May 5, 2016

Meredith Hatfield
Chair, NH Council on Resources and Development
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301

Dear Director Hatfield and Council members:

Our three organizations are writing to advise you of our deep concern about the legal status of the two existing ATV trails in Nash Stream State Forest. After careful review of the most recent Nash Stream Management Plan, as well as the existing New Hampshire statutes governing ATV trails on state lands, we conclude that the existing trails on the Nash Stream property are not in compliance with state law.

Our organizations are not opposed to the use of ATV's for recreational purposes, nor are we opposed to the development of ATV trails on certain state lands. However, we remain concerned about current – and the potential for increased - ATV access in Nash Stream State Forest.

Unfortunately, because the state has failed to adhere to the law, our organizations are compelled to raise concerns because these trails may threaten the natural resource values these laws are intended to protect. We request that upon reviewing the requirements of RSA 162-C:6, II & III, the Council determine that the existing ATV trails are not in compliance with the law and take appropriate action.

It is vitally important that CORD provides the management oversight necessary to ensure that all trails in Nash Stream are compliant with statute, and that the establishment of trails follows a transparent and open public process. We urge CORD to take the time necessary to thoroughly examine the history of the Nash Stream acquisition, and the decision making process that has led the state to have ATV trails operating in the State Forest in violation of state statute.

AMC, SPNHF and TNC's interest in Nash Stream

In 1988, the state's Land Conservation Investment Program (LCIP) approved a grant of $7.65 million in state funding for the purchase of more than 40,000 acres of land, including the self-contained Nash Stream watershed (totaling 39,503 acres in the towns of Stark, Odell, Stratford and Columbia). At the same time, The Nature Conservancy (TNC) and the Society for the Protection of New Hampshire Forests (SPNHF) jointly guaranteed a loan of $5.1 million to bridge the difference between the LCIP grant and the full purchase price of the Nash Stream watershed.

A closing took place on October 27, 1988 where the state of NH purchased 46,679 acres for $12.75 million and re-conveyed 4,496 acres to the Forest Service for $1.175 million. The Forest Service also agreed in principle to share the costs of the Nash Stream acquisition through the purchase of a Conservation Easement on the property. As the terms of the easement were being negotiated, SPNHF and TNC loaned the state $3.925 million to provide the balance of the purchase price.

Finally, on August 4, 1989, the Conservation Easement on Nash Stream was sold to the United States of America for $3.95 million and the TNC/SPNHF loan was repaid with appropriate interest. Today, Nash Stream Forest is NH's largest single state forest.

Our three organizations were advocates at the time for state acquisition of the Nash Stream State Forest, and have since been actively engaged in collaborative efforts – including serving on the Nash Stream Citizens Committee - to manage the land for the benefit of the citizens of the State.

The LCIP originally conserved this land for two primary reasons. The first was to protect the entire Nash Stream watershed as an ecologically intact working forest, for the property's natural resource values, including the economic value associated with sustainable management of the timber resources. The second reason was to reserve for the public the traditional recreational uses of what had long been privately owned and managed forest land. It should be noted that ATV use was not a traditional use [previously allowed by private landowners], and the original DRED forest management plan for Nash Stream specifically prohibited ATV use.

Role of Council on Resources and Development

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

> *II. In addition to its other responsibilities, the council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with persons with ownership interests in such lands.*
>
> *III. The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.*

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

[1] https://www.nh.gov/oep/planning/programs/cord/

purchased using public dollars, and held in the public trust. It is critical that CORD exercise its statutory authority when management of these resources is shown to be detrimental to those resources, or in clear violation of state statute.

In the specific case of Nash Stream, the Department of Resources and Economic Development (DRED) 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 DRED is not properly managing LCIP lands under its control, CORD needs to take corrective action.

Existing Trails in Nash Stream in Clear Violation of RSA 215-A: 42.

Our review of available information suggests DRED did not follow existing state law when establishing ATV trails on the Nash Stream property; the first of which (the West Side Trail) began operation as a pilot in 2002, and an additional trail, the Kelsey Notch trail, was established by DRED as a pilot in 2012.

RSA 215-A: 42 is clear that specific criteria must be met before any ATV trails are established on state owned lands:

> *No ATV or trail bike trail shall be established after the effective date of this paragraph or subsequently maintained on state-owned property unless all of the following [four] conditions are met:*

There is no ambiguity in this language, and the statute is unequivocal that not just some of the conditions (a-d below) of the statute need to be met before trails can be established, but DRED is required to ensure that <u>all conditions</u> explicitly outlined in statute are met.

The four conditions set forth in RSA 215-A:42 are:

> *(a) The property has been evaluated by the bureau in cooperation with the department of fish and game and the department of resources and economic development, division of forests and lands, and other state agencies that are custodians of the property using the coarse and fine filter criteria, established under RSA 215-A:43, and has passed such criteria as determined by the commissioner of the department of resources and economic development and the executive director of the department of fish and game.*

To our knowledge, DRED has never made publicly available any of the "coarse filter" and "fine filter" reviews required for each of the existing ATV trails in Nash Stream. In reviewing CORD's meeting minutes of last year when this topic came up several times, there is no indication that DRED has informed CORD when and if these reviews have been done. CORD should require DRED to provide to CORD and the public the completed analysis for each trail per the coarse and fine filter requirements set forth in RSA 215-A: 43.

> *(b) A memorandum of understanding (memorandum) exists between the bureau, the fish and game department, the department of resources and economic development, division of forests and lands, and all other state agencies that are custodians of the property. The memorandum shall include, but not be limited to, the responsibilities that each agency has in monitoring,*

maintaining, and enforcing relevant laws relative to the trail and the type of OHRV permitted on approved trails. The bureau shall enter into the memorandum only if it is certain that proper monitoring and maintenance of the trail shall occur, either through its own resources or those of others. The fish and game department shall enter into the memorandum only if it can commit sufficient resources to reasonably monitor for proper ATV or trail bike use on the property and enforce the applicable laws.

According to CORD's public meeting minutes of July 8, 2015, a DRED staff representative replied to an inquiry that he "did not believe" any memorandum of understanding exists for any of the Nash Stream ATV trails. Operating a trail system on state lands without an existing MOU is a major concern because the State's capacity to monitor and enforce ATV laws is already stretched thin. If such a memorandum does exist, it should be immediately transmitted to CORD.

(c) A written agreement is in effect between the bureau and a locally-organized ATV or trail bike club recognized by the bureau that details the club's ongoing responsibilities, including but not limited to, monitoring the use and condition of the trail, erecting signage, educating operators, performing maintenance, and monitoring compliance with laws and regulations. Should the club fail to fulfill some or all of its responsibilities, the bureau or its agent may assume such responsibilities provided sufficient resources are available and committed.

We have been provided with two written agreements for the ATV trails in Nash Stream. One is between DRED and the North Country ATV Club for the West Side Connector Trail, signed in February of 2013 with no expiration date. The second agreement is between the Metallak ATV Club and DRED, covering the Kelsey Notch pilot trail for a three year period, and was signed in May 2013. This agreement expires at the end of May 2016. If CORD has not already done so, it should request that DRED provide all agreements required under this statue for ATV trails in Nash Stream, and ensure that the agreements are up to date and complete and that they are being monitored for compliance with statute.

d) A management plan exists for the property that specifically allows ATV or trail bike use on the property, and the ATV or trail bike trail does not otherwise conflict with the management plan. Any state agency proposing to establish or change a management plan that affects ATV or trail bike use on state property shall publicize such plan and provide the public with the opportunity to comment on the plan before enactment.

While the 2002 management plan for Nash Stream does allow for one trail (the West Side Connector), it specifically prohibits any additional trails being developed on the property. Specifically, amendments were made to the management plan on page 50 to make this point quite clear:

"Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail (aka the Farrer Brook Trail #14 Map 3 page 24), the West Side Road (#52 Map 3), and the Andritz Trail (aka Stratford Mtn Rd #44 Map 3). This is a pass through trail set up as a pilot project for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property."**

In 2012, DRED approved a new "pilot trail" - Kelsey Notch - which is explicitly not permitted by the existing management plan for the Nash Stream State Forest. The language of the management plan is quite clear: the West Side Trail is the only ATV trail allowed in Nash Stream. Without amendments to the Nash Stream management plan, the Kelsey Notch Trail is not permitted. In fact, there appears to be no statutory authority for DRED to establish "pilot" OHRV or ATV trails on lands acquired by the LCIP. There have been no amendments to the Nash Stream Management plan that would allow DRED to establish any additional ATV trails on the property. DRED had no authority to authorize ATV use of the Kelsey Notch Trail.

Conclusion

The core issue we would like CORD to address at this time regarding ATV use of trails in Nash Stream is whether current law is being complied with, and, if not, what the appropriate remedy is. As discussed above, we believe the existing trail network in Nash Stream is not in compliance with RSA 215.

Nash Stream was purchased by the state through the LCIP program using public dollars. CORD has a statutory obligation to administer and manage these lands in keeping with the values and purposes for which the lands were purchased. A key component of the proper management of these lands is ensuring that activities being carried out on them are in compliance with state statute. Unfortunately, In the case of the ATV trails in Nash Stream, it appears that DRED has not followed the letter, or the intent, of the laws governing such trails on state lands. The remedy is for CORD to assure compliance, and to ensure that there is a well-informed and transparent public process when contemplating the continued use, or potential expansion, of ATV trails in Nash Stream.

Thank you for your prompt attention to this matter. We are available to meet and discuss this important issue at your convenience.

Sincerely,

Will Abbott
Vice President Policy
Society for the Protection of NH Forests

Susan Arnold
Vice President for Conservation
Appalachian Mountain Club

Jim O'Brien
Director of External Affairs
The Nature Conservancy