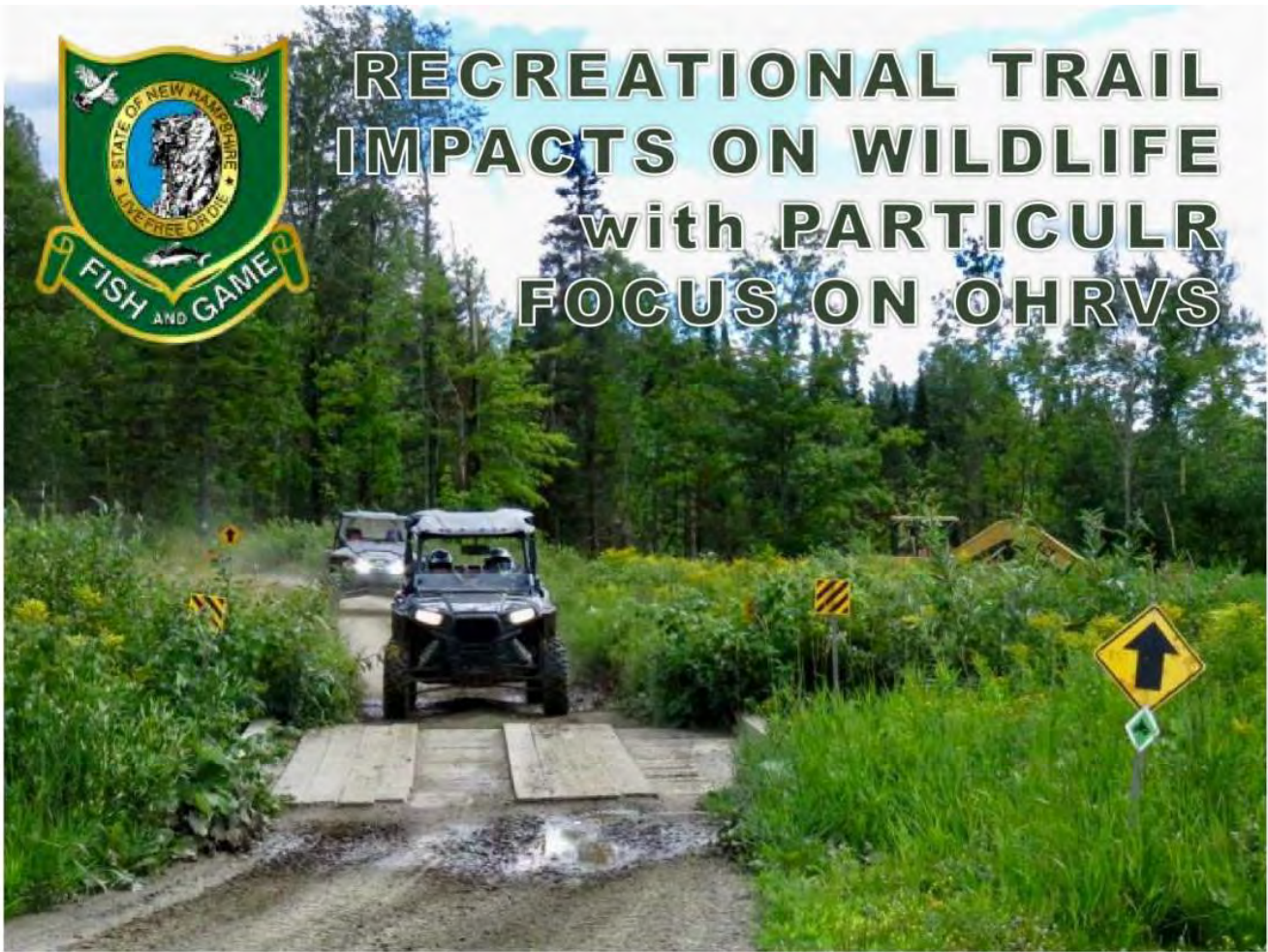
○ Location of Kelsey Notch Trail







# RECREATIONAL TRAIL IMPACTS ON WILDLIFE with PARTICULAR FOCUS ON OHRVS



## Impacts of Recreational Trails on Wildlife



### Physiological

Changes in an animal's heart rate, temperature, or stress hormones.



### Behavioral

Changes in foraging, vigilance or fleeing from perceived predators.



### Reproductive Success

Reduction in the number of nests built, eggs laid or young born and successively raised.



### Predation

Scaring an adult away leaves young vulnerable to predation. Adults may be preyed on directly.



# Impacts of Recreational Trails on Wildlife

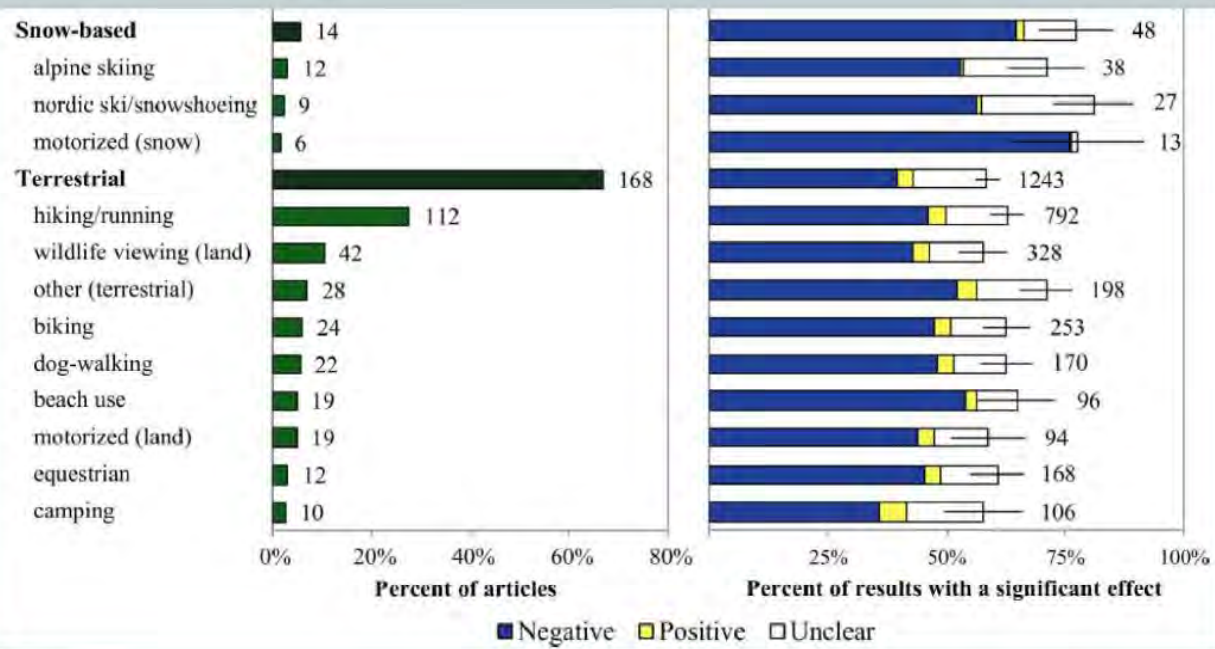
## Effects of Rec. on Animals Revealed as Widespread thru Global Systematic Review

Larson, Reed, Merenlender, Crooks (2016) *PlosOne*

- 274 papers
- North America + Europe
- All taxa – not just birds



# Impacts of Recreational Trails on Wildlife



# Impacts of Recreational Trails on Wildlife

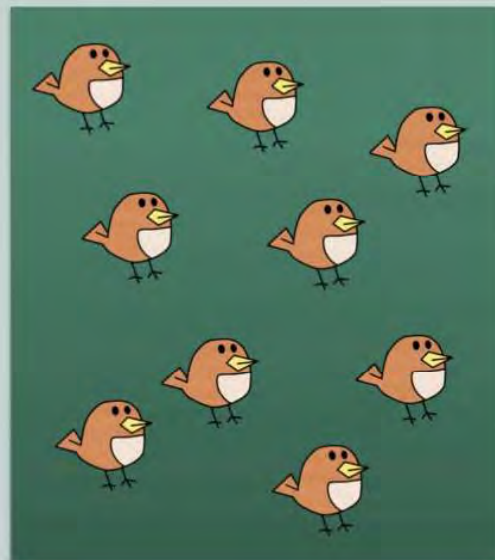
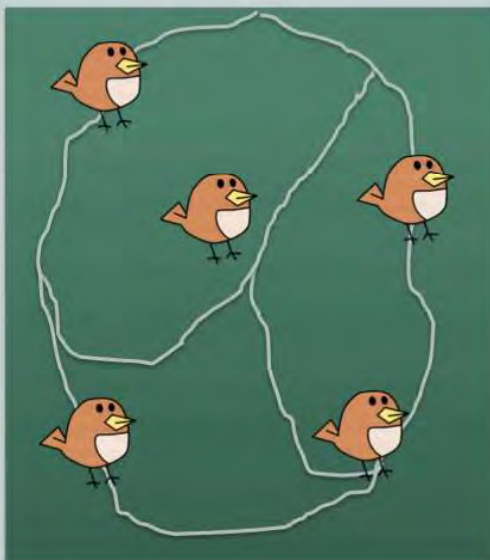
## Wildlife & Recreation: Understanding and Managing the Effects of Trail Use on Wildlife

Meredith Naughton (2021) UVM

- Negative effect on wildlife.
- Greatest effects during breeding season.
- Non-motorized recreation has a stronger effect than motorized recreation.
  - Motorized = snowmobiles



## Real World Examples: Pedestrian Trails

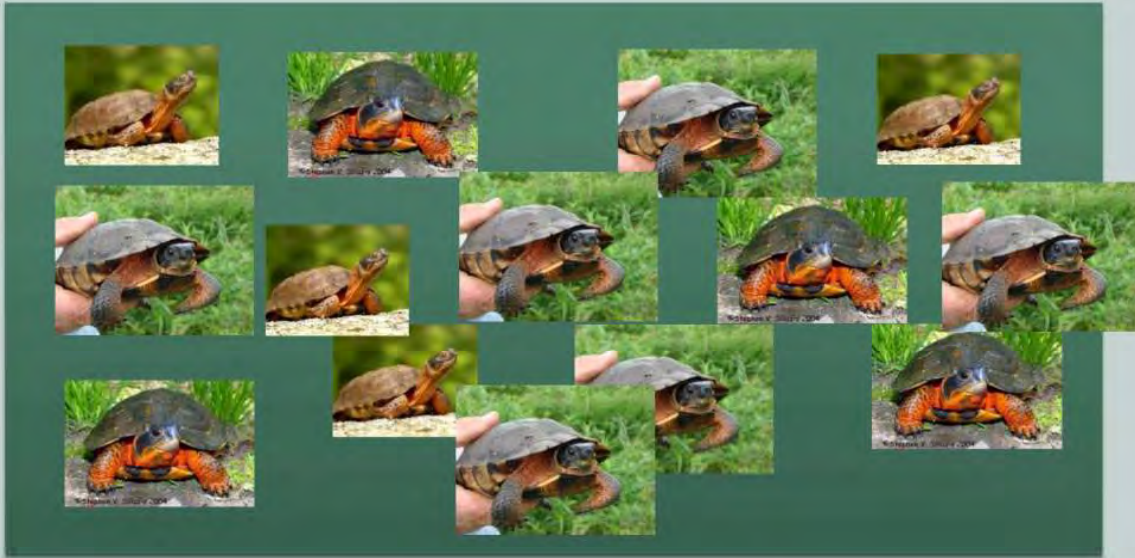


Few or no trails = higher density of ground nesting birds

*Environ Manage. 2015 May;55(5):1181-90. Recreational trails reduce the density of ground-dwelling birds in protected areas.*

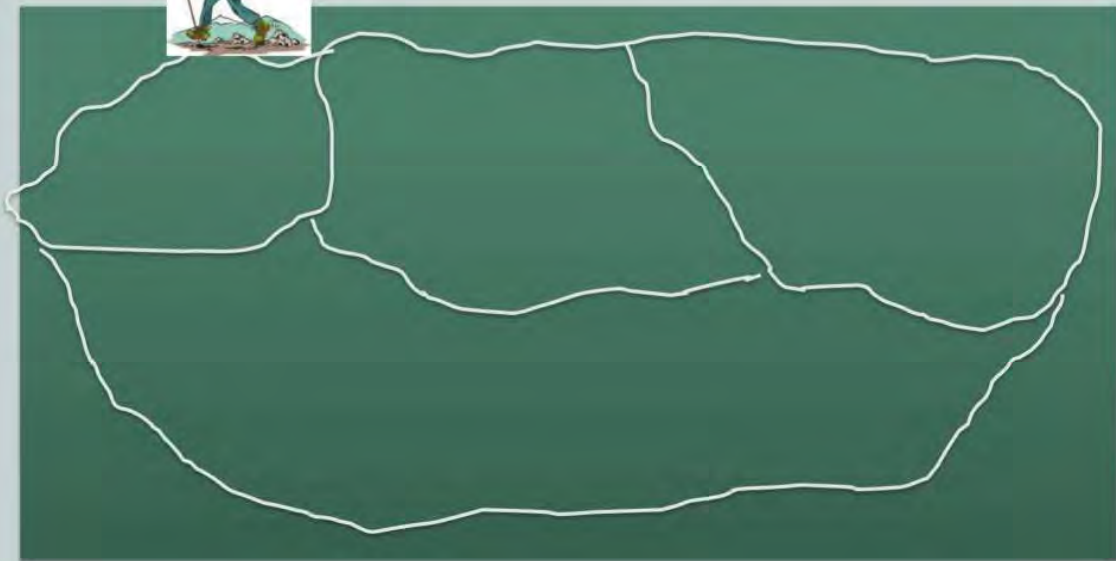


## Real World Examples: Pedestrian Trails



*Garber and Burger. 1995. A 20-Yr Study Documenting the Relationship Between Turtle Decline and Human Recreation. Ecological Applications 5(4):1151*

## Real World Examples: Pedestrian Trails



Introduction of trails lead to local extirpation of wood turtle population over a 20 year period.

## Real World Examples: OHRVs

### Effects of Off-Highway Vehicle Use on the American Marten.

*The Journal of Wildlife Management, 72(7), 1558–1571.*

- Occupancy and daily activity with/without OHRVs.
- Level of OHRV use did not produce effects.
  - Not perceived as threat?
  - Habituation?
  - Use occurred when martens?
- Use = 1 vehicle/2 hours



## Real World Examples: OHRVs

### Road and Trail Influences on Grizzly Bears and Black Bears in Northwest Montana

*Int. Conf. Bear Res. and Manage 8:79-84, 1990.*

- Cabinet Mtn Wilderness Area
- Black bears avoid roads and trails in spring and fall.
- Avoidance distance up to 1,000 yards





## Real World Examples: OHRVs

### The Impact of ATVs on Survival of Softshell Turtle Nests [in LA]

*Journal of Herpetology*, Vol. 55, No. 2, 201–207, 2021

- Nest survival before and after ATVs introduced.
- ATVs were the most common source of nest mortality (1/3 of nests destroyed).
- Nest mortality increased with increased ATV traffic.



## Real World Examples: OHRVs

### Effects of off-highway vehicles on avian abundance and diversity in a designated vehicular recreation area in CA

*Avian Conservation and Ecology* 14(2):9.

- Bird abundance increased with OHRV trail density.
- No impact on species diversity between OHRV and non-OHRV trail areas.
- More research needed: abundance and diversity is not always a good predictor of habitat quality.



# Real World Examples: OHRVs

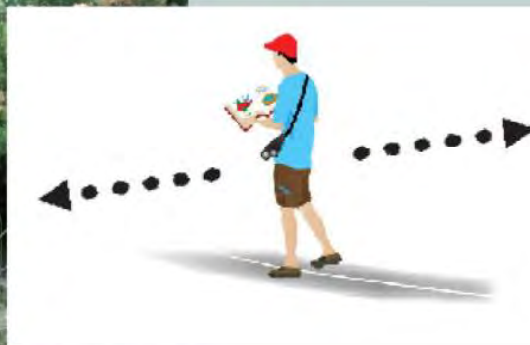
## Off-Highway Vehicle Trail Impacts on Breeding Songbirds in Northeastern California.

*Journal of Wildlife Management, 71(5), 1617-1620. 2019*

- Proximity to OHRV trail increased nest desertion and abandonment.
- Higher for ground-nesting than shrub-nesting birds.
- Reduced quality habitat w/in 100 yards of OHRV trails.



## "Corridor of Influence"



OUR PRESENCE CAN BE DETECTED BY WILDLIFE ON EITHER SIDE OF A TRAIL. THIS IS ITS "CORRIDOR OF INFLUENCE"



# Corridor of Influence “Alert” and “Flight” Distances



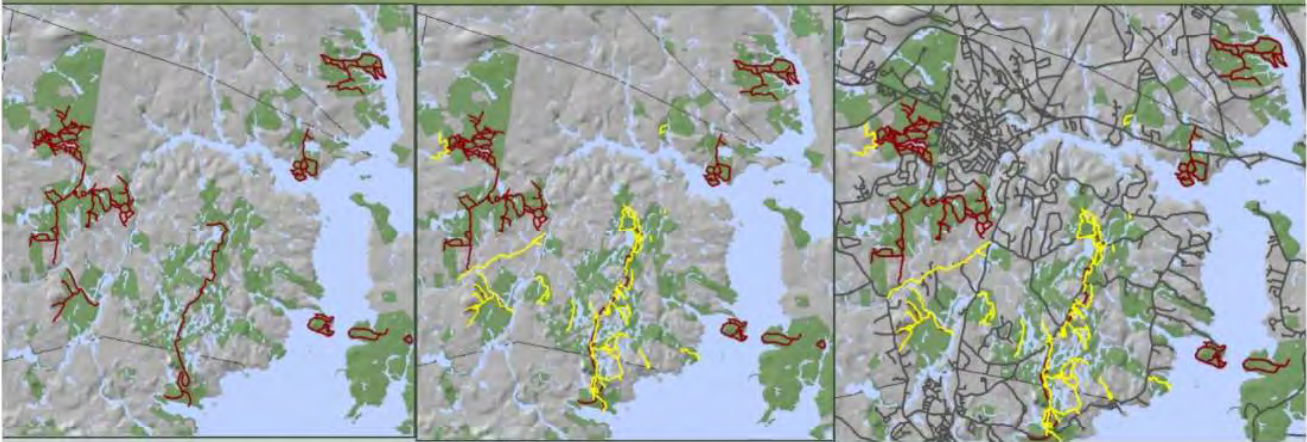
- Herps & bird flee w/in 60 ft of disturbance
- Birds will get disturbed w/in 150 ft of disturbance
- Mammals w/in 400 feet of disturbance



Average Alert and Flight Response Distances (birds, herps, mammals)



# Trail and Road Impacts – Present Day Reality



Official trails

+ rogue trails

+ roads

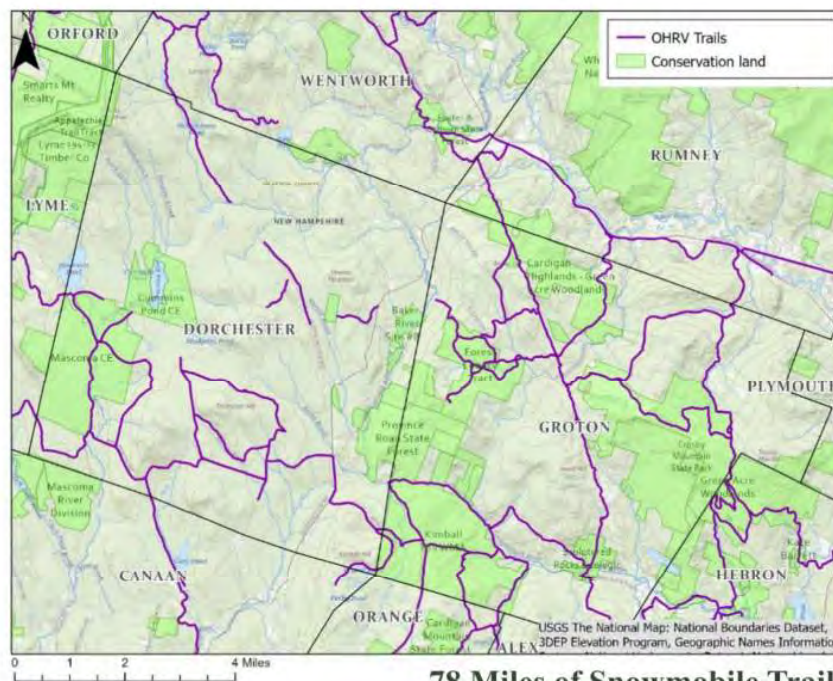
Town of Durham



## Trail and Road Impacts – Present Day Reality



## Trail and Road Impacts – Present Day Reality

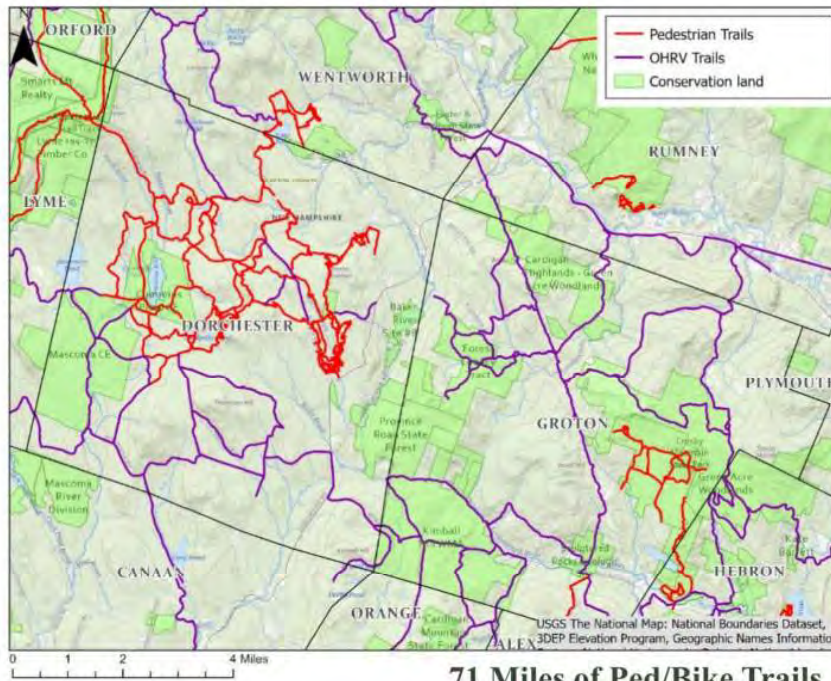


**78 Miles of Snowmobile Trail**

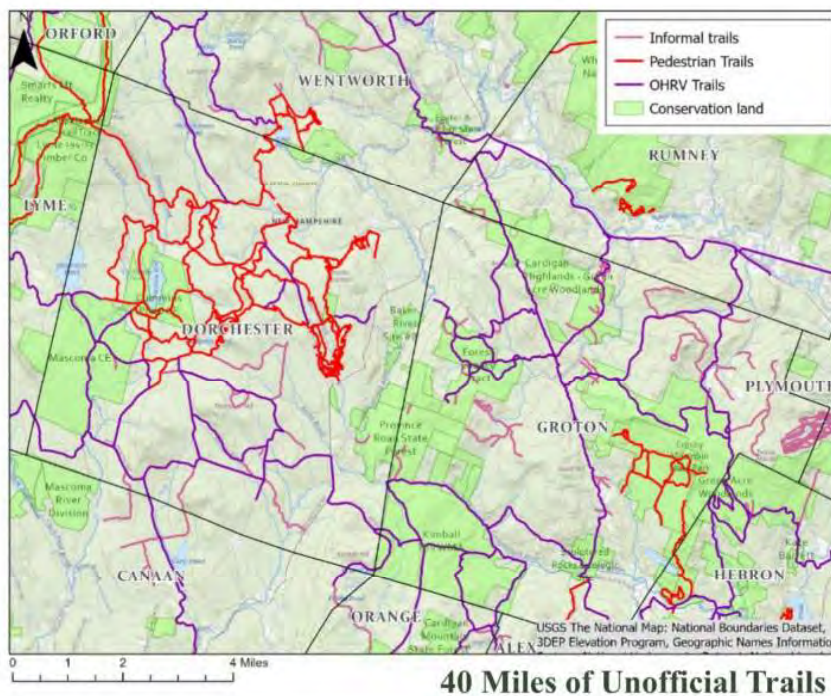
Significant impacts even in rural settings.



## Trail and Road Impacts – Present Day Reality

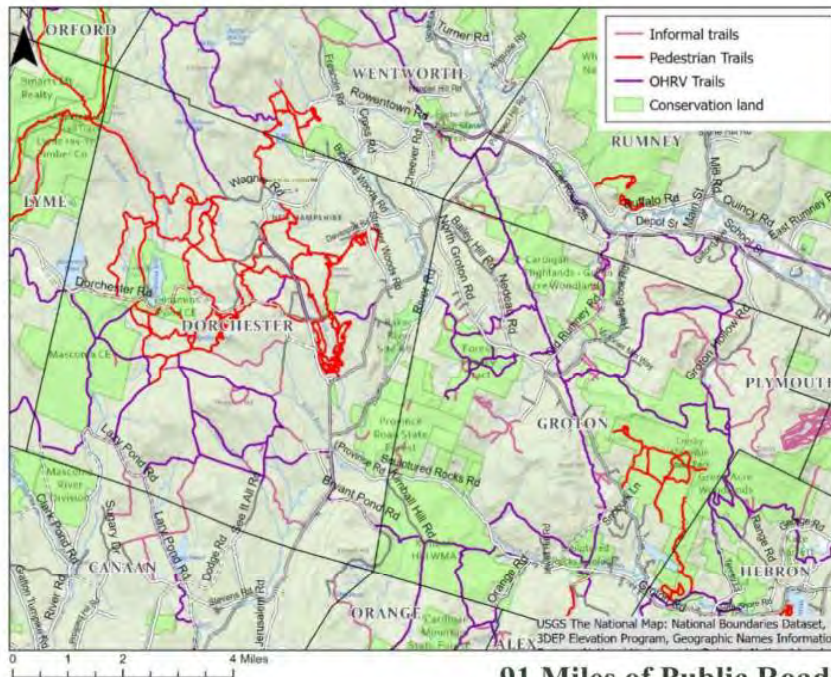


## Trail and Road Impacts – Present Day Reality

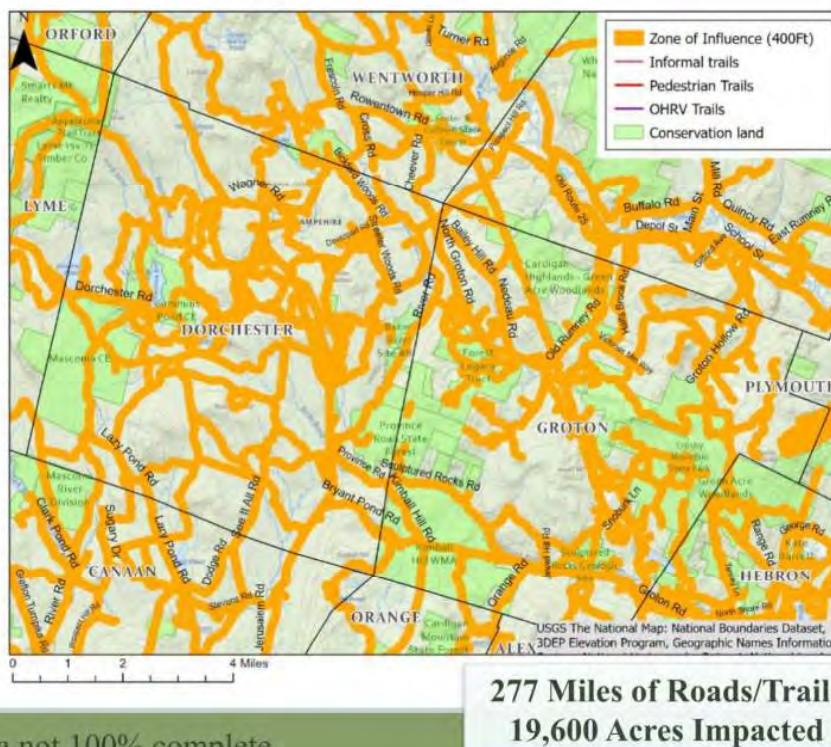




# Trail and Road Impacts – Present Day Reality



# Trail and Road Impacts – Present Day Reality



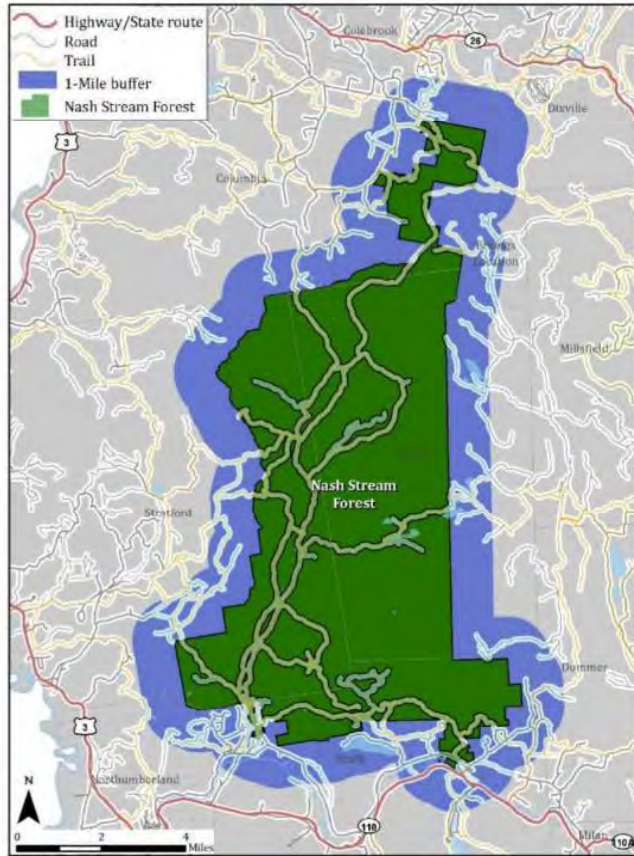
Trails data not 100% complete



# Trail and Road Impacts – Present Day Reality



Nash Stream Forest: Roads and Trails with 400-ft corridor of influence



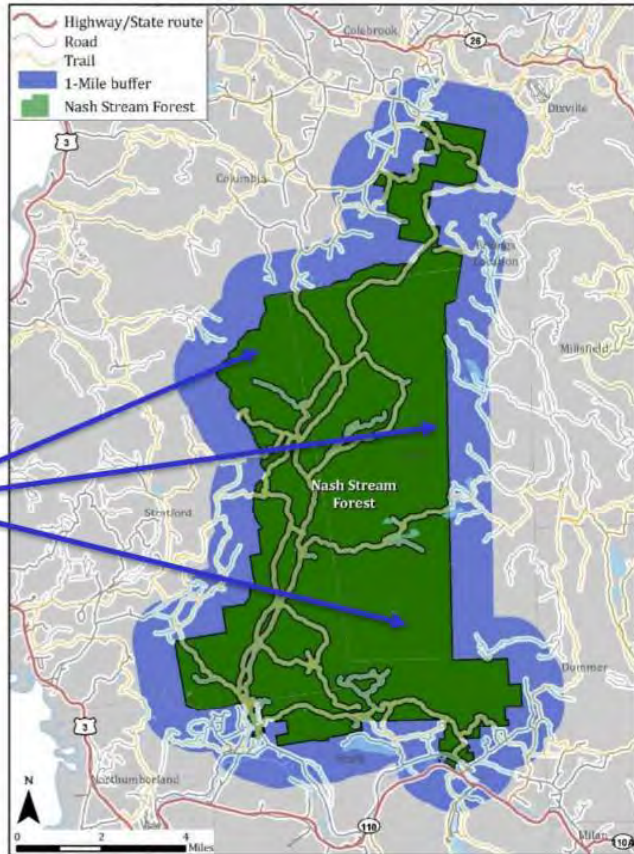
# Trail and Road Impacts – Present Day Reality

Area Name	Acres	Miles of Trails	Acres w/in 400-ft corridor of influence	% w/in corridor of influence
Nash Stream Forest	39,126	76	7,012	18
1-mile buffer	33,399	78	9,006	27
Coos County	1,171,973	3,151	346,792	30

## Trail and Road Impacts – Present Day Reality

- Big road and trail impact surrounding Nash SF.
- Biggest undisturbed patches are in Nash SF and abutting lands.

Nash Stream Forest: Roads and Trails with 400-ft corridor of influence



## Key Principals for Minimizing Trail Impacts to Wildlife

Avoid special habitat types

Route trails away from wet areas

Avoid steep slopes

Route trails along habitat edges

Avoid known locations of rare species





## Key Principals for Minimizing Trail Impacts to Wildlife

- Maintain trail free areas
  - Consolidate trails vs
  - Dispersed trails

Dispersed Trails

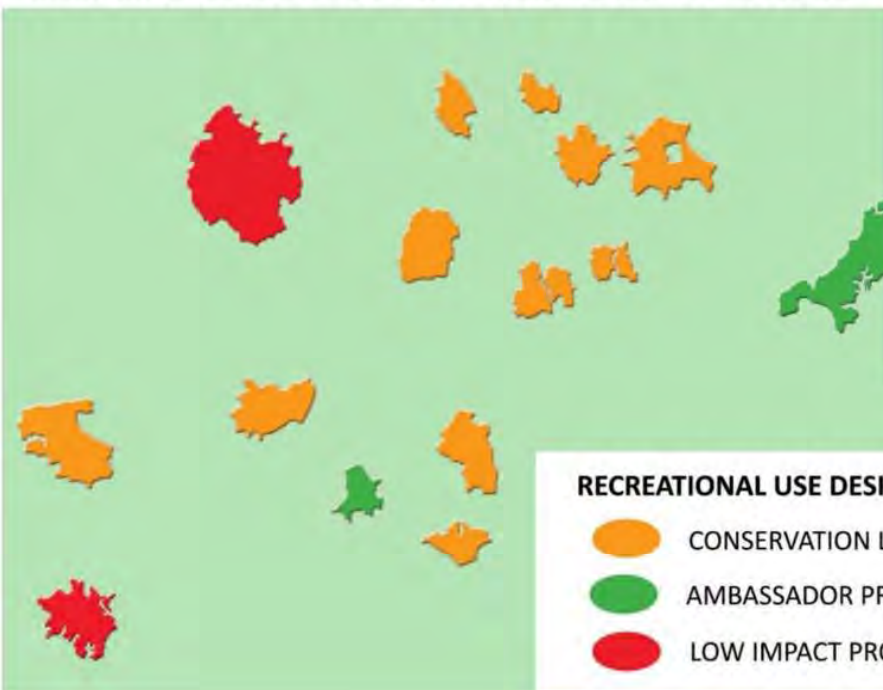


Consolidated Trails






## Key Principals for Minimizing Trail Impacts to Wildlife

### ALL THE PROPERTIES WE OWN & MANAGE



#### RECREATIONAL USE DESIGNATION

-  CONSERVATION LAND
-  AMBASSADOR PROPERTY
-  LOW IMPACT PROPERTY



PROPERTIES THAT ARE MAINLY BLUE ARE GOOD CANDIDATES TO BECOME HIGHLY PUBLICIZED "AMBASSADOR" PROPERTIES.



THOSE THAT ARE MAINLY RED WILL IDEALLY BE LEFT AS UNDISTURBED AS POSSIBLE.

# Trails for People and Wildlife: Where to Find It

## Trails for People and Wildlife

Hiking, mountain biking, bird watching, horseback riding, snowmobiling are just some of the ways we get outside to enjoy nature and unwind from our day-to-day activities. However, even these seemingly innocuous activities can have impacts on wildlife including reduced abundance, reproduction, and survival. Thoughtful trail location allows us to get outside to enjoy nature and also minimize disturbance to wildlife.

Funded by the US Fish and Wildlife Service, the New Hampshire Fish and Game Department developed a statewide tool that can be used to assess existing trails and site new trails in the most wildlife-friendly way. This mapping tool highlights areas particularly important for trail and areas that would be more suitable for trail development. The guidebook explains in more detail how recreation can impact wildlife, how to use the tool to minimize those impacts, and includes some real-world examples of how others are using it to make



The Trails for People and Wildlife g  
available [7.1MB]

### Harvey's Kennard Hill Forest Epping, NH.

A REAL-WORLD CASE STUDY

Case Study: Harvey's Kennard Hill Forest, Epping NH



[wildnh.com/trails](http://wildnh.com/trails)



**From:** [Verdile, Stephanie](#)  
**To:** [Snegach, Alvina](#)  
**Subject:** FW: Letter to CORD for 3/9 meeting  
**Date:** Monday, March 6, 2023 10:54:51 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[2023 Letter to CORD re Nash Stream 03-06-23.pdf](#)  
[DRED 1994 Nash Stream Overview.pdf](#)  
[November 11 2020 - Nash Stream - AMC SPNHF TNC comments.pdf](#)  
[2020 Sept 22-amc-spnhf-comments - with Ropes and Gray opinion and easement deed.pdf](#)

---

**From:** Meredith Hatfield <meredith.hatfield@TNC.ORG>  
**Sent:** Monday, March 6, 2023 10:47 AM  
**To:** Caswell, Taylor <Taylor.Caswell@livefree.nh.gov>  
**Cc:** Gilbert, Jennifer <jennifer.r.gilbert@livefree.nh.gov>; Verdile, Stephanie <Stephanie.N.Verdile@livefree.nh.gov>; Matt Leahy <mleahy@forestsociety.org>; Jim OBrien <jim\_obrien@tnc.org>; Chris Thayer <cthayer@outdoors.org> <cthayer@outdoors.org>; cfoss@nhaudubon.org  
**Subject:** Letter to CORD for 3/9 meeting

**EXTERNAL:** Do not open attachments or click on links unless you recognize and trust the sender.

---

Commissioner Caswell:

Attached please find a letter from AMC, Audubon, SPNHF and TNC regarding the agenda item on the Kelsey Notch Trail on this week's CORD agenda (with attachments). Please distribute this to CORD at your earliest convenience.

As Matt stated, we will respond later today regarding who from our organizations wishes to speak at the meeting.

Thank you,  
Meredith

**Meredith Hatfield**  
*Associate Director for Policy  
and Government Relations*  
[meredith.hatfield@tnc.org](mailto:meredith.hatfield@tnc.org)  
main: (603) 224-5853  
mobile: (603) 496-9451

[nature.org/newhampshire](https://www.nature.org/newhampshire)  
**Join the conversation!**



**The Nature  
Conservancy  
in New Hampshire**  
22 Bridge St, 4<sup>th</sup>  
Floor  
Concord, NH 03301







March 6, 2023

Commissioner Taylor Caswell  
Chairman, NH Council on Resources and Development  
Department of Business & Economic Affairs  
100 North Main Street, Suite 100  
Concord, NH, 03301

*Via email*

Dear Commissioner Caswell and Members of CORD:

We are writing today regarding CORD's agenda item on March 9, 2023 related to the Nash Stream State Forest. As you know, our organizations have consistently raised concerns regarding the establishment and continued usage of the Kelsey Notch OHRV Trail in the Nash Stream State Forest. As the New Hampshire Council on Resources and Development (CORD) considers a final determination regarding whether this trail should be continued, we respectfully request that you also consider these additional comments.

Prior correspondence on this matter dating back to 2016 includes detailed explanations and legal analysis supporting our concerns that the trail was improperly established as a "pilot" by the Department of Natural and Cultural Resources (DNCR) Bureau of Trails, and that the state has failed to adequately monitor, study, and address impacts to the natural resources in Nash Stream State Forest caused by the extensive and increasing ATV use on the trail. See attached for three such correspondence.

The establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. More specifically, the "fine and coarse filter" reviews required by RSA 241:41 *et seq.* were not performed prior to the establishment of this trail (or at any time). This analysis is required for all ATV trails on public lands in the state. In addition, the DNCR Trails Bureau established the trail as a "pilot," something not contemplated in statute or in the Nash Stream State Forest management plan, and the agency did not seek prior approval from CORD. We do not believe that the state should be allowed to establish ATV trails on public land in a manner inconsistent with both statutory authorization and management plan. We understand that closing the trail will be challenging for riders, and we also understand CORD's

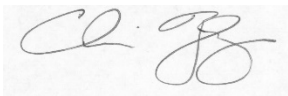
responsibilities under RSA 162-C:6, II & III “to manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire,” and “[t]he council shall maintain and protect benefits derived from such lands and maintain public access to such lands, *where appropriate.*” (Emphasis added).

However, CORD’s primary obligation is to preserve the natural resources of Nash Stream State Forest lawfully and in compliance with the management plan and the intended purpose of the original protection of the land. The interests of the ATV community and the integrity of a trail system should be secondary considerations, and any such uses simply must follow these important statutory and science-based management processes. Observing how the Kelsey Notch Trail was established, and the lack of study as to the impacts of increased ATV use, we believe that continued ATV access on this trail would be inappropriate.

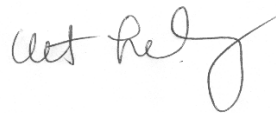
In addition, while we appreciate the discussion that CORD had at its January 2023 meeting regarding the condition of the Kelsey Notch Trail caused by erosion and excessive use, we believe that because the trail is not authorized and was not properly developed, the NH Trail Bureau should not make any additional upgrades or improvements. We remain deeply concerned regarding the lack of studies and information provided to the public that would address the many impacts that the operation of the trail may be having on water resources, wildlife, wildlife habitats, and other users of Nash Stream State Forest. We have heard anecdotal evidence – and observed first-hand – that the impacts of the trail on wildlife and water resources have been significant. We believe that review of these impacts, and mitigation proposals, along with the required statutory analysis, are required before CORD can make a lawful decision regarding the continued use of trail, let alone additional improvements.

Thank you again for considering our concerns, and for your work to ensure that Nash Stream is protected for its intended uses. Representatives of our organization will attend your meeting on March 9 to speak to these issues.

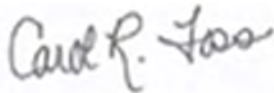
Respectfully submitted,



Chris Thayer  
Senior Director, External Affairs and Contracts  
Appalachian Mountain Club



Matt Leahy  
Public Policy Manager  
Society for the Protection of  
New Hampshire Forests



Carol Foss  
Senior Advisor for Science and Policy  
New Hampshire Audubon



Jim O'Brien  
Director of External Relations  
The Nature Conservancy

# 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  
Stream NEWS**

is published by  
New Hampshire's  
Department of Resources and  
Economic Development,  
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?

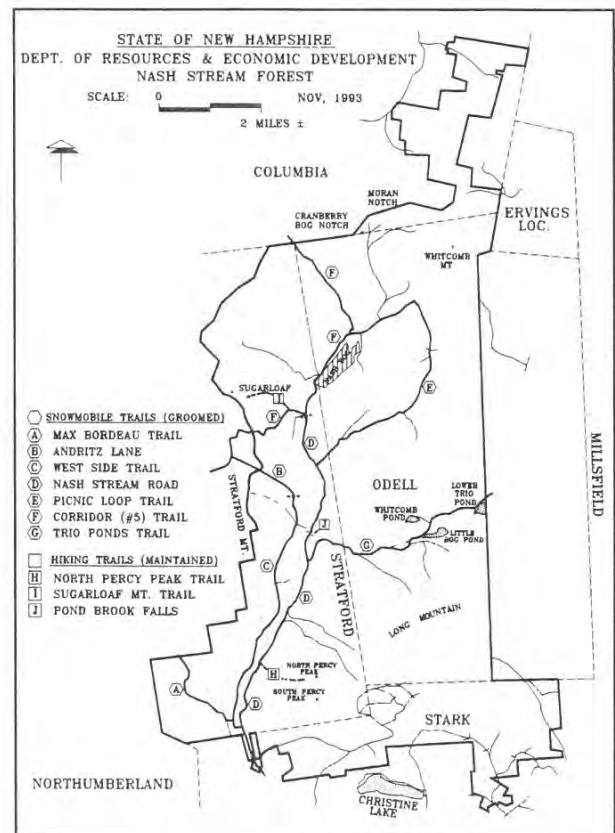
No. There are no plans to build a visitors' center nor is a gate keeper for the entrance road recommended in the Management Plan. Visitor information will be made available at the entrance as well as at the North Country Resource Center in Lancaster and the DRED office in Concord.

## 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>	
<b>DESIGNATION</b>	<b>ACRES</b>
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
<b>TOTAL</b>	<b>18,339</b>

### **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 ( $\geq 9.6$  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

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## 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.





November 11, 2020

Mr. Jared Chicoine, Chair  
New Hampshire Council of Resources and Development  
107 Pleasant Street, Johnson Hall, 3rd Floor  
Concord, NH 03301

**RE: CORD Assessment of ATV/UTV use of Kelsey Notch Trail**

Dear Mr. Chicoine and CORD members:

We appreciate the time, attention and diligence you have shown in examining the Kelsey Notch Pilot Trail in the Nash Stream Forest. Our organizations have provided comments to you in the past, both independently as well as together.

We submitted comments on August 20, 2020 regarding the failure of the Kelsey Notch Trail to comply with many of the statutory requirements of RSA 215-A. Further, on September 21, 2020, a memo was provided to CORD by the Appalachian Mountain Club outlining the different legal and regulatory standards applied to snowmobiles and ATVs/UTVs in New Hampshire.

The purpose of this letter is not to reargue points made in our preceding communications. Rather, we would like to take the opportunity to respond to the October 26, 2020 letter from the NH Off Highway Vehicle Association ("the Association") and their conclusion that "CORD's statutory duties require" that the Kelsey Notch Pilot Trail remains open. We also question the Association's statement that "the clear intent of the parties to the Easement is to allow the use of ATVs/UTVs in the Nash Steam Forest."

**The clear intent of the Easement is perpetual public use consistent with the traditional uses of the land.**

The Association argues that the intent of the parties to the Easement was to allow ATV use in the Nash Stream Forest. This version of events is not supported by the historical record nor the clear and plain language of the Easement.

An important component of conservation easements are the recitals – the rest of the easement flows from them. The recitals or "whereas" clauses set forth background information that helps to frame the legal and factual basis for an easement. In the case of the Nash Stream Forest Conservation Easement, the relevant section states that:

*WHEREAS, the parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract*



*with primary management emphasis being the sustained yield of forest products consistent **with traditional uses of the land**, including public access, and the conservation of other resource values.*

A clear decision was made to continue the management policy of the previous landowner and continue to exclude ATV use, as it was not considered low impact, dispersed, or traditional nor consistent with the Vision for the Forest. The original 1995 Nash Stream Management Plan, which took the many stakeholders involved in the protection of the Nash Stream Forest more than 6 years to complete continued to allow traditional recreational uses of the land and did not allow ATV/UTV access.

If the intent of the parties to the Easement was to include ATV's as a traditional use of the land, either the Easement - which notably does list the traditional recreational uses of the property - or the original management plan would have included their use. ATV use on the property was considered at the time of purchase, as well as during the creation of the first management plan, and was not included as an appropriate use.

If ATV use was "expressly permitted by the terms of the Easement", then it would follow that the founding documents and management plan would have allowed their use. The absence of reference to ATV restrictions does not mean they were intended to be allowed.

### **CORD's statutory duties**

We take issue with the Association's conclusion that CORD 's statutory duties require that it keep the Kelsey Notch Trail open. In the case of the Nash Stream Forest, CORD's statutory obligations are quite clearly articulated.

### **Role of Council of Resources and Development**

The Council on Resources and Development (CORD) was created to provide a forum for interagency cooperation to assure consistency in implementation of established policies relating to the environment, natural resources, and growth management issues under [RSA 162-C](#).<sup>1</sup> Specifically, per RSA 162-C:6, II & III, CORD has management and administrative responsibilities for state lands purchased under the LCIP.

*II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.*

*III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.*

In reviewing RSA 162-C:6, it is evident that CORD has both the statutory responsibility to ensure that LCIP lands are being managed in accordance with state law and regulations, and the authority to affect the on the ground management of these properties. There is no other agency or office of state government authorized in statute with the oversight responsibilities of these important lands, purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when

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<sup>1</sup> <https://www.nh.gov/oep/planning/programs/cord/>

management of these lands is shown to be detrimental to those natural resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Natural and Cultural Resources (DNCR) is responsible for the day to day management of these lands, following an established Management Plan, and adhering to existing state statutes governing the agency and its work. If CORD finds that DNCR is not properly managing LCIP lands under its control, CORD needs to take corrective action in the interests of the state and the public interest for which the state is holding these lands.

### **Authority to close trails**

CORD clearly has the statutory responsibility to ensure that Nash Stream management is consistent with established state statute, and the original purposes for which the LCIP acquired the land. The citizens of the state of New Hampshire invested more than \$7 million to protect and steward these lands. As the entity with fiduciary responsibility for this investment, CORD must ensure that all trails on Nash Stream are compliant with the law, and if they are not, they should not be open for use.

The State is responsible for managing the Nash State State Forest in accordance with the terms of the Conservation Easement, which is built on a commitment to a primary management emphasis “consistent with the traditional uses of the land”. Public access was intended to be low impact and dispersed, and the State has the right to reasonably restrict and regulate access to ensure prudent resource utilization and protection of all the conservation values of the property.

RSA 215-A:42,II provides that DRED may close trails if:

*(a) ATV or trail bike use on the property is not in conformance with this chapter;*

CORD has the statutory obligation to maintain public access to LCIP lands, “where appropriate.” Because the Kelsey Notch Trail is not in conformance with the law, as outlined in our August 20, 2020 letter and previous communications, we ask that the Council take immediate action to suspend all ATV use on the Kelsey Notch Trail.

Thank you for your thoughtful consideration of this important issue, and for your continued oversight of the Nash Stream Forest.

Sincerely,

**Susan Arnold**

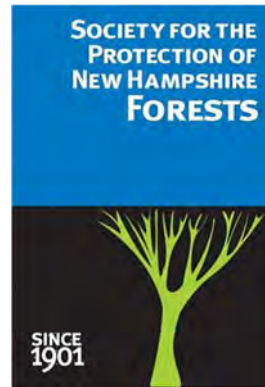
Vice President for Conservation  
Appalachian Mountain Club  
[sarnold@outdoors.org](mailto:sarnold@outdoors.org)

**Jim O’Brien**

Director of External Affairs  
The Nature Conservancy in NH  
[jim\\_obrien@tnc.org](mailto:jim_obrien@tnc.org)

**Matt Leahy**

Public Policy Manager  
Society for the Protection of NH Forests  
[mleahy@forestsociety.org](mailto:mleahy@forestsociety.org)



September 22, 2020

Mr. Jared Chicoine, Chair  
New Hampshire Council on Resources and Development  
c/o New Hampshire Office of Strategic Initiatives  
107 Pleasant Street, Johnson Hall, 3rd Floor  
Concord, NH 03301

Dear Mr. Chicoine and members of CORD:

Attached please find a legal memo addressing ATV use in Nash Stream State Forest. As you consider the status of the pilot of Kelsey Notch Trail, we believe your deliberations should be informed by this analysis.

The attached memo summarizes a review of the Nash Stream State Forest easement, and of the distinctions made in New Hampshire statutes governing ATVs/OHRVs and snowmobiles. In short, this review clarifies that a previous legal opinion which equates ATV use/trails with snowmobile use/trails was mistaken and not supported by New Hampshire law or the terms of the Nash Stream State Forest easement.

While CORD's immediate focus is the future of the Kelsey Notch trail pilot, we believe this legal perspective on the incompatibility of any ATV use on Nash Stream State Forest under the easement and New Hampshire law is critically important to your deliberations as it illuminates the potential legal peril created by any continued ATV use on the Forest.

Thank for the opportunity to share this information with you.

Sincerely,

Susan Arnold, VP for Conservation  
Appalachian Mountain Club

Matt Leahy, Public Policy Manager  
Society for the Protection of NH Forests





ROPES & GRAY LLP  
PRUDENTIAL TOWER  
800 BOYLSTON STREET  
BOSTON, MA 02199-3600  
WWW.ROPESGRAY.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

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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.”<sup>1</sup> 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

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<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> Further, snowmobiles are expressly excluded from the definition of OHRV<sup>4</sup> 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].”<sup>5</sup> 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”<sup>6</sup> and therefore “snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State”<sup>7</sup> 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.<sup>8</sup> 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.

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<sup>2</sup> Opinion, para. 2.

<sup>3</sup> 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.

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

<sup>5</sup> 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).

<sup>6</sup> Opinion, para. 2.

<sup>7</sup> *Id.*

<sup>8</sup> <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

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 4<sup>th</sup> day of August, 1989 by Will Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

*John W. Barts*  
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.]

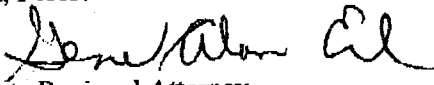


United States  
Department of  
Agriculture

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Counsel

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Telephone: (414) 297-3774  
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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



**From:** [Kris pastoriza](#)  
**To:** [Verdile, Stephanie](#)  
**Subject:** Nash Stream March 9 meeting submissions  
**Date:** Tuesday, February 28, 2023 6:10:48 AM  
**Attachments:** [March 2022 letter to CORD re. Nash Stream SF easement terms.pdf](#)  
[Response to Supervisor Ibarquen 2022.pdf](#)  
[1-14-22 response to DNCR.pdf](#)  
[ATV problems in Nash Stream #2..pdf](#)  
[ATV violations.pdf](#)  
[Letter to Scott Mason October 2020.pdf](#)  
[letter to NSFCC after the meeting.pdf](#)

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**EXTERNAL:** Do not open attachments or click on links unless you recognize and trust the sender.

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**Submissions re. Nash Stream State Forest for the CORD March 9 meeting.**

## ATV Violations on State Lands

NH RSA 215-A:41, ATV and Trail Bike Operation on State Lands states:

I. The general court declares it to be in the public interest to balance the demand for ATV and trail bike trails on state lands: **An evidence-based response to global warming requires that the State, and especially DNCR, cease support of recreational ATV use:** “The EPA estimates that a four stroke ATV operating for one hour emits hydrocarbons equal to driving a current passenger car 290 miles. A two stroke ATV operating for one hour emits hydrocarbons equal to driving a passenger car 6,470 miles.”

<http://www.atvwatch.com/ATV%20New%20Hampshire%20TE%20Funded%20Projects%20Links.htm>

(a) With other, non-motorized recreational trail uses; **ATV use conflicts with all non-motorized uses on State Lands;** see: <https://cdn.shopify.com/s/files/1/0145/8808/4272/files/G3880.pdf>

**Table 1. Average land-based recreational activity compatibility ratings.**

PRIMARY USE <sup>a</sup>	Interacting use <sup>a</sup>										Average compatibility
	ATV riding	Hunting	Snowmobiling	Horseback riding	Mountain biking	Cross-country skiing	Linear trail biking	Hiking	Wildlife watching	Camping	
ATV riding	X	5.3	6.5	5.1	5.5	4.9	5.5	6.1	6.9	7.5	6.0
Hunting	3.3	X	3.7	4.7	4.3	5.3	5.7	5.4	6.0	6.3	5.0
Snowmobiling	4.3	4.0	X	4.0	4.8	4.3	5.8	5.3	6.3	7.2	5.1
Horseback riding	2.2	3.5	3.0	X	3.8	4.9	4.5	6.3	7.3	7.7	4.8
Mountain biking	3.1	3.6	4.7	4.8	X	5.7	8.1	6.1	7.4	8.0	5.7
Cross-country skiing	1.8	3.6	2.6	3.3	4.2	X	5.6	4.9	8.1	8.5	4.7
Linear trail biking	2.6	3.9	5.5	5.3	8.2	7.1	X	7.4	8.0	8.7	6.3
Hiking	2.4	3.5	3.5	5.7	4.7	6.1	6.5	X	8.9	9.2	5.6
Wildlife watching	2.2	3.2	2.9	6.4	5.2	7.6	6.8	8.6	X	8.3	5.7
Camping	3.9	4.1	5.0	7.5	7.8	8.2	8.2	8.9	8.5	X	6.9
Average compatibility	2.9	3.9	4.2	5.2	5.4	6.0	6.3	6.6	7.5	7.9	

Source: WDNR 2006, 4–6.

<sup>a</sup>Compatibility ratings reflect the perceived level of conflict from the perspective of trail users participating in the activities in the left column—the primary use. Ratings should therefore be read horizontally. Results are based on responses from 23 Wisconsin recreation professionals.

**highly competitive or antagonistic** (below 4.0)

**moderately to mildly competitive** (4.0–7.0)

**supplementary or complementary** (7.0 and above)

(b) Potentially conflicting management goals for state lands; and **ATV use was forbidden in the original Nash Stream State Forest management plan and conflicts with all other uses.**

(c) Protection of wildlife and ecologically important areas, including wildlife corridors and habitat strongholds as defined in RSA 207:1. **Where are the studies showing that existing or proposed ATV trails on State Lands protect wildlife or ecologically important areas?**

II. In furtherance of the public interest, the bureau, in cooperation with the department of fish and game and all other state agencies that are custodians of the property involved shall work to develop a system of trails for ATVs and trail bikes on both public and private lands that:

(a) Uses, to the greatest extent possible, private lands, under voluntary agreement with landowners;

(b) Uses public lands that can host ATV and trail bike trails that are compatible with existing uses and management goals and plans; **ATVs conflict with all existing uses.**

(c) Is managed cooperatively with formally established ATV and trail bike clubs recognized by the bureau;

(d) Is regularly monitored for overuse, compliance with laws and regulations, and environmental degradation, with curtailment of trail use if such conditions are found to exist; **Two Compliance**

Reports, for Kelsey Notch Trail only, have been completed. The 2018 report showed degradation of the trail. Club GIA grants reports show degradation of the trail. DFL request to move 750' of the West Side Trail away from Nash Stream "...to prevent further sedimentation and erosion... siltation from the fill may be reaching Nash Stream during severe storm events..." shows degradation of the trail. In addition: "This past summer DNCR discovered erosion adjacent to a culvert that was buried 30-40' down in depth with fill on top. The erosion has caused the fill to start migrating towards Nash Stream..." (November 18, 2018 minutes CORD) shows degradation of the trail. The 2019 Compliance report was done just after maintenance and found recommended work un-done. Where are the Club reports showing monitoring?

(e) Ensures safe and legal use through consistent enforcement of all laws as set forth in this chapter; DF&L reported, out of 150 riding "season" 10 days of patrols 2017, 4 in 2018, 5 in 2019. DNCR and DFL "patrolled Nash Stream minimally during this past riding season..." Capt. John Accardi, 2018

(f) Provides opportunities for public input in all decisions regarding development of new or significantly revised trail systems on state lands.

**Source.** 2002, 233:16, eff. July 1, 2002. 2019, 243:5, eff. Sept. 10, 2019.

NH RSA 215-A:42 ATV and Trail Bike Trails states:

II. An ATV or trail bike trail on state-owned property may be closed to ATV or trail bike use by the bureau, if the bureau finds that:

(a) ATV or trail bike use on the property is not in conformance with this chapter; **GIA reports and Kelsey Notch Compliance report and photographs show extensive damage to trails. See below**

(b) Responsibilities assumed by the locally-organized ATV or trail bike club pursuant to subparagraph

I(c) are not being met; **Responsibilities assumed by the locally-organized ATV Clubs have not been met, therefore the trails in Nash Stream S.F. and Jericho S.P. should be closed.**

Below: Nash Stream S.F., Kelsey Notch Trail Compliance Report, 2018



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



215-A:43 Evaluation Process states:

II. A new ATV or trail bike trail proposal that has passed the initial screening process of the coarse filter criteria under paragraph I shall proceed into a planning and layout phase and shall be considered to have passed such phase if the following fine filter criteria are met:

- (a) The new trail is supported by an organized ATV or trail bike club recognized by the bureau.
- (b) ATVs or trail bikes operated on the trail will comply with maximum decibel limit established by law. **There has been no enforcement of this standard, that I can find.**
- (c) Adequate parking exists or will be developed for the type of trail being proposed and the number of expected riders.
- (d) The bureau has given due consideration to local planning and zoning ordinances.
- (e) The proposed trail does not pass through a parcel with deed restrictions.
- (f) The bureau has given due consideration to local noise and obnoxious use ordinances.
- (g) The proposal is reasonably compatible with existing uses. **ATVs conflict with all other existing uses.**
- (h) The proposal does not violate federal, state, or local laws. **No Club or Agency has tested the air on any ATV trails for compliance with EPA dust standards. Dust is likely hazardous on many trails, especially in Jericho Lake SE, as well as on the Rail Trails (see below) and town roads.**  
<https://www.youtube.com/watch?v=UNy1Xu9mmkU>

**NHDOT recognizes issues with rail bed contaminants:**

Additional details are in the Contamination Inventory Memorandum in Appendix C.

**4.3.1 Affected Environment**

Along the existing railroad track bed, there is a high probability of the presence of contaminated soils or debris. Contaminants commonly found associated with railroad corridors include railroad ties (wood treating chemicals), spilled or leaked fluids (oil, cleaning solvents), herbicides, transformer fluids [Polychlorinated biphenyl (PCBs)], fossil fuel combustion products [Polycyclic aromatic hydrocarbons (PAHs)], asbestos, and metals such as arsenic and mercury. Also, existing steel bridge overpasses along the corridor were likely painted with lead-based paint prior to 1970, which may or may not have been removed or sealed.

**Full Corridor:** Of the contaminated sites within 1,000 feet of the corridor, 81 were identified as having the potential to impact the corridor.

[https://www.nh.gov/dot/org/aerorailtransit/railandtransit/documents/app\\_10b\\_fta\\_ea\\_final.pdf](https://www.nh.gov/dot/org/aerorailtransit/railandtransit/documents/app_10b_fta_ea_final.pdf)

**Cord received indication from NHDES of potential contaminants in rail beds:**

<https://www.nh.gov/osi/planning/programs/cord/meetings/documents/20180510-meeting-packet.pdf>

***Summary provided for convenience and reference purposes only. Please refer to actual comments for exact language.***	
SLR: 18 SLR 5	Town: Windham
Comments Due: May 4, 2018	Applicant: DNCR
<b>Division of Historical Resources:</b>	concur.
<b>Environmental Services:</b>	The simple transfer of the 3/8-mile (~ 3.3 acres) unmanaged and unmaintained section of the Fremont Branch old rail corridor to the town of Windham in and of itself will not create apparent impacts to the local environment or public health. However, any future land disturbance activities or other work scheduled for the rail trail corridor may require the issuance of environmental permits from NHDES.

(i) The proposal includes a monitoring and response system designed to detect and correct adverse environmental impacts. **Apparently non-existent except for two Kelsey Notch Monitoring Reports.**

(j) The proposed trail layout incorporates existing motorized

travel corridors whenever possible.

- (k) The proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. **ATV trails fragment forests, by definition.**
- (l) The proposed trail does not pass through a sanitary protective area of a public well as determined by the department of environmental services.
- (m) The proposed trail is not located on earthen dams, dikes, and spillways unless approved by the department of environmental services.
- (n) The proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.
- (o) The proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts. **Where is the data showing compliance?**

(p) All stream crossing structures meet 5-year flood design criteria. **Where are the forms showing bridges as in compliance? One Metallak Valley ATV Club 2019 GIS grant was for \$14,315. to “Replace Simms Stream Bridge that was washed down stream.” Below: Kelsey Notch Compliance report 2018:**



Fish & Game is required under RSA 9-B to consider “Smart Growth” principles. “Fish and Game Department’s mission supports several aspects of the Smart Growth policy. Through their habitat protections programs, the Department works to protect wildlife habitat, clean water and viewsapes.” <https://www.nh.gov/osi/planning/programs/cord/meetings/documents/20180510-meeting-packet.pdf>

- (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce

adverse environmental impacts. Nash Stream West Side Trail, and many other trails, do not appear to be in compliance with this requirement. Where is the documentation of compliance?

(r) The proposed trail avoids elevations over 2,700 feet.

(s) The proposed trail avoids important wildlife habitat features for species of concern. Where is the data showing compliance with this requirement? (See below for Jericho Lake SP.)

(t) The proposed trail avoids known locations of federally and state listed endangered or threatened species, or their habitat, as specified on a site-specific basis by the fish and game department.

(u) The proposed trail avoids known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory.

“Statutes with no known data.

Despite many extensive and exhaustive searches, no known datum was identified pertaining to the following statutes:

(s) The proposed trail avoids important wildlife habitat features for species of concern

(t) The proposed trail avoids known locations of federally and state listed endangered or threatened species, or their habitat, as specified on a site specific basis by the fish and game department

(u) The proposed trail avoids known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory...Many of the specifics of the above statutes—“...species of concern...”, “...endangered or threatened species or their habitat...”, “...locations of rare plants and exemplary natural communities...”, “...known raptor nest or nesting trees...”, “...eagle winter roosting areas...”, “...heron rookeries...” —are covered by Wildlife Action Plan. This datum should not only adequately address the criteria but it should also serve as a starting point for identifying priority areas within the site, city, county, and state for land conservation activities. **In general 44% of the project site already contains some of the highest ranked habitat in the state and biological region.**” (my emphasis)

Modeling least-impact ATV trails in Berlin, NH with established fine-grained evaluation criteria (RSA 215-A: 43) Shawn C. Herrick University of New Hampshire, Durham, 2011  
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1684&context=thesis>

(v) The proposed trail avoids alteration or disturbance of unique geologic features, formations, and designated state geologic waysides, as specified on a site-specific basis by the state geologist.

(w) The proposed trail avoids alteration, disturbance, and adverse impacts to cultural and historic resources.

“(v) The proposed trail avoids alteration or disturbance of unique geologic features, formations, and designated state geologic waysides, as specified on a site-specific basis by the state geologist, and

(w) The proposed trail avoids alteration, disturbance, and adverse impacts to cultural and historic resources. Data have not yet been created for these two statutes.”

Modeling least-impact ATV trails in Berlin, NH with established fine-grained evaluation criteria (RSA 215-A: 43) Shawn C. Herrick University of New Hampshire, Durham, 2011 p. 69

(x) The proposed trail is not within 330 feet of known raptor nest trees, or within 650 feet of trees with eagle or osprey nests, or as specified on a site-specific basis by the fish and game department.



(y) The proposed trail is more than 650 feet from eagle winter roosting areas and 330 feet from the edge of wetlands containing heron rookeries, or as specified on a site-specific basis by the fish and game department.

“Despite many extensive and exhaustive searches, no known datum was identified pertaining to the following statutes:

(x) The proposed trail is not within 330 feet of known raptor nest trees, or within 650 feet of trees with eagle or osprey nests

(y) The proposed trail is more than 650 feet from eagle winter roosting areas and 330 feet from the edge of wetlands containing heron rookeries.” (See text on criteria (s) and (t), above.)

Modeling least-impact ATV trails in Berlin, NH with established fine-grained evaluation criteria (RSA 215-A: 43) Shawn C. Herrick University of New Hampshire, Durham, 2011 p. 69

GIS ATV Club grant summaries, a sampling:

\$5,196.00 Chase Rd, Henniker-Add gravel to 4700' of Class VI Rd to fix wash outs  
\$1,296.00 Chase Brook Trail, Henniker-Fix 5900' of trail by adding water bars & fixing wash outs  
\$2,400.00 Hardscrabble Trail (Jct. 68 to top of hill)- Fix wash out on .6 mile of trail  
\$20,004.00 Purchase 1,200 yds. of gravel for BOT District to spread on the Scenic Lookout Trail in Jericho  
\$15,000. Purchase 840 cubic yards of 1.5" crushed gravel for BOT District to spread on Ammonoosuc Rail Trail from Savageville Road south to Lisbon  
\$18,046.50 Fern Drive-Add gravel/culverts to fix .4 mile of road  
\$7,500.00 Rock Pond Trail-Re-ditch trail & add gravel to road  
\$12,868.00 Millsfield Pond Road-Re-ditch, replace culverts, clear brush  
\$2,956.00 Baxter Trail (Cilley Brook to mountain top)-Re-ditch & install 4 culverts  
\$4,800.00 Hovel Trail-Re-ditch trail & add gravel  
\$16,446.00 Project #3: Newell Brook Road-Widen road, add gravel, add culverts  
\$8,128.00 Carrier Trail-Re-ditch, add culverts, add gravel  
\$15,000.00 Rail Trail (north of Pine Hill)-Purchase 65 loads of 3/4 gravel for BOT District to spread on 3-4 miles of trail  
\$10,310.00 South Jordan Hill Road, Town of Columbia - Fix major washout on class VI road above where town maintained road ends by adding gravel, fixing culverts, and smoothing road

<https://www.nhstateparks.org/about-us/trails-bureau/grants/grant-in-aid>

These reports of washouts, ditching, lost cover, etc., indicate over-use and damage. Existing cover has apparently been thrown to the sides of the trails, filling the ditches and perhaps culverts. Only one grant report mentions re-claiming this material, so the ecology of the trails is damaged not only by compression, but by repeated addition of large amounts of non-local materials. If the AMC were carrying or helicoptering in gravel for repairs of their trail system, it would be considered unacceptable.

The trails do not appear to be constructed to any standard. Federal standards are described in: <https://www.arlis.org/docs/vol1/A/53352785.pdf> “The National Forest attempts to build and maintain ATV trails to a standard of environmental stability—trails that are sufficiently well designed, built and maintained so that their use does not cause erosion, water quality damage, or damage to vegetation or wetlands. Achieving these goals costs \$15,000- 30,000 per mile in construction costs and \$1,000 per

mile annually in maintenance costs, according to the Forests' calculations." pgs 21-22 Trail rehabilitation costs are estimated at \$1,500. per acre.

Are the ATV "trails" "sufficiently well designed, built and maintained so that their use does not cause erosion, water quality damage, or damage to vegetation or wetlands."? Do they meet DNCR, Board of Trails, and Club standards? Have these standards been loosened to allow continued ATV use?

"WHEREAS, the CLUB is a recognized non-profit group by the State of New Hampshire that provides designated ATV trails for its members and the public, and **has a policy of closely watching and maintaining its trails to protect and preserve the landscape...**" (MOU between ATV Club and DNCR) Below: 2019 Kelsey Notch Compliance Report done *after* maintenance.



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

CORD responsibilities:

4. After construction, the trail must be continually managed to protect natural resources and conservation attributes and to limit interference with other uses of Nash Stream Forest.
5. CORD must be adequately informed on an ongoing basis of the status of management, maintenance, and enforcement efforts related to ATV/UTV use, as well as impacts of ATV/UTV trails on the Nash Stream Forest.
6. CORD reserves the right to periodically reassess whether ATV/UTV use in the Nash Stream Forest, or on any of the trails therein, remains consistent with RSA 162-C:6 and reserves the right to temporarily or permanently close trails if necessary as circumstances change over time.



Jericho Mountain State Park, before the ATV season, 2019.

“A study in Kentucky estimated that over 20 years of ORV use on a 40 acre site, 10 million pounds of soil were lost.” Jericho ATV system is 700 acres. (<https://www.arlis.org/docs/vol1/A/53352785.pdf> ) (<https://www.nhstateparks.org/getmedia/156d86a3-f059-49e7-a04d-891afe2bc760/Jericho-Mountain-State-Park-Master-Trail-Development-Plan.pdf> ) Have the Clubs posted a bond for eventual restoration of the trails, if and when the Park is closed to ATV use?

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Some conditions specific to Nash Stream State Forest:

“Whereas, Off Highway Recreational Vehicles to include All Terrain Vehicles (ATVs) and Utility Terrain Vehicles (UTVs) are rapidly becoming an outdoor recreational activity popular to the North Country economy of the State of New Hampshire, by adding much needed revenue opportunities to some North Country businesses...” MOU between NH F&G, DRED, and DF&L, 2017

The meaning of this clause is unclear. It needs to be clarified and supported with documentation, or removed. It seems to intend to state that ATV use is of such proven economic benefit to some business owners in Coos County that ATVs should be permitted in Nash Stream State Forest, despite the anecdotal nature of the data presented, confusion of correlation and causation, and the exclusion of externalized costs.

“Whereas, pursuant to RSA 215-A:32, the Executive Director of NHF&G is responsible for the adoption and implementation of rules and administrative procedures for public OHRV riding, necessary for the safety of rider and passengers and the protection of property...”



5. DRED Bureau of Trails, in concert with the local club noted in the MOA for the specific trail, will monitor and maintain the approved trails in a safe and environmentally responsible manner using best management practices as described in "Best Management Practices for Erosion Control during Trail Maintenance and Construction," or any successor publication" (MOU between NH F&G, DRED, and DF&L, 2017)

No Club or Agency has tested the air on any ATV trails for compliance with EPA dust standards. Club GIA grant reports show degradation of the trail and unsafe bridge conditions. DFL request to move 750' of the West Side Trail away from Nash Stream "...to prevent further sedimentation and erosion..." shows degradation of the trail. (November 18, 2018 minutes CORD) Either Best Management Practices are ineffective or are not being followed. I have been unable to find Club reports showing monitoring. "I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified." Fish & Game intra-department communication. (11/18/18 meeting package CORD) "He (Jamie Sayen) asked why the Kelsey Notch Trail monitoring trip in August of 2017 showed that everything was ok and then 105 loads of gravel at \$22,000 was spent on fixing it." (6/27/28 Nash Stream CC minutes.)

"6. Once a year, by October 15th, the following staff representing the Parties will provide an environmental compliance report (the Report) to the Nash Stream Forest Citizens Committee and to the Council on Resources and Development:

- DRED Trails Bureau District #1 Supervisor, or designee
- DRED Division of Forests and Lands North Region Forester, or designee
- F&G Region 1 Wildlife Biologist, or designee

The Report shall include the dates of each inspection, photographs (particularly of stream crossings), a narrative of trail conditions as they relate to environmental resources, any water quality violations, and recommendations including a timeline for remediations or repair work necessary to bring the trails into compliance with water quality regulations." (MOU between NH F&G, DRED, and DF&L, 2017)

Though this MOU was signed in early January of 2107, no report was filed for that year. Two superficial reports, covering *only* the Kelsey Notch Trail, (2018 & 2019) have been completed.

"8. The Parties agree that each will work cooperatively to provide safe and environmentally responsible riding opportunities to these OHRV trails, and recognize that failing to properly maintain these trails to avoid water quality violations and/or damages to aquatic resources and wildlife habitat could lead DRED and/or NHF&G to suspend the MOA in writing by 30 day notification to the other party until appropriate maintenance has been performed, or suspend indefinitely, depending on the severity of the damage." (MOU between NH F&G, DRED, and DF&L, 2017)

"WHEREAS, the CLUB is a recognized non-profit group by the State of New Hampshire that provides designated ATV trails for its members and the public, and has a policy of closely watching and maintaining its trails to protect and preserve the landscape\_ NOW THEREFORE, the parties hereto agree as follows:

1) The parties agree to work cooperatively in providing and maintaining, through environmentally sound action, a safe, functional, attractive and user-friendly ATV trail system (the "TRAIL ") over

existing ways known as "West Side Road", "Bordeau Trail" and "Andritz Trail", or relocated portions thereof, on the PROPERTY, as depicted on a plan entitled "Proposed ATV Trail ..."



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

Above and below: Kelsey Notch Trail, 2018 Compliance Report.



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

“The STATE maintains its right to close the TRAIL when any of the following occur:

- weather conditions make the TRAIL unsuitable for ATV use;
- public safety is endangered due to TRAIL conditions;
- use of the TRAIL is resulting in degradation of surface waters; ”

(2016 MOUs between DNCR and North Country ATV Club and Metallak ATV Club for maintenance of ATV trails in Nash Stream State Forest)

2019 Compliance Report:

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 2018 and 2019 (above) Kelsey Notch Compliance Reports document the Clubs' failure to properly maintain "safe and environmentally responsible riding opportunities" and "avoid water quality violations." Nash Stream Citizens Committee minutes in 2018 state: "The West Side ATV trail has been closed due to a large washout that occurred during the spring. Dave Govastski asked what caused it. Maggie explained that she had checked it out and was unsure of the exact cause. Water appeared to have run down the road during the spring possibly causing it. Kelley Butler asked if it was going to be fixed during this summer. As of right now it is unclear what will be done and if it will reopen this summer." ( Draft June 27, 2018 Meeting Minutes ) More than a million dollars has been spent on a preliminary restoration of Nash Stream, with no monitoring for the effect of ATV traffic on fish or anglers. The heavy ATV use, repeated damage to the trails, the condition of the trails and bridges, and the absence of a thorough cost benefit analysis of ATVs in Nash Stream State Forest, indicate that ATV access to the Forest should be suspended permanently. *"not all impacts (of ATVs) can be mitigated with good management. There may still be impacts, for example, on wildlife, air quality, or noise pollution."*

<https://www.arlis.org/docs/vol1/A/53352785.pdf>

Note that ATV riders are free to enjoy the Forest as the rest of the public does, under their own power.

Resources:

<https://www.nh.gov/nhdf/committees-boards/xyz.htm> Nash Stream Citizens Committee

Environmental Effects of Off-Highway Vehicles on Bureau of Land Management Lands: A Literature Synthesis, Annotated Bibliographies, Extensive Bibliographies, and Internet Resources, USGS  
<https://pubs.usgs.gov/of/2007/1353/report.pdf>

Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities, 2000  
<https://pdfs.semanticscholar.org/c3f4/5ba2fd6de19935f72fb696929f5aef61c4de.pdf>

Effects of All-Terrain Vehicles on Forested Lands and Grasslands, USDA, USDOT, 2008  
<https://www.fs.fed.us/t-d/pubs/pdf/ATV/08231811L.pdf>

Cumulative and Universal: ATV Impacts on the Landscape and Wildlife, Backcountry Hunters and Anglers, 2011



[https://www.lsohc.leg.mn/materials/16\\_Mtg/DEC\\_14\\_2016\\_ORV\\_WHITE\\_PAPER\\_BackcountryHuntersAnglersofAmerica.pdf](https://www.lsohc.leg.mn/materials/16_Mtg/DEC_14_2016_ORV_WHITE_PAPER_BackcountryHuntersAnglersofAmerica.pdf)

Rutted, Ruined and Damaged: ATV Damage on the Adirondack Forest Preserve, Protect the Adirondacks, 2013 <http://www.protectadks.org/wp-content/uploads/2013/03/RuttedRuinedATVreport-LOWRES.pdf>

All-terrain vehicles in the Adirondacks: Issues and Options, Wildlife Conservation Society, 2003 <https://www.arlis.org/docs/vol1/A/53352785.pdf>

[https://www.nhstateparks.org/getmedia/b12abe11-bd52-4d39-811b-6131721df698/Report-Coos-County-Trails-Planning-Framework\\_Recommendations\\_NCC\\_Final\\_June\\_2018.pdf](https://www.nhstateparks.org/getmedia/b12abe11-bd52-4d39-811b-6131721df698/Report-Coos-County-Trails-Planning-Framework_Recommendations_NCC_Final_June_2018.pdf)

<http://www.gencourt.state.nh.us/rsa/html/xviii/215-a/215-a-mrg.htm>

<https://www.nh.gov/nhdfl/documents/complete-book-nash-stream-book-part-1.pdf>

[https://www.unlv.edu/sites/default/files/page\\_files/27/Exposure-to-naturally-occurring-mineral-fibers-Wolfe-et-al-2017.pdf](https://www.unlv.edu/sites/default/files/page_files/27/Exposure-to-naturally-occurring-mineral-fibers-Wolfe-et-al-2017.pdf)

<https://rewilding.org/who-speaks-for-nash-stream-forest/>

<https://www.nhpr.org/post/north-countrys-nash-stream-putting-environmental-wayback-machine#stream/0>

<https://nepis.epa.gov/Exe/ZyPDF.cgi/P100IDLO.PDF?Dockey=P100IDLO.PDF> (dust)

<https://www.epa.gov/nps> (nonpoint source pollution)

<https://nepis.epa.gov/Exe/ZyPDF.cgi/P100IDLO.PDF?Dockey=P100IDLO.PDF> (dust)

<https://www.fs.fed.us/t-d/pubs/pdf/ATV/08231811L.pdf>

<https://www.nh.gov/osi/planning/programs/cord/meetings/documents/20181108-meeting-packet.pdf>

<https://www.nh.gov/osi/planning/programs/cord/meetings/index.htm>

### ***But what about the economic benefits?***

Reports of the economic benefit of ATVs for the North Country are anecdotal, incomplete, confuse correlation with causation, and do not include externalities such as pollution, sickness, global warming, environmental damage, loss of quiet enjoyment of private and public property, loss of property values, and loss of other revenue from other uses of the land that are incompatible with ATV use.

### **Economic Costs**

“Just as it is difficult to capture the precise economic benefits of ATV activity, it is even harder to put a dollar figure on the costs to society of ATV use. Some areas that allow ATV use spend nothing on enforcement, trail construction or maintenance, or environmental remediation. This does not mean that

ATV use has no costs; it simply means that the costs have not yet been addressed by the community. The emerging field of environmental and ecological economics tries to affix numbers to qualities like healthy ecosystems and clean water. This is a complicated subject, but the costs of ATV use can be at least partially captured by the amount of money that needs to be spent in order to have an environmentally stable trail network and lawful use patterns.

The discussion about designated ATV trails in the Allegheny National Forest in Pennsylvania, above, included some figures of the costs of trail construction and maintenance. These included trail construction and maintenance costs. The National Forest attempts to build and maintain ATV trails to a standard of environmental stability—trails that are sufficiently well designed, built and maintained so that their use does not cause erosion, water quality damage, or damage to vegetation or wetlands. Achieving these goals costs \$15,000- 30,000 per mile in construction costs and \$1,000 per mile annually in maintenance costs, according to the Forests' calculations.

The costs of rehabilitating areas that have been used by ATVs in a nonmanaged fashion are not well understood, partly because these areas seldom see maintenance work. The illegal trails created by ATVs in the Chattahoochee-Oconee National Forest in Georgia (see the National Forest section, above, for more information) will cost approximately \$1 million, or an estimated \$1500 per acre of road area, to rehabilitate, according to Forest Service estimates. This amounts to somewhere between \$800 and \$1400 per mile of illegal road depending on its width, and this is a conservative estimate that does not include any wetland remediation or other ecosystem improvements. The numbers estimate the cost of bringing in equipment and personnel to improve drainage and revegetate the area with lime, fertilizer and grasses. The intent of these efforts is to close the trail entirely to use, not to make the trail stable and rideable (Luckett 2003). The cost considerations of reclaiming an area for riding, for restoration as a hiking trail, for repairing ecosystem and wetland damage, or simply closing an area entirely, are obviously quite different and complex.”

#### Externality and Equity Issues

“Externality” is the term used by economists to describe a situation where one person or group benefits from a situation, while a different person or group pays the costs associated with it. In the case of ATV use, an externality is present if a group of riders benefits from public land being open to ATV use, but the general public pays the price of environmental damage caused by the ATV use. In some cases, these costs may be the actual, financial costs of rehabilitation, and in other cases the costs may be less tangible, such as the effect that listening to ATVs or looking at damaged vegetation might have on other users of public lands. In either case, if externalities are present, they are an important factor in the economic effects of ATV use. An issue related to externalities is equity, the less technical concept that land management policies should not unfairly or disproportionately affect one segment of the population. ORV users often make equity arguments about their rights to have public lands open to ORV use just as they are open to other kinds of uses. This is an important concern; where ORV use is restricted, it should be restricted on grounds that are defensible. A bias against motorized use should not, independently, be a rationale for limiting access; policies which are seen as arbitrary or inequitable undercut the validity of the policy process and respect for existing laws. Policies which are seen as arbitrary or inequitable undercut the validity of the policy process and respect for existing laws wildlife conservation society

#### Summary of Economic Issues

The prism of economic analysis is sometimes used to judge public policy in the following way: if the economic benefits of a policy are greater than the economic costs of the policy, and if the policy does not pose significant externality or equity challenges, then it may be seen as worthwhile. It would be difficult to assess any ATV-related policy by this metric at the current time. The limited information that is available about the costs and about the benefits of ATV use (especially in New York) suggest that a great deal more research needs to be done before any ATV policy can be deemed economically viable. Even if more comprehensive cost/benefit analyses are done, there are a few critically important questions to consider:

- Is economics the right tool for policy analysis concerning ATVs? There are important factors associated with ATV use that are nearly impossible to capture in even the most complete economic model. It is valuable to have an understanding of the costs and benefits, but often these alone don't show the full policy picture.
- If economics is a useful tool, how carefully are costs and benefits being evaluated? Historically, cost/benefit analyses have failed to account for environmental costs. Any thorough analysis of the economics of ATV use needs to take all factors fully into account.
- Are externality issues being considered? Are the economic benefits directly helping to pay for the economic costs?
- Are equity concerns being fairly addressed? Is one segment of the population being disproportionately negatively affected by the existing policy?
- Are the economic benefits felt locally, or does much of the money leave the area before causing an economic benefit?...

As noted above in the section on environmental impacts of ATVs, not all impacts can be mitigated with good management. There may still be impacts, for example, on wildlife, air quality, or noise pollution.”

<https://www.arlis.org/docs/vol1/A/53352785.pdf>

“Other critical points on the impacts of ATV use on the physical environment are:

- The impacts of ATV use are cumulative, universal, and can be achieved by low intensity traffic over short time periods.
- ATV use effects soil and hydrologic function primarily through soil compaction, increased soil strength, removal of the forest litter layer, and destruction of soil crusts. These changes in soil properties increase erosion and stream sediment deposition and decrease plant productivity.
- Seasonal restrictions on ATV use are necessary to limit the impact of ATV use on soils, vegetation, and watersheds.
- Restricting ATV use in areas of low road density is necessary to reduce the spread of invasive species and protect the community structure of native species.
- ATV impacts on the environment are similar regardless of the type of ATV.



- Recovery from the impacts of ATV use to pre-disturbance conditions can take generations.
- Restoring sites degraded by ATV's is unfeasible as long as ATV use continues.”

[https://www.lsohc.leg.mn/materials/16\\_Mtg/](https://www.lsohc.leg.mn/materials/16_Mtg/)

[DEC 14 2016 ORV WHITE PAPER BackcountryHuntersAnglersofAmerica.pdf](#)

Kris Pastoriza

Easton, NH

[krispastoriza@gmail.com](mailto:krispastoriza@gmail.com)

January 24, 2020

August 11, 2020

To CORD,

I request that you close the Kelsey Notch Pilot Trail in Nash Stream State Forest to ATV use. I request that you close all trails in Nash Stream State Forest to ATV use.

“Please, don’t let your greatest supporters, allies, and potential partners — the forest conservation/ protection/ecological management community of NH — become your opponents. It is not good for you, it is not good for us, and it is not good for Nash Stream Forest.” Stephen Blackmer

**Problem #1:**

Tom Wagner, former WMNF employee, when queried in 2001 about the legality of permitting ATV use in Nash stream wrote:

“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.”

All the ATV trails in Nash Stream provide “through travel.”

In 2002 the Nash Stream ATV Study Subcommittee made a verbal report to the Nash Stream Citizen’s Committee. The ATV Study Committee rejected the “interior trail” allowed without approval from the Forest Service, and recommended a “connecting trail” providing the “through travel” that would require Forest Service permission.

The latest management plan confirms this trail status:

“All-Terrain Vehicle (ATV) and Utility Task Vehicles (UTV)

West Side Trail: Currently, about nine miles of trail are available for pass-through ATV and UTV travel utilizing the Bordeaux Trail, the West Side Road, and Andritz Trail. A memorandum of agreement (MOA) exists between the North Country ATV Club and the NH Bureau of Trails.

Kelsey Notch Trail (provisional): An additional four miles of trail in the north of Nash Stream Forest are also available for pass-through ATV and UTV travel from Route 26 through Kelsey Notch, north to Millsfield and south to the Bungy Road toward Columbia pass. This Connector trail is part of the “Ride the Wilds” trail system and is maintained by the Metallak ATV club through an MOA with the NH Bureau of Trails.”

Where is documentation of WMNF consent to the opening of these through trails to ATVs?

In 2015, at a Nash Stream Citizens Committee meeting "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."

#### Report of the ATV Study Subcommittee

The committee met once for approximately 1.5 hours. There was no interest in having a second meeting. 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. The committee felt the West Side Trail could be put in service as an ATV trail with little work. There is a section that will need to be rerouted around a beaver flowage but the majority of the proposed trail runs along an existing trail, a portion of which is an old gravel-based road. Two of the committee members voted against this project, the remainder of the committee members voted in favor of moving forward with development of this trail as a pilot ATV trail project. The length of the trail segment that will be on Nash Stream is approximately 7 miles and would connect existing ATV trails on private land.

Tellman asked Bryce to review the current actions being considered by the State Legislature. Bryce reported that Rep Alger and the ATV study committee submitted legislation regarding ATV use on public land that includes increased registration fees, allows for acquisition of land for the purpose of developing ATV trails, allows for contracting with local law enforcement to help enforce ATV laws, codifies the criteria developed by DRED regarding location of ATV trails on state lands, and provides for the establishment of an ATV trail at Nash Stream. While this legislation has not yet passed it is a clear indication of the direction legislative study committee is heading.

Now-Executive-Director of Fish and Game, Scott Mason, joined this, hasty, unresearched, political (rather than evidence-based) decision to support ATV trails in Nash Stream:

**Motion: Mason motions to open the West Side Trail for ATV use and amend Nash Stream Management Plan as necessary. King seconds.**

Discussion: King says decision is up to Commissioner Bald.

Frizzell feels this motion is not necessary.

Goulet feels the motion is inappropriate.

Mason feels King is being nice, he thinks legislature is saying to agencies; get off your duff and open Nash Stream to public use. Asks Lanier what his concerns about ATV use are.

Lanier answers that ATV use is year-round and that affects "critters" breeding season.

Questions about whether ATV use will be year-round.

Bryce suggests that before the vote you go through the proposed changes to the management plan.

**King withdraws second of the motion.**

Benson feels we are not just talking about Nash Stream and that what happens here can affect all public lands in New Hampshire.

Mason feels the only issue for this committee is Nash Stream, not Bear Brook or other State lands.

**End of Discussion**



## **Problem #2: ATVs and Global Warming**

New Hampshire's Climate Action Plan directs agencies to follow "10 overarching strategies" to slow Global Warming. Banning ATV use in State Forests and Parks would follow seven of these:

1. Maximize energy efficiency in buildings.
2. Increase renewable and low-CO<sub>2</sub> -emitting sources of energy in a long-term sustainable manner.
3. Support regional and national actions to reduce greenhouse gas emissions.
4. Reduce vehicle emissions through state actions.
5. Encourage appropriate land use patterns that reduce vehicle-miles traveled.
6. Reduce vehicle-miles traveled through an integrated multi-modal transportation system.
7. Protect natural resources (land, water and wildlife) to maintain the amount of carbon fixed or sequestered.
8. Lead by example in government operations.
9. Plan for how to address existing and potential climate change impacts.
10. Develop an integrated education, outreach and workforce training program." (p. 13)

[https://www.des.nh.gov/organization/divisions/air/tsb/tps/climate/action\\_plan/documents/nhcap\\_final.pdf](https://www.des.nh.gov/organization/divisions/air/tsb/tps/climate/action_plan/documents/nhcap_final.pdf)

"About 30 percent of all motor vehicle use is for social and recreational purposes... total recreational emissions would be... about 20 percent of total US carbon emissions from motor vehicles.

Other motorized amusements require a fairly staggering 2.2 billion gallons of gasoline,... ATVs 594 million gallons; snowmobiles 188.5 million gallons..." <https://www.sierraclub.org/sierra/ask-mr-green/what-environmental-impact-motorized-recreation>

No evidence-based, fair plan for lowering carbon can include recreational fossil fuel use. The State cannot yet forbid vacationers in cars, but it can forbid fossil-fuel-vehicle use in its Parks. This issue was addressed by the public in comments on the Nash Stream management plan in 2017:

"How is it justifiable to have motorized traffic (according to reports on RGGI now the greatest contributor to carbon in the Northeast) straddling Nash Stream, particularly in light of original plan's mandate "to use and build upon, rather than work in opposition, ecological principles and natural tendencies."? Clearly this new plan, with more cutting, younger forests, reduced set-backs along waterways and increased use by internal combustion engines is counter to the admirable and singular plan laid out but the first committee tasked with caring for this north country "jewel". " (Lucy Wyman)

The "alteration" of the management plan to allow ATV use in Nash Stream State Forest gave no consideration to global warming.

The latest Nash Stream Management Plan mentions the effects of climate change on recreation, but is silent on the effects of recreation on climate change/global warming. This Management Plan contains the term 'ATV' 242 times, and the word nature, used as a noun, once.

<https://www.nh.gov/nhdf/documents/complete-book-nash-stream-book-part-1.pdf>

### **Problem #3: Environmental Degradation normalized through Regulatory Capture.**

I submitted a 91-A to DNCR for all documents relevant to the claim, (in the MOU between NH F&G, DRED and DF&L, for the West Side Trail and Kelsey Notch Pilot Trail) that ATVs are “popular to the North Country economy and the State of New Hampshire, by adding much needed revenue opportunities to some North Country businesses...” I received no documents showing any economic benefit.

The “economic driver for the North Country” justification for opening Nash Stream State Forest to ATV use did not meet any standard for evidence. Nor does the latest Nash Stream Management Plan’s description of ATVs and UTVs as an “important economic driver in the North Country.”

ATV Clubs are represented in the Nash Stream Citizens Committee and backed by DNCR and BOT. The head of BOT described ATV users as “his constituency” and ATV registrations pay his salary. The Clubs pressed for ATV trails in Nash Stream and got them, despite questions about the legality of the trails, and despite extensive opposition from the public and organizations dedicated to protecting public lands.

“Nash Stream SF was protected through substantial efforts of multiple agencies and organizations with interests in the property’s timber, wildlife, ecological, and recreational values. This was followed by another substantial effort of these same entities to develop a management plan that strived to balance these and other values. ATVs were not a part of the original management plan.” (State Lands Management Team request for review, 12/26/12)

Concerns about permitting ATV use in Nash Stream SF were expressed 18 years ago, in a not so much prescient (the problem was obvious to many) as simply honest and outspoken, minority report by Dave Publicover and Peter Benson in 2002:

“Such a decision should not be inappropriately legitimized by reference to a Study Committee that collected little information, identified no issues or concerns, and produced no written report that could help inform the Nash Stream Advisory Committee, DRED, the legislature, or the public.”

“The Study Committee held only a single 90-minute public meeting, which was not sufficient to identify or review the complexities of this important topic. In no way did the Committee’s work represent the in depth analysis called for by Director Bryce.”

“Perhaps most importantly, if the proposed use were to be adopted with a defined trial period, what process and criteria would be used to determine if the use should be continued as is, curtailed or ended?”

*minority report on ATV’s libels Fred King and that the two organizations (Nature Conservancy and Appalachian Mountain Club) are being obstructionists.*

(NSFCC comment, unattributed)

After the original management plan was altered to allow ATV use, the “inappropriate legitimization” became standard practice. ATV pollution, noise, speeding, dust, erosion, and trail destruction requiring

yearly repair became normalized. Loss of cover on West Side Trail became permanent. Despite persistent concerns and violations, DNCR continued to heavily support ATV use in Nash Stream. In 2007 the Nash Stream Citizens Committee voted to continue the West Side Trail ATV permit/MOU for another three years, despite an absence of baseline data and inconclusive monitoring:



The bird study showed “ATVs seem to have little effect on birds.” No other documentation from any other sources was provided.

The mammal study results were “inconclusive. There were many problems with the study.”

The noise study concluded that “if ATVs stay below 25 mph the sound doesn’t register on the noise meter.” Noise measurements were taken from a bridge over water and from a gas station outside Nash Stream S.F.

In 2016, John Magee, fish habitat biologist for Fish and Game wrote to Glen Normandeau: “Over the years, I have heard from the mainstem of Nash Stream, OHRVs on the West Side trail, when when they are several hundred feet away.” In 2017 Dayton Goudie commented: “Some will say that ATV use within the Forest does not diminish other uses. As a hiker and a fisherman I can attest that I have heard them and I have seen their erosive effects.”

(Left: West Side Trail erosion picture looking north., BOT records.) “A stable cover of grasses and vegetation...used to be present on the entire Westside trail prior to the use of OHRVs.” (Will Guinn, Administrator Forest Management Bureau, to Sarah Stewart, cc to Brad Simpkins, Director DFL, June 13, 2019.)

**Introduction:**

The baseline noise testing was performed to be able to answer noise issue questions, in regards to ATV use, on trails on DRED lands, specifically the Nash Stream Forest.

Many of the complaints against development of ATV trails on Public lands are the noise level associated with the All Terrain Vehicle. The intent of the testing is to establish a baseline decibel level for ATV use, compared with decibel levels of other vehicles and sources of noise on the Nash Stream Forest property.

Unfortunately, the baseline noise testing did not establish a baseline; the ambient noise level in the forest when there are no ATVs. It merely measured the decibel levels of various models of ATVs and other vehicles from various distances.

There was only a summary of the Macro-Invertebrate study, which showed no negative impact.



There was only a summary of the turbidity study, but “no adverse effects were shown.”

Road maintenance was insufficient:

“-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.”

Despite this mixture of inconclusive and negative reports , the Nash Stream Citizens Committee voted to approve another 3 year permit/MOU for the West Side Trail.

Years later the same issues persist because ATVs on the trails will inevitably do damage. Despite this, the premise is “ATVs will stay so how do we make that work?”

In 2019 Metallak ATV Club received a GIA grant for nine dump truck loads of screened gravel (\$900.) to be put on the Kelsey Notch Pilot Trail. In 2018 they received \$15,650.00 to add gravel to Kelsey Notch Pilot Trail, ditch it and “fix” it. In 2017 their grant paid for \$10,000.00 of crushed gravel (40 loads) and \$400. of screened gravel (4 loads) to be spread on Kelsey Notch Pilot Trail. That means more than 40 loads of gravel have been blown off the trail by ATVs. This is high-impact abuse.

DNCR’s and other agencies support of this premise has given the ATV clubs and supporters a sense of entitlement to which they have no right:

“Ted Burns stated that the Southern Connector ATV trail is a no brainer and put signage on the roads. People break laws, but will have minimal people on the parts of the roads they aren’t allowed on. It ought to be up to us and DRED to promote recreation. If there are issues, don’t put obstacles in the way of volunteer clubs, get the technical team together to figure it out. It should be promoted on a state level. No one wants ATVs on roads and the state forest belongs to everyone.” (5/2/17 NSFCC minutes)

“Harry Brown, the president of the North Country OHRV Coalition asked John Lanier if he could make a presentation about Ride The Wilds ATV Trails. He was allowed and made his testimony statement.” (5/17/14 NSFCC minutes)

“Craig Washburn – Ride the Wilds going well, using town roads... Clint added comment about connections to Ride the Wilds, as Nash Stream lies in the heart of North Country. There is going to have to be accommodations for ATVs. Berlin-Gorham connection access through Nash Stream. (11/6/13 NSFCC minutes)

The quiet, low carbon travelers must move aside:

“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.” (5/21/15, NSFCC minutes)

In 2008 NSFCC minutes state:

“Trails: Maintenance of the ATV Trail system is still the responsibility of the NH Dept. of Trails as far as the club knows. No Trails Bureau members were available for comment.

Some of the bridges on the trail are in disarray and seem to do little in diverting water so these bridges will be gotten rid of and the ditch will be filled in.”

In 2012, NSFCC minutes state:

Clint Savage discussed proposed ATV trail across the new acquisition as well as across existing Nash Stream. This trail would go through Kelsey Notch and would connect to Bayroot Lands over to Millsfield... Dave Goulet expressed concern about who would be responsible for maintaining the trail, because he feels the N. Stratford trails are in horrible condition.”

In 2013 Jim Oehler, State Lands Habitat Biologist, in a report to DRED wrote:

“Stream connectivity is not only a concern within the Nash Stream State Forest, but also the entire proposed North Country ATV trail system. Yet, there didn’t seem to be a clear plan for maintaining the Nash Stream SF or other proposed ATV trails.”

In 2014, NSFCC minutes stated “The West Side Road is under construction to fix water bars to control run-off on the ATV trail.”

In his 2016 letter to Glen Normandeau, John Magee wrote:

“The Technical Team responsible for writing the Nash Steam Forest Management Plan visited the Kelsey Notch Trail in November 2015. I was disappointed to see the road erosion problems on this trail and the resulting truckloads of sediment that were obviously entering the perennial streams there. This is the direct result of a lack of suitable erosion control on this OHRV trail. My understanding is that there is supposed to be in place a signed agreement between DRED and the OHRV club that states the monitoring required and timelines for restoration work to preclude such erosion issues. However, no such agreement has been sent to the Technical Team. We were told during our November 2015 visit that DRED Bureau of Trails staff would speak with the local OHRV club to get the club to fix the erosion problems. My understanding is that some work was done in 2016, but that the erosion issues may be even worse now because the needed work still has not been done. Therefore, it seems that this trail should be closed until a solid, signed agreement is in place and the erosion problems are fixed. Furthermore, the agreement should include details about how often and when assessments will be done and by when erosion issues will be fixed. Again, the sediment coming off this road and entering perennial streams is tremendous.”

On August 1, 2016, Will Staats wrote to Glen Normandeau:

“Earlier this year a straw vote was taken where most tech team members had strong reservations about any further ATV trail development in the forest. There also continue to be questions surrounding the issue of allowing any ATV trails in the Nash Forest and whether or not this recreational activity fits with the Vision. SPNHF, TNC and AMC have raised concerns over the legitimacy of ATVs on Nash and have also questioned the approach used to review trail proposals.”

BOT fails in ATV GIS-funded project oversight, inspection and permitting:

**From:** Meffert, Lisa  
**Sent:** Tuesday, May 16, 2017 10:00 AM  
**To:** Savage, Clinton  
**Subject:** Metallak's Project Request  
**Importance:** High

Hi Clint,

You have no issues with Metallak's GIA projects, correct? Also, will there be needed permits for the proposed work done on the abutments? Thanks.

Lisa

*Lisa A. Meffert*  
Program Specialist  
Bureau of Trails/Grant-In-Aid Program

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**From:** Savage, Clinton  
**Sent:** Tuesday, May 16, 2017 12:46 PM  
**To:** Meffert, Lisa  
**Subject:** RE: Metallak's Project Request

I don't believe I have any issues. I have not actually seen their paper work to know what they are doing. I have spoken with Craig about some of his project but not sure if I am aware of all of them.

Clinton Savage, District 1 Supervisor  
NH Bureau of Trails  
629B Main Street  
Lancaster, NH 03584

Office 603-788-3155  
[Email-Clinton.Savage@dred.nh.gov](mailto:Email-Clinton.Savage@dred.nh.gov)

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**From:** Meffert, Lisa  
**Sent:** Tuesday, May 16, 2017 12:52 PM  
**To:** Savage, Clinton

1

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**Subject:** RE: Metallak's Project Request  
**Importance:** High

Okay...well they are saying you are aware of their projects (on land we own & manage) and have obtained any need approvals and that SDR is getting any permits needed. "All permits will be in place before any work commences. Clint is involved with the planning and execution of the work." This is why I want you guys to be signing off on the State/Federal Land Permission Form so I know clubs are working with you guys on their projects.



**From:** Savage, Clinton  
**Sent:** Tuesday, May 16, 2017 1:03 PM  
**To:** Meffert, Lisa  
**Subject:** RE: Metallak's Project Request

They have talked with me about bridges that they want to redeck. Just was not sure if I had seen everything.

Clinton Savage, District 1 Supervisor  
NH Bureau of Trails  
629B Main Street  
Lancaster, NH 03584

Office 603-788-3155  
[Email-Clinton.Savage@dred.nh.gov](mailto:Email-Clinton.Savage@dred.nh.gov)

**From:** Meffert, Lisa  
**Sent:** Tuesday, May 16, 2017 1:03 PM  
**To:** Savage, Clinton  
**Subject:** RE: Metallak's Project Request

So Clint, can I put down on all of my grant materials that you have approved their projects? I need to know prior to the meeting. Thanks.

---

**From:** Savage, Clinton  
**Sent:** Tuesday, May 16, 2017 1:05 PM  
**To:** Meffert, Lisa  
**Subject:** RE: Metallak's Project Request

YES

Clinton Savage, District 1 Supervisor  
NH Bureau of Trails  
629B Main Street  
Lancaster, NH 03584

Office 603-788-3155  
[Email-Clinton.Savage@dred.nh.gov](mailto:Email-Clinton.Savage@dred.nh.gov)

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**Meffert, Lisa**

**From:** Meffert, Lisa  
**Sent:** Tuesday, May 16, 2017 1:05 PM  
**To:** Savage, Clinton  
**Subject:** RE: Metallak's Project Request

THANK YOU!

Note that between 1:03 and 1:05 there was not time enough for Clint Savage of BOT to make sure he had seen everything (or maybe anything) of Metallak ATV Club's project. Metallak ATV Club maintains the Kelsey Notch Pilot Trail in Nash Stream State Forest.



“Aerial pic of West Side Road erosion site looking south” (Board of Trails files.)

Kris Pastoriza  
Easton, NH  
[krispastoriza@gmail.com](mailto:krispastoriza@gmail.com)  
August 11, 2020

Dear Director Mason,

according to CORD draft minutes for their September 24<sup>th</sup>, 2020 meeting, at which the Kelsey Notch Pilot ATV Trails were addressed:

“Ms. Modigliani agreed about postponing any formal opinion, and further agreed that consulting with legal counsel before such a decision would be helpful. She then asked if Fish and Game requested additional time for the pilot program to get more information because of the change in personnel? Director Mason responded that to the best of his knowledge, no.”

However, in your submission to CORD, you wrote:

“The Fish and Game Department concurs with the NH Bureau of Trail’s (sic) recommendation to continue the pilot period while additional information is gathered. As the new Executive Director of the Department, whose staff and resources are significantly impacted by a CORD decision, I would like additional time to understand the issue both from law enforcement and resource conservation perspectives. Our Region 1 biologist, who is also new to his position and who is named in the NHFG-DNCR MOA as someone who will provide input to the annual environmental compliance report to CORD also needs time to get better apprised of the issue and perform site visits to evaluate the trail. Although not named in the MOA, our Fish Habitat Biologist or Region 1 Fish Biologist should also assist with annual assessments as a primary concern is sedimentation into nearby perennial streams and impacts to fisheries.”

It is concerning that feel your failure to prepare for this meeting is an adequate reason for extending the trial period for this controversial trail. You and your new personnel could have consulted with your existing personnel; John Magee, (Fish Habitat Biologist) and Jim Oehler (Habitat Biologist) as well as Maggie Machinist (Regional Forester, DF&L), read the relevant correspondence between F&G, DNCR, and DF&L, and gained an understanding of the Kelsey Notch Pilot ATV Trails sufficient to make a recommendation that they be closed due to their clear failure to meet the trial conditions.

Many people feel that you were chosen by Governor Sununu to head Fish and Game in part because you support ATV trail development in Coos:

**Motion: Mason motions to open the West Side Trail for ATV use and amend Nash Stream Management Plan as necessary. King seconds.**

Discussion: King says decision is up to Commissioner Bald.

Frizzell feels this motion is not necessary.

Goulet feels the motion is inappropriate.

Mason feels King is being nice, he thinks legislature is saying to agencies; get off your duff and open Nash Stream to public use. Asks Lanier what his concerns about ATV use are.

(Nash Stream Citizens’ Committee minutes, 2/13/2002)

The opening of Nash Stream State Forest to ATVs undermined law, the management plan, the Vision, public confidence in DRED/DNCR, traditional uses, and the terrain.

In 2002 Dave Publicover and Peter Benson submitted a minority report to Phil Bryce, Tom Miner and the Nash Stream Citizens' Advisory Committee:

“It is our opinion that the Study Committee failed to adequately complete its assigned task, and produced no information that would help to advance an informed dialogue on the issue of ATVs in Nash Stream Forest. The charge to the Study Committee was laid out in a memo from Phil Bryce dated December 3, 2001: “The purpose of the Study Committee is to conduct an *in depth* analysis of the issues surrounding the establishment of ATV trails on state lands by evaluating a specific proposal.” (italics added). The issue of ATVs on public lands is a highly contentious and complex issue. The Study Committee held only a single 90-minute public meeting, which was not sufficient to identify or review the complexities of this important topic. In no way did the Committee’s work represent the in depth analysis called for by Director Bryce.”

In 2013 Jim Oehler, State Lands Habitat Biologist, in a report to DRED wrote:

“Stream connectivity is not only a concern within the Nash Stream State Forest, but also the entire proposed North Country ATV trail system. Yet, there didn’t seem to be a clear plan for maintaining the Nash Stream SF or other proposed ATV trails.”

In 2014, NSFCC minutes stated “The West Side Road is under construction to fix water bars to control run-off on the ATV trail.”

In 2016, 500’ of the 50 year old West Side Road had to be relocated due to ATV use leading to erosion and instability.

In a 2016 letter to Glenn Normandeau, John Magee wrote:

“The Technical Team responsible for writing the Nash Steam Forest Management Plan visited the Kelsey Notch Trail in November 2015. I was disappointed to see the road erosion problems on this trail and the resulting truckloads of sediment that were obviously entering the perennial streams there. This is the direct result of a lack of suitable erosion control on this OHRV trail. My understanding is that there is supposed to be in place a signed agreement between DRED and the OHRV club that states the monitoring required and timelines for restoration work to preclude such erosion issues. However, no such agreement has been sent to the Technical Team. We were told during our November 2015 visit that DRED Bureau of Trails staff would speak with the local OHRV club to get the club to fix the erosion problems. My understanding is that some work was done in 2016, but that the erosion issues may be even worse now because the needed work still has not been done. Therefore, it seems that this trail should be closed until a solid, signed agreement is in place and the erosion problems are fixed. Furthermore, the agreement should include details about how often



and when assessments will be done and by when erosion issues will be fixed. Again, the sediment coming off this road and entering perennial streams is tremendous.”

On August 1, 2016, Will Staats (F&G) wrote to Glenn Normandeau:

“Earlier this year a straw vote was taken where most tech team members had strong reservations about any further ATV trail development in the forest. There also continue to be questions surrounding the issue of allowing any ATV trails in the Nash Forest and whether or not this recreational activity fits with the Vision. SPNHF, TNC and AMC have raised concerns over the legitimacy of ATVs on Nash and have also questioned the approach used to review trail proposals.”

In 2016, John Magee wrote to Glenn Normandeau:

“If any Ride the Wilds trail is connected to the West Side trail, especially if the intent is to make it part of a larger Ride the Wilds loop, it is likely that the OHRV use on the West Side Trail will increase dramatically. From my many hours walking in the mainstem of Nash Stream, a dramatic increase in OHRV traffic will certainly negatively impact the angling experience in Nash Stream. This would be particularly unfortunate given that NH Fish and Game, DRED-Division of Forests and Land and Trout Unlimited have spent more than 10 years and \$1.3 million restoring Nash Stream and its tributaries specifically for angling for wild brook trout. This is literally one of the largest stream restoration projects in the northeast. Over the years, I have heard from the mainstem of Nash Stream, OHRVs on the West Side trail, when when they are several hundred feet away. Most anglers that fish the part of Nash Stream near the West Side Trail do so for the overall experience of being away from multitudes of cars, dwellings, OHRVs and other human activities. That experience will surely be impacted by the increased OHRV use that any Ride the Wilds connector trail would bring.”

In 2017 Dayton Goudie commented:

“Some will say that ATV use within the Forest does not diminish other uses. As a hiker and a fisherman I can attest that I have heard them and I have seen their erosive effects.”

In 2017 the Metallak ATV Club received a grant from DNCR for \$10,000.00 of crushed gravel (40 loads) and \$400. of screened gravel (4 loads) to be spread on the Kelsey Notch Pilot Trails.

In 2018 they received a grant from DNCR for \$15,650.00 to add gravel to the Kelsey Notch Pilot Trail, ditch it and “fix” it.

In 2019 they received a grant from DNCR for nine dump truck loads of screened gravel (\$900.) to be put on the Kelsey Notch Pilot Trails. This means that more than 40 loads of gravel have been blown off the “trails” by ATVs. This is abuse.

In 2019, Will Guinn, Administrator of the Forest Management Bureau, wrote to Sarah Stewart and Brad Simpkins:

“A stable cover of grasses and vegetation...used to be present on the entire Westside trail prior to the use of OHRVs.”

You need to read the documents and reconsider your position on ATVs in Nash Stream, and Ride the Wilds.

In 2018: Fish and Game officers spent 12,029 hours and 3,109 overtime hours enforcing snowmobile and ATV laws. They checked 55,000 vehicles and issued 927 summonses and 882 warnings.

In 2019 Fish and Game officers spent 11,735 hours and 3,168 overtime hours enforcing snowmobile and ATV laws. They checked 19,498 vehicles and issued 1064 summonses and 848 warnings.

Despite this there are repeated complaints on the Ride the Wilds Facebook page of inadequate patrolling of the ATV trails.

Perhaps enforcing ATV speed limits while inhaling dust, and being subjected to ATVs at 96 decibels is not the work Fish and Game Conservation Officers were meant to be doing.



The incessant demand for these Conservation Officers to serve as ATV police is diminishing the time they have for their traditional jobs as guardians of New Hampshire’s Fish, Wildlife and Marine resources.

Recreational ATV use has no place in an ever-warming world of fish and game.

Kris Pastoriza  
Easton, NH  
10/2/2020  
krispastoriza@gmail.com

January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest (“NSF”). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, “Uses which are not expressly reserved by the State shall be prohibited by the State....” Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as “ATV uses”). Such uses were not “expressly reserved.” They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands (“DRED”), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its “Overview of the Nash Stream Forest,” a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, “The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests.” You may not realize that the list of NSFCC members posted on your site is out of date.

Second, “Traditional, dispersed, non-motorized recreationists” for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The ‘Snowmobile clubs’ designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called “Expertise in Recreation and Tourism” designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: “The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting’s formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.” At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen’s Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that “Existing OHRV trails are monitored annually by N.H. State Park’s Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff” is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its “Trial” and monitoring was only instituted after CORD’s December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that “Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD.” But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn’t been any monitoring of Westside, so there are no issues on the record that need to be addressed “to the satisfaction of agency resource managers and members of CORD.” That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: “Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.” Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs’ request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.



In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

Claudia Damon, Concord, N.H.

Marsha Clifford, Pittsburg, N.H.

Dick Harris, Colebrook, N.H.

Dave Evankow, Gorham, N.H.

Patti Stolte, Gorham, N.H.  
Mark Primack, Berlin, N.H.  
Dan Whittet, Berlin, N.H.  
Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA  
Susan Percy, New Gloucester, ME  
Field Rider, New Gloucester, ME  
Margaret and Eric Jones, Trustees of the Legacy Forest Trust  
Nancy DeCoursey, Jefferson, N.H.  
Michael Phillips, Groveton, N.H.  
Pat Kellogg, Littleton, N.H.  
Daniel Clarke, Gorham, N.H.  
Sarah Doucette, Whitefield, N.H.  
David Van Houten, Bethlehem, N.H.  
Jody Camille, Dummer, N.H.  
Milton Camille, Dummer, N.H.  
Bill Joyce, Stark, N.H.  
Wayne Moynihan, Dummer, N.H.  
Kim Votta, Lancaster, N.H.  
Cam Bradshaw, Berlin, N.H.  
Roger Doucette, Whitefield, N.H.  
George Brown, Shelburne, N.H.  
Howie Wemyss, Randolph, N.H.  
Representative Judith Spang, Durham, N.H.  
Stephanie Kelliher, Whitefield, NH  
Beau Etter-Garrette, Whitefield, NH

Andrea Muller, Lancaster, NH

Jeremiah Macrae-Hawkins, Randolph, NH

Emily Fox, Berlin, NH

Seth Quarrier, Berlin, NH



March 4, 2022

To CORD,

with this letter are eleven (11) documents relevant to the Nash Stream easement issues raised by AMC on 9/21/2020 which you avoided as shown in the minutes of your meeting of [November 12, 2020](#):

“... CORD is now tasked with determining whether: additional information is necessary; or if use of ATV/UTV on Kelsey Notch Trail is consistent with **RSA 162-C:6**; or if use of ATV/UTV on Kelsey Notch Trail is not consistent with **RSA 162-C:6** and the trail should cease to be open for AV/UTV use. Chairman Chicoine also noted that CORD met with its attorneys since the last public meeting to address certain legal questions.

Chairman Chicoine referenced the specific language contained in RSA 162-C:6, II and III and said that **CORD has received three legal memos to date, including one received the day before (which was a state holiday), disagreeing on what the Kelsey Notch easement allows as pertains to Section II of RSA 162-C:6.** Chairman Chicoine **suggested members focus discussion on Section III** of the statute based on the additional data contained in the three-year assessment.”

- The AMC legal [memo](#) does not mention [RSA 162-C:6](#).
- The AMC legal memo addresses the USFS [Wagner](#) and [Erl](#) 2001 interpretations of the Nash Stream S.F. easement terms and the definition of snowmobile, issues which CORD failed to address or even mention.
- The easement covers the whole of Nash Stream S.F., not just Kelsey Notch.

CORD again failed to address the easement terms at its meeting of [January 14, 2021](#), again focusing attention instead on RSA 162-C:6:

“CORD is now tasked with determining whether: additional information is necessary; or if use of ATV/UTV on Kelsey Notch Trail is consistent with RSA 162-C:6; or if use of ATV/UTV on Kelsey Notch Trail is not consistent with **RSA 162-C:6** and the trail should cease to be open for ATV/UTV use.

Chair Chicoine suggested CORD focus its discussion on specific language contained in **RSA 162-C:6, III**, “The council shall manage the lands acquired under the former **RSA 221-A** so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.”

In [1996](#) DNCR/BOT acknowledged that OHRVs were not snowmobiles.

In [2007](#) DNCR concurred with [FHWA's](#) statement that OHRVs were not snowmobiles thus not allowed on TE- funded rail trails.

CORD needs to acknowledge that ATVs are not a permitted use in Nash Stream and order DNCR to close the Kelsey Notch and West Side Trails in Nash Stream State Forest to ATV use.

Kris Pastoriza  
Easton, N.H.  
krispastoriza@gmail.com

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](#)



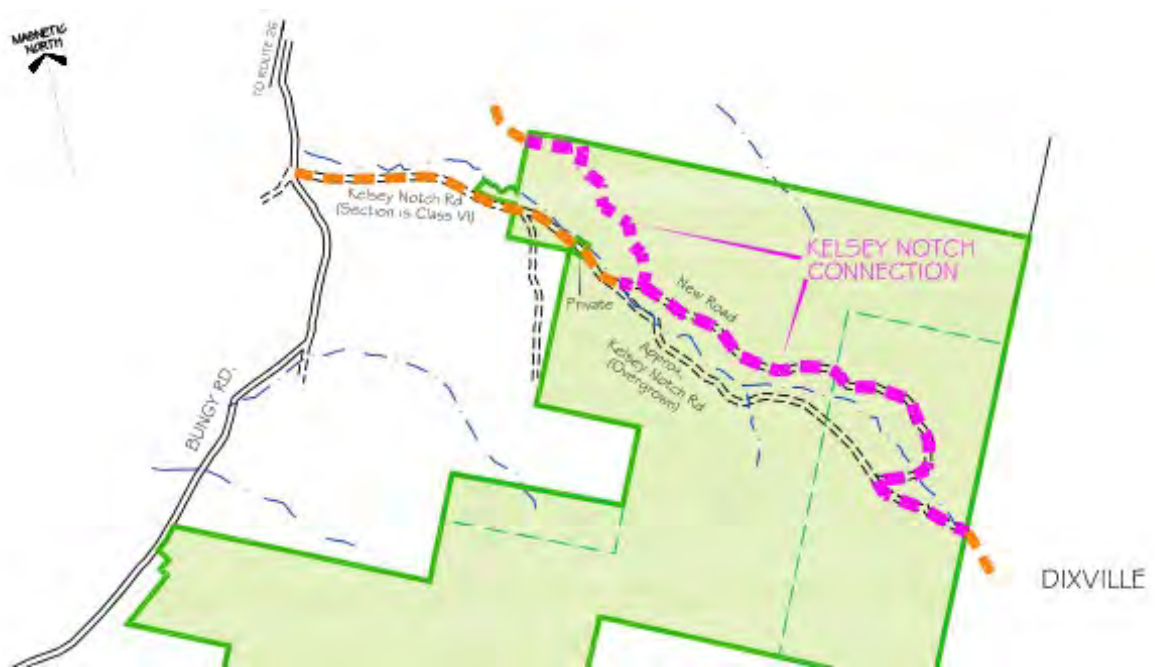
*(Kelsey Notch ATV Road. Division of Forest and Lands files, 2016)*





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 (did 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 in 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](mailto:krispastoriza@gmail.com)



Dear Chair Govatski,

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

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

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

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

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

Take care – vince v.

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

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



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



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

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

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

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

“Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails...

The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trails Patrolled														Trail Condition		
Lgting Mt	Percy Rd	BB Hill	Strat Bog	Ledge Mt.	Bell's	Blue Mt.	RR	West Side	Bord	Andz	Big Rock	Charlie's	Potato Grove	Muddy	Need Brsh	Other
44	77	74	63	3	31	17	87	22	22	27	33	59	17			

The [2005 trail report](#) has sections cut and pasted from the 2004 report. For example, despite new figures of an average of 11 other users a day reported on the trails during ATV patrols, this document goes on to state “Please bear in mind that most of our trail patrol hours are on the weekends when most riders are out there. Keeping this in mind, you will have to conclude that during the weekdays there is much less traffic than the observed 6 per day” a sentence which shows up in the 2003 and 2004 reports. The “time invested” in trail patrols is listed as 256 hours.

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

No baseline studies were done for the West Side Rd. and Andritz/Bordeau Trails. No follow-up studies have been done since 2003 though there are references to trail/road conditions in some

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

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

of the NSFCC minutes, for example the loss of cover on the West Side Road caused by ATV use.

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

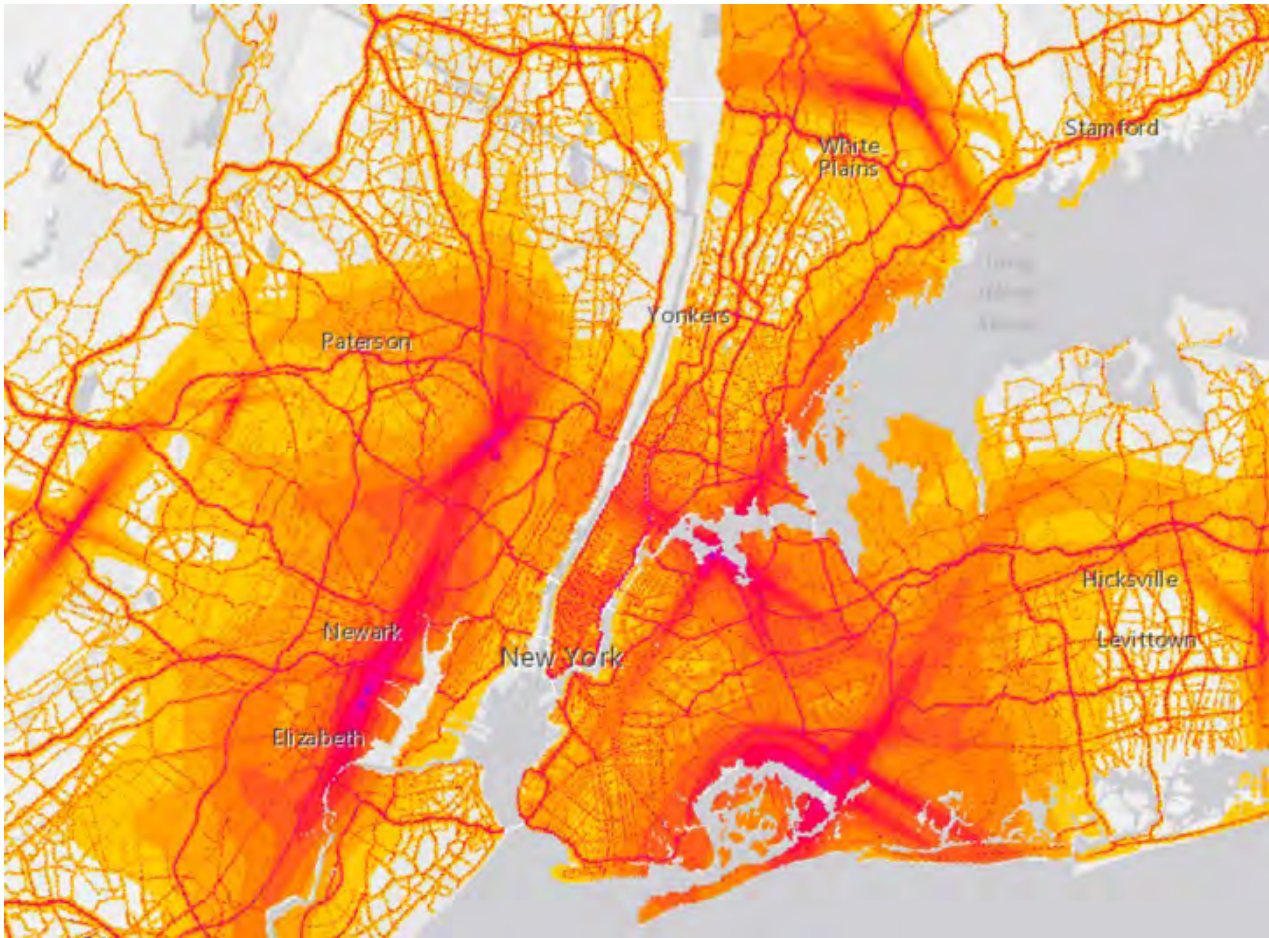
Apparently neither the Nash Stream Citizens' Committee nor DRED objected to this offer by the North Country ATV Club members to threaten other ATV users on public land.

I request that the Harvard Negotiations and Mediation Clinical Program be hired to assess the functioning of the Nash Steam Citizens' Committee, and that the Committee be required to follow, if made, a recommendation to hire a facilitator for meetings, whose expertise would be



helpful as the Committee “tackles the process and relational barriers” to responding to global warming and the ATV problem. “A facilitator, or third-party neutral without a stake in the outcome, could bring a disinterested perspective, and therefore a sense of legitimacy” to the Nash Stream Forest Citizens’ Committee meetings.

Other documents on Nash Stream State Forest are here:  
[https://nhconservation.org/doku.php?id=nash\\_stream\\_state\\_forest](https://nhconservation.org/doku.php?id=nash_stream_state_forest)



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

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

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

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

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

State Representative John Alger, 2001

