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DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
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Amanda Merrill, Chair
NH Council on Resources and Development
107 Pleasant Street, Johnson Hall
Concord, NHH 03301

Dear Chairperson Merrill and Councilors:

The Department of Resources and Economic Development (DRED) received the May 5, 2016 letter from the Appalachian Mountain Club (AMC), The Nature Conservancy (TNC), and the Society for the Protection of New Hampshire Forests (SPNHF) directed to the Council on Resources and Development (CORD) and responds as follows.

One of the most challenging responsibilities of State agencies is managing public lands. Due to the many diverse uses and competing interests, agencies must use reasonable and measured approaches in dealing with these competing interests. DRED believes that it has done so with respect to its management of the Nash Stream State Forest and the establishment of one designated ATV trail and one pilot ATV trail.

DRED is the agency responsible for managing the activities on the 40,000 acre Nash Stream State Forest (Nash Stream). *See* RSA 227:H, *et seq.* and Res 100, *et. seq.,* specifically Res 101.06 listing Nash Stream Forest as being a state property "owned, leased, managed or under the control of [DRED]." . When Nash Stream was purchased by the State on October 27, 1988, it was purchased with LCIP funds with the United States Forest Service holding a conservation easement on the Forest, granted on August 4, 1989. Nash Stream was purchased to provide forest products through timber harvesting, public access for recreation, and protection of the beauty and ecological values of the area. Management of Nash Stream was assigned to DRED. At that time, CORD did not have management responsibilities for properties purchased with Land Conservation Investment Program (LCIP) funds. However, in 1995, 1998 and 2000, RSA 162-C:6 was modified to provide CORD with responsibilities to manage lands purchased with LCIP funds. The relationship between DRED and CORD regarding the management of Nash Stream and the agencies' interactions has been evolving since the statutory changes.

In 1996, the first Nash Stream Forest Citizen Advisory Committee (Nash Stream Advisory Committee) was created by DRED under the first Nash Stream Management Plan, which took 6 years to establish. This Committee included members from SPNHF, AMC, TNC, White Mountain National Forest, Audubon Society and the New Hampshire Timberland Owners Association to name a few. On November 8, 2001, the Nash Stream Advisory Committee created an 11 member ATV study site subcommittee (the ATV subcommittee) to review possible

ATV trails on Nash Stream. The State also has a statewide ATV plan that was created in 2003 in accordance with HB 1273 which authorized funding for the creation of the statewide ATV plan. Despite the lack of funding for updates to the ATV plan, in February of 2007 the Jericho Mountain State Park Master Plan included statewide ATV plans. DRED is also preparing to partner with the North Country Council to create a North Country Trails Plan with the work to begin this summer.

West Side Trail

As part of its management plans, DRED has established one designated ATV trail in Nash Stream, the West Side Trail. In 1999, both the Nash Stream Advisory Committee and members of the State Land Cooperative Management Committee met jointly to walk a possible pilot ATV trail in the West Side Road area. In its 2002 Nash Stream Forest Management Plan Updates and Revisions, DRED explained that it was working to create a pilot ATV trail that would be on the West Side Road and adjoining rails (Bordeau and Andritz) for a period of up to 5 years with the DRED Commissioner having the ability to renew, revoke or continue the pilot at the end of 3 years for an additional 2 year period, or to formally adopt the trail as part of Nash Stream's recreational trail network. The first year for use of the trail was proposed to be after July 2002. The purpose of the pilot trail process was to determine the suitability and impact of the operation of ATVs on Nash Stream Forest under the land stewardship philosophy and guidelines established and adopted in the Management Vision. The decision was supported by the ATV subcommittee at its December 11, 2001 meeting although a minority report was filed by two subcommittee members on February 7, 2002. Both reports were provided to the Nash Stream Advisory Committee at its February and May, 2002 meetings. Final updates and revisions to the management plans were approved by DRED in June 2002, including the creation of an ATV trail pilot project.

During the 2002 legislative session, RSA 215-A:41, *et. seq.*, was enacted with certain requirements for the establishment of ATV or trail bike trails on state-owned properties. *See* HB 1273, 2002 NH LAWS Chapter 233:16. As part of that legislative session, the Legislature encouraged DRED to "move forward with the planning and approval process for an appropriate ATV connecting trail in the Nash Stream Forest, in cooperation with a local ATV Club." *See* 2002 NH LAWS Chapter 233:20. As a result of the Legislature's directions and decisions of the Nash Stream Advisory Committee with input from its ATV subcommittee, the West Side Trail was created as the original pilot trail.

Four Conditions For Establishing An ATV/Dirt Bike Trail

Under RSA 215-A:42, four conditions were enacted in order for an ATV trail to be established on state-owned properties. The first condition requires that the coarse and fine filter criteria in RSA 215-A:43 be analyzed and passed as determined by the Commissioner of DRED and the Executive Director of the Department of Fish and Game (F&G). The review is to be done with other state agencies that are custodians of the property. *See* RSA 215-A:42 (I)(a). DRED did analyze all of the coarse and fine filter criteria and then-Commissioner George Bald

approved the West Side Trail as a pilot trail on July 15, 2002. This was reported to CORD in the FY2002 Report of Monitoring and Enforcement Activities and reflected in the CORD meeting minutes of November 7, 2002.

There is no restriction in the deed or conservation easement for Nash Stream prohibiting ATVs. Additionally, letters from Tom Wagner, Forest Supervisor for the White Mountain National Forest, and Paul Stockinger, from the office of General Counsel of the United States Department of Agriculture, dated September 25, 2001, December 10, 2001 and December 11, 2001, found that the "State may ban/allow/regulated public ATV use of trails and roads for recreational purposes." As stated in RSA 215-A:43 (I), the "trail proposal shall be considered to have passed the initial screening process if the [statutory] coarse filter criteria are met…" The fine filter criteria, established in RSA 215-A:43 (II), were reviewed and analyzed, and as stated in the statute, the trail "shall be considered to have passed such phase if the [statutory] fine filter criteria are met."

Baseline information was gathered beginning in 2002, including a bird survey, baseline noise study, surface water study, mammal track study, turtle survey, and the studies continued. In 2005, then-Commissioner Bald continued the pilot status of the West Side Trail for 2 additional years to allow for further study. This continuation of the pilot status was explained in DRED's management plan. In July 2004, House Bill 1138 became law formally creating the Nash Stream Forest Citizens Committee (Citizens Committee) and codifying it in RSA 12-A:9-c. After completing the studies, on January 25, 2007, all of the information was provided to the Citizens Committee. On March 21, 2007, then-Commissioner Bald issued a letter adopting the trail.

Copies of the management plans, baseline information, the coarse and fine filter criteria, and Commissioner Bald's letter are available if CORD would like to review them. These documents have been available for public review, possibly with some redactions, for years. Further information was provided to the Nash Stream Committee on the ATV trail in 2001 through 2009.

The second condition requires that a memorandum of understanding (MOU) exist between DRED and F&G to enforce the ATV laws on the property. Written MOUs did not exist between DRED and F&G though verbal ones did until 2013. Since 2013, written MOUs between DRED and F&G pertaining to OHRV law enforcement have been annually approved by the Governor and Executive Council. Law enforcement responsibilities are shared in Nash Stream by both F&G's Conservation Officers and DRED's Forest Rangers, although the bulk of the law enforcement responsibilities have fallen to DRED in the past 5 years with funding from F&G.

The third condition is that a written agreement be in effect between DRED and a locally-organized ATV club. Such agreements exist between the North Country ATV Club for the West Side Trail, and the Metallak ATV Club for Kelsey Notch. These agreements can be provided.

The fourth condition requires that a management plan exist that specifically allows ATV use and public notice of changes regarding ATV use. In June 2002, DRED issued the Nash Stream Management Plan Updates and Revisions. That plan provided for a 3-5 year pilot ATV trail on the West Side Road, with the ability to formally designate the ATV trail residing with the Commissioner of DRED. All of the ATV trail changes have been discussed with the Citizens Committee, which is a public body with public notice of all of its meetings. Additionally, DRED has discussed with CORD, over the years, both the West Side Trail and the newer pilot trail, Kelsey Notch.

Kelsey Notch Trail

The Kelsey Notch Trail is a pilot proposal that is addressed in the update to the management plan which will be presented to CORD at the September 8, 2016 meeting. With respect to the Kelsey Notch Trail, it too has been reviewed in accordance with RSA 215-A:41, *et. seq.* It was established as a stand-alone pilot trail which, along with other alternatives, is included in the most recent version of DRED's draft management plan that is currently under development. On November 12, 2012 , the pilot for the Kelsey Notch Trail was discussed at the Nash Stream Committee meeting. DRED employees, Will Staats, a F&G biologist, and Craig Rennie, a Department of Environmental Services employee, walked the proposed trail in 2013 to review the area. At the March 14, 2013 CORD meeting, DRED presented a proposal for two ATV trails in Nash Stream. A second meeting was scheduled. In a March 28, 2013 email and then at the April 11, 2013 meeting, the Kelsey Notch Trail pilot proposal was discussed in more detail with CORD. DRED explained that it had performed the coarse and fine filter reviews. At that meeting, CORD determined its role to be advisory with respect to the pilot of the Kelsey Notch Trail. The Kelsey Notch Trail opened for use in May, after the April 2013 CORD meeting. There was a law enforcement MOU with F&G and an ATV club agreement by May 22, 2013. There are current versions of these documents as well. Copies of those documents are available for review. An update on the Kelsey Notch Trail was provided to the Citizens Committee on November 6, 2013.

For the Kelsey Notch Trail, the coarse and fine filter analysis was reviewed and updated from the establishment of the West Side Trail. Additionally, State officials and stakeholders, as the Nash Stream technical team, did a field tour of the pilot Kelsey Notch ATV trail on November 4, 2015. The technical team included Maggie Machinist, Ken Desmarais, Todd Caron, Jim Oehler, Steve Walker, Clint Savage, Bill Carpenter, John Magee. One important note regarding the Kelsey Notch Trail is that it was partially an already existing dirt road and partially an already existing snowmobile trail before it became a pilot ATV trail. It was improved to become a pilot ATV trail but the infrastructure pre-existed the ATV trail.

Current Nash Stream Management Plan

With respect to the current Nash Stream management plan, an update and overview on its status was presented at the July 8, 2015 CORD meeting. Again on September 10, 2015, an update was provided on the status of the management plan revisions. The draft management

plan will be presented to CORD for review at the September 8, 2016 CORD meeting. That plan includes alternatives regarding establishment of ATV trails on Nash Stream, including the Kelsey Notch Trail as a permanent trail. DRED is seeking CORD's review of and input on the possible alternatives that are being considered.

DRED believes that it has acted responsibly with respect to establishing the West Side Trail and the pilot Kelsey Notch Trail in Nash Stream. With respect to AMC, TNC and SPNHF's argument that there is no authority in RSA 215-A to establish pilot ATV trails, CORD should note that there is also no restriction on DRED being able to do so. By establishing pilot trails and reviewing the possible impact of these trails, using the criteria established in RSA 215-A:42, *et. seq.*, DRED believes that it is following a reasonable and measured process. The intent of RSA 215-A:42, *et. seq.*, was to allow public input before moving forward with establishing ATV or dirt bike trails on State-owned properties. DRED has provided public input from the beginning of its management of Nash Stream through the public meetings and hearings of first the Nash Stream Advisory Committee and then the Nash Stream Committee. Further, as CORD's role changed with respect to Nash Stream, DRED has also provided public notice and presentations at CORD meetings.

With respect to DRED and CORD's responsibilities to each other, both entities are being advised by their respective counsel from the Attorney General's Office and need to proceed under that guidance. DRED believes that it must provide a management plan to CORD for its review. However, how DRED implements the management plan, as long as it is in compliance with state law, is DRED's responsibility. DRED is more than willing to provide information and updates to CORD on LCIP properties as requested.

Finally, it is important to note that AMC, TNC and SPNHF have been in communication with DRED during the current management plan revision process and some or all of them have seats on the Citizens Committee. Being important partners of the agency, they have been invited into the process and have had the opportunity to participate. DRED believes that it has complied with the requirements and legislative intent of RSA 215-A:41, *et. seq.* and welcomes the opportunity to work more closely with CORD, as well as all of our partners, on the future management of the Nash Stream Forest.

If CORD would like to review the voluminous documents supporting DRED's management decisions regarding the West Side Trail or the Kelsey Notch Trail, DRED would be happy to provide those documents.

Very truly yours,

Jeffrey J. Rose
Commissioner