

**MEMORANDUM OF AGREEMENT**

**For  
ATV Trail  
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 ("MOA") is entered into this 13 day of FEB, 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 **North Country ATV Club**, (the "CLUB"), P.O. Box 161, Stratford, NH 03032, for the purpose of providing the opportunity for the public to operate all-terrain vehicles (ATVs) on state-owned property known as "Nash Stream Forest" (the "PROPERTY") in Stratford, 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);

**WHEREAS**, the Nash Stream Management Plan provided for an "ATV Use – West Side Connector Pilot Program" and the five (5) year trial period was successful and the advisory committee voted on January 25, 2007 to issue a 3 year agreement;

**WHEREAS**, Chapter 233-20 of the NH Laws of 2002 directs the Commissioner of the Department of Resources and Economic Development to move forward toward the establishment of an ATV connecting trail in Nash Stream Forest;

**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,;

**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;

**WHEREAS**, the United States of America holds a Conservation Easement on the Nash Stream Forest that assures perpetual public use and protection of the forest and provides for OHRV use on its roads and trails;

**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 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 – Nash Stream Forest" (the "PLAN"), attached as ATTACHMENT A.
- 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 three (3) year term commencing from the effective date of this Agreement thru December 15, 2015, for the seasonal period of May 23<sup>rd</sup> after continuous snow cover has melted, until December 15<sup>th</sup>.
- 3) Throughout the PROGRAM, 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 PROGRAM, 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.
  - a. The CLUB and the STATE recognize that a portion of the TRAIL known as "West Side Road" is maintained by the STATE as a Class B Gravel Summer Road, under the Nash Stream Forest Management Plan. The CLUB shall not be responsible for the maintenance of West Side Road associated with the normal wear and tear of the Road due to non-ATV use.
  - b. The STATE agrees that the CLUB shall not be responsible for repairs to the TRAIL resulting from unexpected catastrophic events, natural or otherwise.

6) The STATE maintains 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 insurmountable by the STATE and the CLUB, which would cause public safety or environmental concerns sufficient enough to close the TRAIL to ATV use; and
- loss of permission from abutters to cross their lands.
- no reasonable alternatives are available when trail use and forest management activities can not safely be accommodated on the developed roads .

8) If the STATE closes the TRAIL, the STATE shall meet with the CLUB immediately, in no case to exceed one (1) week, to discuss the reasons for closing the TRAIL and corrective action to be taken, provided such action is acceptable to the STATE.

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 ensure that the special ecological conditions, as identified in the baseline documentation collected for the PROGRAM on file with the STATE, are not substantially diminished or degraded by ATV use and that ATV use is limited to the designated TRAIL and is done in compliance with then existing state laws, administrative rules and this Agreement. 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 to establish and maintain monitoring stations and study plots.

#### **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 section 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 (completed through the "Volunteer Trail Patrol Program" – see ATV Education Section below);
- TRAIL maintenance reports (completed through the "Volunteer Trail Patrol Program" – see ATV Education Section below);
- 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;
- Annual "Pilot Program Summary Report" summarizing the status of the PROGRAM to date; and
- 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 :**

Prior to the commencement of the PROGRAM, 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.

**ATV-USER EDUCATION:**

The CLUB shall conduct ATV use education prescribed by the STATE known as the Volunteer Trail Patrol Program ("PATROL") on the TRAIL. The PATROL shall include continued monitoring of TRAIL use, abuse and interaction with users to assure compliance with the terms of the MOA and recording of routine TRAIL maintenance. The CLUB shall submit copies of "Trail Patrol Reports" to the Bureau of Trails. The CLUB shall provide the users with information regarding authorized riding areas and post necessary signs pertaining to protection of water quality and other environmental issues as the PROGRAM progresses.

**AMMENDMENTS:**

This AGREEMENT 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 this 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 this agreement with a 30 day written notice to the other party, for any reason deemed appropriate by either party.

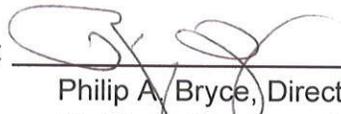
**ATTACHMENTS:**

Attachment A – Trail Plan

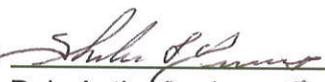
**SIGNATURES:**

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

By:  2/20/13  
 Brad W. Simpkins, Interim Director  
 Division of Forests and Lands  
 Date

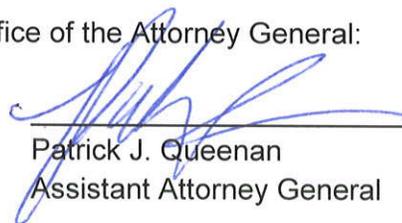
By:  2-25-13  
 Philip A. Bryce, Director  
 Division of Parks and Recreation /  
 Acting Commissioner  
 Date

**“CLUB” – North Country ATV Club**

By:  02-13-2013  
 Duly Authorized TRAIL ADMINISTRATOR  
 Date

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

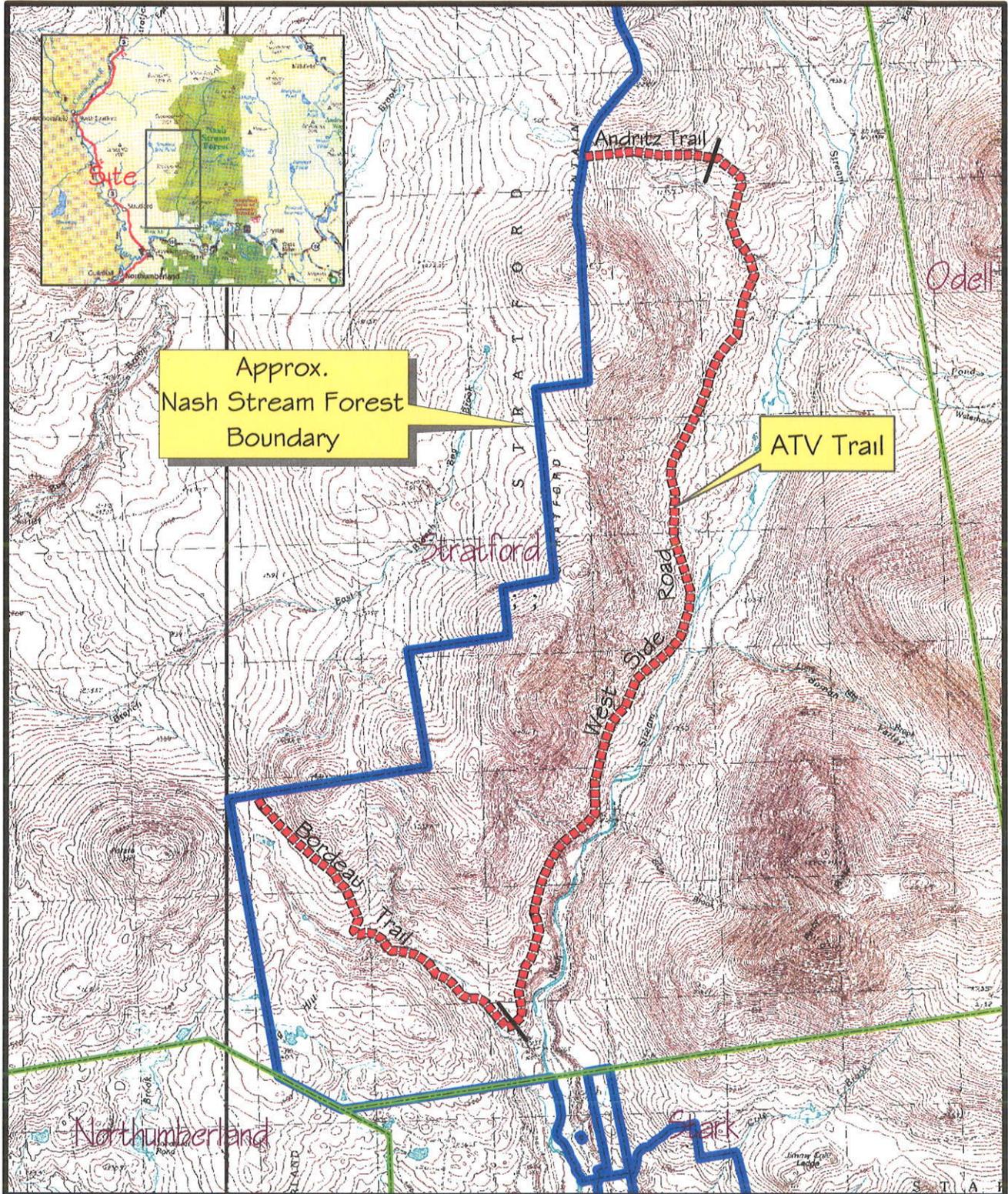
2/27/13  
 Date

  
 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	Ted Burns, Trails Administrator North Country ATV Club PO BOX 161 Stratford, NH 03032
Nash Stream Forest Citizen Advisory Committee C/O Forests and Lands PO BOX 1856 Concord, NH 03302-1856	



Approx.  
Nash Stream Forest  
Boundary

ATV Trail



## Plan of ATV Trail Nash Stream Forest Stratford, New Hampshire

