

PILOT
MEMORANDUM OF AGREEMENT
For
ATV Trails
AT
NASH STREAM FOREST

Pursuant to New Hampshire RSA Chapter 215-A:3 "Off Highway Recreational Vehicles and Trails", and under the provisions of Res 8500 "Bureau Trail Use Rules", this Memorandum of Agreement ("the MOA") is entered into this 22nd day of MAY, 2013, between the **New Hampshire Department of Resources and Economic Development**, (the "STATE"), with a principle mailing address of P.O. Box 1856, Concord, NH 03302-1856 and the **Metallak ATV Club**, (the "CLUB"), P.O. Box 318, Colebrook, NH, 03576, for the purpose of providing the opportunity for the public to operate all-terrain vehicles (ATVs) on a portion of state-owned property known as "Nash Stream Forest" (the "PROPERTY") in Columbia NH, as prescribed below.

WHEREAS, Nash Stream Forest is the largest state-owned forestland in New Hampshire at 39,601 acres, and pursuant to the "Nash Stream Management Plan", is open to public use and managed for multiple uses and resource values including off-highway recreation vehicles (OHRVs) where approved; and

WHEREAS, on November 13, 2012 the Nash Stream Citizen Advisory Committee considered a proposal for ATV connector trails in the Kelsey Notch area of Nash Stream Forest and recommended approval of a 3-year "pilot" agreement; and

WHEREAS, the Division of Forests and Lands, pursuant to RSA 227-G, has the responsibility for the management of all state-owned forestlands, and to cooperate with the Division of Parks and Recreation in promoting recreational use of state-owned forestlands; and

WHEREAS, the Division of Parks and Recreation, pursuant to RSA 216-A:3, has the responsibility for recreation, development and management of state-owned parks and forests, and to cooperate with the Division of Forests and Lands in the joint promotion of forest recreation and forest management of state-owned forestlands; and

WHEREAS, the United States of America holds a Conservation Easement on the Nash Stream Forest that provides for State-managed public use on its roads and trails; and

WHEREAS, the Division of Parks and Recreation, Bureau of Trails, pursuant to RSA 215-A, is responsible for establishing and administering ATV trails in cooperation with state and private interests for public benefit, administering funds for the development and maintenance of OHRV trails, and working with organized trail clubs in support of the activity; and

WHEREAS, the CLUB is a recognized non-profit group by the State of New Hampshire that secures rights to designated ATV trails for its members and the public, and has a policy of closely patrolling 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 corridors (the "TRAIL") over existing ways known as "Kelsey Notch Road Trail" and "Kelsey Notch Connection Trail", on the PROPERTY, as depicted on an attached plan.
- 2) The STATE hereby grants to the CLUB, in cooperation and coordination with the STATE, the exclusive rights to operate, manage and maintain, and to promote responsible public use of the TRAIL under a "pilot" three (3) year term commencing from the effective date of the MOA, thru December 15, 2016, for the seasonal period of May 23rd after continuous snow cover has melted, until December 15th.
- 3) Throughout the 3-year pilot term, the CLUB agrees to work with the STATE to mitigate the impact of the TRAIL on natural resources and other uses of the PROPERTY.
- 4) Throughout the 3-year pilot term, the CLUB agrees to maintain the TRAIL in a litter-free condition and shall promptly dispose of all litter, trash and manmade debris in a proper manner.
- 5) The CLUB agrees to assist the STATE in the maintenance of the TRAIL for all matters relating to ATV use, including sign replacement and maintenance, routine structure inspection and repairs and may apply for Grant-In-Aid funds for other projects, as requested by the STATE. The CLUB agrees to conduct ATV use related maintenance using best management practices as described in "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau) or any successor standard. The STATE, and its agents, reserves the right to enter the PROPERTY with persons and equipment for purposes of maintaining the TRAIL. Through the Grant-In-Aid PROGRAM, maintenance activities by the CLUB shall include, but not be limited to, installation and replacement of bridges and culverts, rocks and stump removal, smoothing the trail surface, placement of gravel and natural fill, installation of broad based dips, water bars and ditches, removal of fallen trees and cutting back encroaching vegetation. All maintenance activities must be approved through a Trail Maintenance Work Plan (the "PLAN"), or the Grant-in-Aid projects. The TRAIL and any and all improvements shall remain the property of the STATE.

The STATE agrees that the CLUB shall not be responsible for repairs to Kelsey Notch Road Trail or Kelsey Notch Connection Trail resulting from unexpected catastrophic events, natural or otherwise, but hereby agrees to work with the STATE to complete any such repairs.

- 6) The STATE reserves the 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;
 - damage to the TRAIL may occur due to heavy rain, mud, or other condition;
 - use of the Trail is resulting in unauthorized ATV use on the PROPERTY;
 - any other reason that is not immediately resolvable by the STATE and the CLUB;
 - loss of permission from abutters to cross their lands, thereby rendering the TRAIL inaccessible, and.
 - no reasonable alternatives are available when forest management activities require direct use of the TRAIL

- 8) In the event that the STATE must effect a planned closure of the TRAIL, the STATE shall give the CLUB no less than one (1) week notice prior to closure.
- 9) The CLUB shall obtain all necessary federal, state and local permits and approvals for projects done by the CLUB, and remain in compliance with and abide by the terms of said permits and approvals, and all federal, state, and local laws and regulations regarding new construction, maintenance and supervision of use upon the TRAIL.

MONITORING TRAIL USE :

In cooperation and consultation with the STATE, the CLUB agrees to monitor ATV usage on the TRAIL, and communicate with other users of the TRAIL, to promote public safety and reduce any possible negative environmental impact. The STATE and the CLUB agree to meet at least twice annually, before May 23 and within one month of the annual closing date, and more often at the request of either party, to discuss ATV use issues that may develop and to consider management options.

The STATE, and its agents, reserves the right to access the TRAIL with persons and equipment at any time.

LIMITATION OF LIABILITY :

Nothing in the Memorandum of Agreement (MOA) shall be a basis for any liability on the part of the STATE with respect to personal injury or property damage sustained by any person. The STATE is entitled to the protections of RSA 508:14, RSA 212:34 and sovereign immunity. The Club shall defend and indemnify and save the State of New Hampshire harmless for any liability, damage, loss, cost or expense caused by the Club for injury to persons or property arising out of, or incidental to, the use of the TRAIL as herein permitted.

COMPLIANCE WITH DEPARTMENTAL REGULATIONS AND POLICIES:

The use of ATVs on the PROPERTY shall be in accordance with New Hampshire laws and the STATE'S rules and regulations pertaining to such use. The term "ATV" is defined in RSA 215-A: 1.

NON-EXCLUSIVE USE:

The TRAIL shall be open to the public for ATV use as defined in RSA 215-A:1 and shall not be limited to use by members of the CLUB.

RESPONSIBILITIES OF THE CLUB:

Annually the PLAN shall be prepared with the assistance of the Trails Bureau and submitted by December 1st, to the STATE. The PLAN shall include, but not be limited, to the following:

- TRAIL monitoring reports
- TRAIL maintenance reports
- Record of the previous year's maintenance activities to include hours of volunteer work and maintenance costs – both state-grant funded and other funding source activities;
- Routine maintenance activities

The PLAN shall be reviewed and approved by the Division of Forests and Lands and the Bureau of Trails within thirty (30) days of submission. Issues, if any, rendering the PLAN unacceptable, shall be resolved by the STATE and the CLUB before the TRAIL may be opened for the approaching season. The CLUB shall work cooperatively with the STATE to do such things as are reasonably necessary and practicable (including the use of gates, barriers and appropriate official signs) to keep ATV use on the TRAIL and to restrict access by vehicles other than ATVs. Any proposed work to the TRAIL by the CLUB shall not be permitted until all environmental permits are secure and copies are submitted to the Trails Bureau.

RESPONSIBILITIES OF THE STATE :

In cooperation with the CLUB, the TRAIL shall be adequately marked by the STATE in accordance with the "Trail Signing Handbook: Guidelines for Signing Snowmobile Trails" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau), or any successor standard, to indicate location of the TRAIL, to restrict ATV use to within the designated TRAIL corridor, and to restrict access by vehicles other than ATVs. All spur, side or connecting trails will be posted to indicate that ATV access and use thereon is prohibited.

AMMENDMENTS:

The MOA may be amended only in writing through mutual agreement by the STATE and the CLUB.

TRANSFERABILITY:

The CLUB, upon written approval from the STATE, may transfer its rights and responsibilities under the MOA to another qualified non-profit group if it is determined that the CLUB is no longer able or willing to abide by the terms and conditions of this MOA. In the event that this MOA is not transferred, the Commissioner of DRED shall make an assessment to determine whether to continue or not continue ATV use and TRAIL designation on the PROPERTY.

TERMINATION:

The STATE or the CLUB may terminate the MOA with a 30-day written notice to the other party, for any reason deemed appropriate by either party.

DISPUTES:

Prior to the filing of any formal proceedings with respect to a dispute, the party believing itself aggrieved shall call for progressive management involvement in the dispute negotiation by written notice to the other party. The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed.

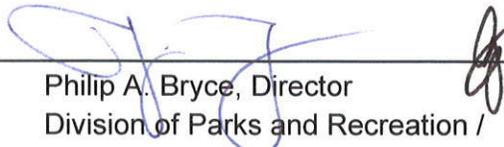
If the dispute is not resolved informally, disputes may be resolved by filing an action in the Merrimack County Superior Court.

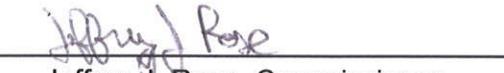
This AGREEMENT is to be construed according to the Laws of the State of New Hampshire.

SIGNATURES:

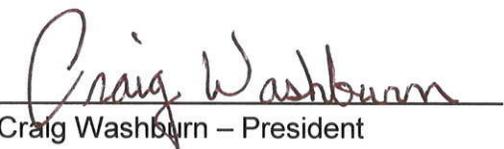
“STATE” – New Hampshire Department of Resources and Economic Development

BC.
By:  5/20/13
Brad W. Simpkins, Interim Director
Division of Forests and Lands
Date

By:  5-22-13
Philip A. Bryce, Director
Division of Parks and Recreation /
Date

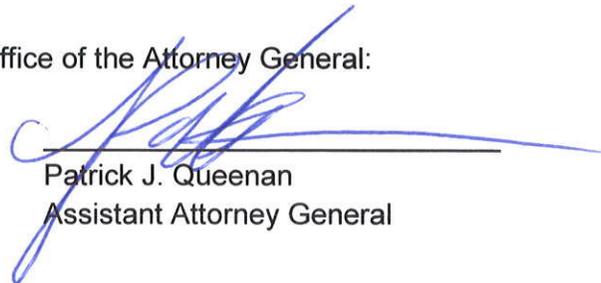
By:  5/22/13
Jeffrey J. Rose, Commissioner
Date

“CLUB” – Metallak ATV Club

By:  5-14-13
Craig Washburn – President
Duly Authorized
Date

Approved as to form, substance and execution by the Office of the Attorney General:

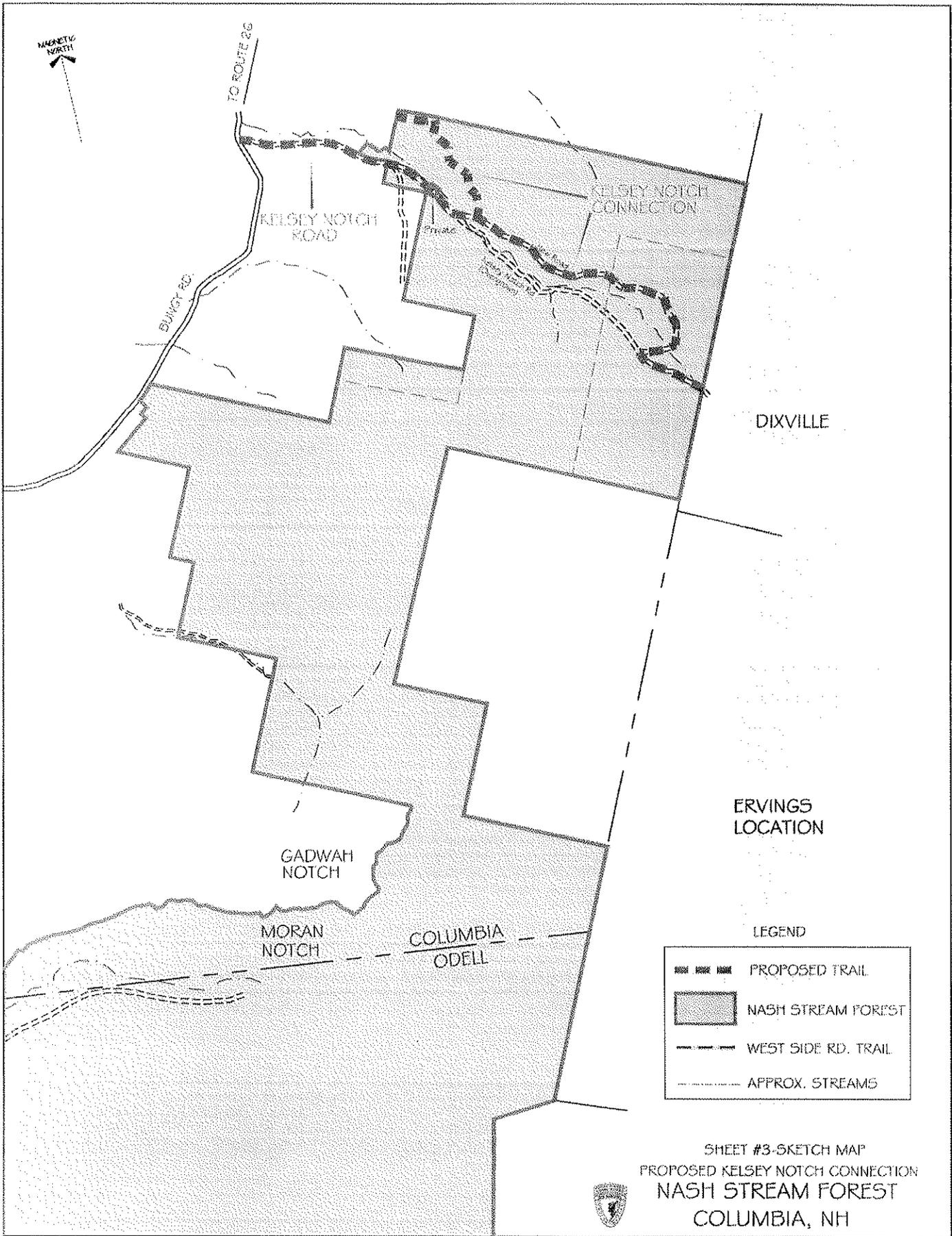
5/24/13
Date


Patrick J. Queenan
Assistant Attorney General

Notices

All notices pursuant to this MOA should be sent to the following parties;

Brad Simpkins, Interim Director Forests and Lands PO BOX 1856 Concord, NH 03302-1856	Margaret Machinist, North Region Forester Forests and Lands - North Region Headquarters 629B Main Street Lancaster, NH 03584-3612
Christopher Gamache, Chief Supervisor NH Bureau of Trails PO BOX 1856 Concord, NH 03302-1856	Craig Washburn, President Metallak ATV Club P.O. Box 318 Colebrook, NH, 03576
Nash Stream Forest Citizen Advisory Committee C/O Forests and Lands PO BOX 1856 Concord, NH 03302-1856	



NASH STREAM FOREST LOCATION