MEMBERS PRESENT

Amanda Merrill, Chair, Director, NH Office of Energy and Planning
Robert Beaulac, Designee, NH Department of Administrative Services
William Carpenter, Designee, NH Department of Resources and Economic Development
Amy C. Clark, Designee, NH Department of Education
Timothy Drew, Designee, NH Department of Environmental Services
Marta Modigliani, Designee, NH Department of Safety
Elizabeth Muzzey, Designee, NH Department of Cultural Resources
Glenn Normandeau, Executive Director, NH Fish and Game
William Ray, Designee, NH Housing Finance Authority
Nancy Spaulding, Designee, NH Department of Transportation

OTHERS PRESENT

Tracey Boisvert, NH Office of Energy and Planning
Susan Slack, NH Office of Energy and Planning
Kellie Walsh, NH Office of Energy and Planning
Will Guinn, NH Department of Resources and Economic Development
Johanna Lyons, NH Department of Resources and Economic Development
Maggie Machinist, NH Department of Resources and Economic Development
Brad Simpkins, NH Department of Resources and Economic Development
Richard Cook, NH Fish and Game Department
John Magee, NH Fish and Game Department
Chris Aslin, NH Department of Justice
Anne Edwards, NH Department of Justice
Susan Arnold, Appalachian Mountain Club
Matt Leahy, Society for the Protection of New Hampshire Forests
Jim O’Brien, The Nature Conservancy
Larry Gomes, Nash Stream OHRV Task Force
I. ROLL CALL AND INTRODUCTIONS

The meeting was opened at 10:11 a.m. by Chairperson Merrill. CORD members and guests introduced themselves. The Chair asked guests to include brief descriptions of their involvement with the issue of ATVs in the Nash Stream Forest.

II. LAND CONSERVATION INVESTMENT PROGRAM (LCIP)

A. Legal status and management of ATV trails in Nash Stream State Forest – discussion and deliberation.

Chairperson Merrill stated that the reason for the meeting is 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 the Land Conservation Investment Program (LCIP). Management responsibility for LCIP properties was transferred to CORD by way of legislation in 1995. The Appalachian Mountain Club (AMC), The Nature Conservancy (TNC) and the Society for the Protection of New Hampshire Forests (Forest Society) (collectively referred to as the Advocates) have raised questions regarding the legal status and appropriateness of existing ATV trails in Nash Stream Forest (known as the West Side Trail and the Kelsey Notch Trail).

Chairperson Merrill read from RSA 162-C:6, stating that “the general court recognizes that the land conservation investment program was undertaken, in part, with significant donations of cash and land value by citizens of the state who intended that the conservation value of these lands be protected in perpetuity. 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 agreement with agreements entered into with persons with ownership interests in such lands. 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.” She noted the State purchased the Nash Stream property and sold a conservation easement to the U.S. Forest Service and, therefore, the Forest Service is a party with an interest in the property.

Chairperson Merrill stated that in response to the Advocates’ request to review the legality of the ATV trails in Nash Stream, CORD requested guidance from the
Attorney General’s office related to CORD’s role in managing the Nash Stream Forest, as well as other LCIP-acquired properties. The Attorney General’s office provided guidance to CORD. While the intention is to develop guidance that can be useful in addressing the relationship between CORD management and that of the on-the-ground managing agencies on LCIP properties in general, today’s discussion is focused on that relationship in the context of the Nash Stream Forest. The document provided to CORD members is a confidential attorney-client communication and therefore distributed to members only.

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.

Chairperson Merrill noted that at its July 2016 meeting CORD requested additional materials from DRED regarding the process of establishment of the Kelsey Notch Trail and its current status and that such materials were made available on the CORD website.

Chairperson Merrill opened the discussion by offering CORD members an opportunity to pose questions to attendees that might serve to inform the discussion at hand.

Ms. Modigliani stated she had visited Nash Stream Forest and was surprised by the large size of the ATVs being used on the trails. She asked if these ATVs were the same type or class as those in use in 2001, when an opinion from the U.S Forest Service attorney stated that ATV use on designated trails was at the discretion of the State of New Hampshire.

Mr. Gomes stated that some ATVs seen now are about 15 inches wider and are known as “side by sides.” Ms. Machinist said the definition of ATVs has evolved since 2001. She explained that there are differences between the definitions of ATV and OHRV and that DRED is carefully evaluating the wording in the updated management plan with this in mind. Ms. Modigliani asked if snowmobiles have changed in the same manner and Ms. Machinist stated that they have not. Mr. O’Brien said he was concerned about the ability of the trails to properly accommodate the larger ATVs. Ms. Muzzey asked questions about the width of current ATVs and Mr. Gomes stated that the range is up to 60 to 62 inches in width and pointed out that the trail gates allow for a vehicle up to 64 inches wide to enter. He said the gates are designed to prevent larger vehicles, such as jeeps, from entering the trails. Ms. Muzzey asked if these gates existed at the Nash Stream property and Mr. Gomes indicated that they did.

Chairperson Merrill noted that five CORD members took a field trip to Nash Stream Forest; she was unable to attend, but had recently spent time on both the West Side and Kelsey Notch trails.
Ms. Muzzey raised concerns about the issue of OHRV enforcement.

Mr. Normandeau stated that NH Fish and Game does not have the appropriate resources to address OHRV enforcement in general. He said his agency is facing challenges due to increased ATV use and the decision of several municipalities to allow ATV use on public roads.

Chairperson Merrill stated that she wanted to clarify for members that in addition to addressing the questions raised by the Advocates concerning the two existing ATV trails, CORD has also been asked by DRED to address the broader question of ATV use in Nash Stream by providing DRED with guidance in its draft Nash Stream Forest management plan update, specifically with regard to the recreation chapter of the plan, which addresses ATV use. She said that discussion of the draft management plan will take place at the November CORD meeting.

Mr. Normandeau asked if the intent of this meeting was to discuss specifically the Kelsey Notch Trail or all trails within Nash Stream. Chairperson Merrill responded that CORD discussion at this meeting is focused on the Kelsey Notch Trail. She noted that more concerns have been raised about the impacts of Kelsey Notch than about the West Side Trail and that, in addition, West Side had been included in the 2002 management plan update prior to its establishment.

Ms. Modigliani asked how long the duration of the Kelsey Notch pilot trail is.
Mr. Simpkins said that the thought was for the pilot trail to be three years, but that this was contingent upon the management plan update being completed—at which time it would become a permanent trail. Chairperson Merrill asked Mr. Simpkins if, in fact, it was also possible for the management plan update to include continuation of the pilot status of Kelsey Notch. Mr. Simpkins replied that it was possible. Ms. Machinist stated that no term was officially set when the original pilot trail was established.

In response to a question from Mr. Carpenter, Mr. Simpkins stated that in 2011-2012 several trail proposals were brought to the Nash Stream Citizens Committee, including Kelsey Notch, which was considered to be a critical east-west link for the Ride the Wilds ATV trail network. Mr. Simpkins stated that several agencies were involved in reviewing the request, including the State Lands Management Team, NH Fish and Game, and NH DES. Ms. Machinist said that The Nature Conservancy has membership on the Nash Stream Citizens Advisory Committee, which also reviewed the Kelsey Notch proposal.

At Ms. Muzzey’s request, Mr. Simpkins explained DRED’s challenges with drafting the recreation chapter of the draft management plan update. He said that DRED had received several proposals from the ATV community for additional ATV trails in Nash Stream and that it has taken some time for the Nash Stream...
technical review team to evaluate the proposals. Ms. Machinist said there was a need for the recreation chapter to be more specific about addressing proposals for future ATV trails.

Mr. Normandeau asked Mr. O’Brien if The Nature Conservancy commented in 2012 on the Kelsey Notch Trail proposal. Mr. O’Brien said he wasn’t a member of the advisory committee himself and didn’t know what was said during the discussion since there is no record. He noted that TNC and AMC sent letters expressing their concerns about ATV use at the time of the West Side Trail proposal. Ms. Arnold confirmed that AMC sent such a communication. Mr. O’Brien said that one of the reasons AMC and TNC are concerned about the Kelsey Notch Trail is that it was established even though it is not included in the current Nash Stream management plan. Ms. Arnold said the reason for mentioning the West Side related letter was to highlight that TNC and AMC have had long-standing concerns about ATV use in Nash Stream.

Chairperson Merrill reiterated that the Kelsey Notch Trail was established without being part of a management plan, which appears to be a violation of the requirements of RSA 215-A. The other 215-A requirements for establishment of an ATV trail include a memorandum of understanding between DRED and Fish and Game, a written agreement between DRED and a local ATV club, and a determination that the proposed trail has been evaluated using the coarse and fine filter requirements and has been found to have met the criteria (as determined by the DRED commissioner and Fish and Game executive director). Based on the documentation available, she said that, for her personally, it is unclear whether the trail met all of these requirements, adding that while CORD’s charge is to determine whether or not the Kelsey Notch Trail meets the requirements of RSA 162-C, consideration of whether the trail meets the requirements of other statutes, including RSA 215-A, is relevant and appropriate in making that determination.

Ms. Muzzey stated that the field visit to Nash Stream made it apparent that the type of trail needed to meet the demand for today’s ATV use is much different from a basic trail in the woods, more like a road, and that given the reasons why LCIP purchased the property, there needs to be a high standard for environmental review, monitoring and maintenance of the ATV trails, and the availability of resources to do the proper monitoring, maintenance, and enforcement.

Mr. Gomes noted that the Kelsey Notch Trail was established on an existing logging road.

There was a discussion of trail construction and stream crossings and the impact on water quality. Mr. Drew said 28 permits have been issued by DES over the last 26 years in wetland areas within Nash Stream, and no issues have been noted by DES thus far. Mr. Gomes noted that when bridging streams in Nash Stream Forest, the OHRV Task Force is not required to file for a permit if they are
spanned bank to bank. Ms. Clark asked if DRED had checked with DES to see if an Alteration of Terrain permit was required. Staff responded that terrain alteration permits were not required.

Chairperson Merrill asked Mr. Magee to comment on water quality and stream restoration efforts in Nash Stream. Mr. Magee stated that one of the fine filter requirements in RSA 215-A is that stream crossing structures meet 5-year flood design criteria. He said all the research that he has seen indicates the 5-year flood standard isn’t working well enough over the long term and results in undersized structures and environmental damage. He recommended an update to the DRED Trails Bureau’s Best Management Practices (BMP) for Erosion Control during Trail Maintenance and Construction to require a higher flow standard. Mr. Magee also stated there is noticeable erosion throughout Nash Stream. Mr. Simpkins said that the Trails BMP manual is being updated.

Mr. O’Brien said there is no evidence that the coarse and fine filter analysis was done for the Kelsey Notch Trail. He noted the importance of having the analysis done prior to the trail being put in place and said this is one of The Nature Conservancy’s concerns about this trail. Mr. Simpkins said DRED has developed a checklist to better document the coarse and fine filter analysis and said DRED is going back through the Kelsey Notch Trail information and utilizing the checklist, which they will submit to CORD. He stated that the intent of the checklist and improved documentation of trail development is to prevent future occurrences of the uncertainty and questioning that has arisen with regard to Kelsey Notch.

Chairperson Merrill noted that there is also concern that the filter analysis for the Kelsey Notch Trail was done two years after the trail was already in use.

Mr. Normandeau noted the difficulty in closing a pilot trail after it has already been established.

Ms. Modigliani asked if it was DRED’s intent to provide more than a checklist in order to address other items under RSA 215-A that require more explanation. Mr. Simpkins stated the checklist also has a comment section, which would address that.

Chairperson Merrill recessed the meeting at 11:24 a.m.

Chairperson Merrill re-opened the meeting at 11:37 a.m.

Ms. Modigliani asked how difficult it would be for DRED to evaluate coarse and fine filter criteria for the West Side Trail at this time, in addition to Kelsey Notch. Mr. Simpkins said it would be more challenging for the West Side Trail as it is older and the people originally involved in the process are no longer available. Ms. Machinist said that evaluation of the Kelsey Notch Trail using the filter
criteria has been done. She added that the West Side Trail has been open for 14 years. Mr. Simpkins said it would probably take several days to compile the documentation for West Side. Mr. Normandeau questioned what would happen if in fact DRED went back and did the analysis and found that a requirement on the checklist was not met. Ms. Muzzey said that if CORD believes the filter analysis in RSA 215-A represents a good management technique for LCIP land, then the criteria should be met.

Mr. Normandeau asked if the West Side Trail was established in the management plan before or after the 2002 legislation requiring the coarse and fine filter analysis. Chairperson Merrill noted a letter from Commissioner Bald authorizing West Side Trail as a designated trail in June 2002 and pointed out that the effective date of the legislation was July 2002.

Ms. Modigliani asked if DRED would be willing to ask the U.S. Forest Service if their attorney’s opinion would be the same now, given the use of larger ATVs in Nash Stream. Mr. Simpkins said there is a member from the White Mountain National Forest on the technical review team who believes the attorney’s view of ATVs in Nash Stream still stands as it did previously.

Chairperson Merrill noted that the state can regulate ATV use in a number of ways. She asked if it was possible to put more specific information about ATV size requirements in the management plan. Ms. Machinist said it would be difficult because trails outside Nash Stream could have different size requirements and it would be challenging to enforce the size requirements consistently of ATVs entering Nash Stream from other properties.

For the purposes of discussion, Ms. Muzzey made the following motion:

MOTION: In recognition of the high management standards put forth in 162-C:6, II and in recognition of concerns raised by the creation of the Kelsey Notch Trail and changes in ATV use since the opening of the West Side Trail, CORD asks DRED to maintain the pilot status of the Kelsey Notch Trail until a number of conditions can be met to CORD’s satisfaction. The motion was seconded by Mr. Beaulac.

Chairperson Merrill brought up the question of specifying a time frame for how long the Kelsey Notch Trail should remain open as a pilot. Mr. Normandeau recommended the pilot time period placed on the trail should coincide with the management plan timeline. He also noted that an updated MOU between Fish and Game and DRED is being drafted that will include requirements for monitoring of trail conditions. The Chair said she would prefer a longer time frame for the trail pilot that would offer the opportunity for more monitoring and documentation of impacts. She suggested that at least one additional ATV season would be necessary.
Ms. Muzzey stated that it is more than reporting. She noted MOUs and MOAs as well as other documents need to be looked at. She also stated that CORD should specify what will happen if conditions placed on the trail are not met.

Mr. Beaulac noted the previous discussion about the difficulties with closing a trail once it has been established. He also stated that CORD has a fiduciary responsibility under RSA 162-C and that if under this responsibility it is determined that standards are not being met, then there is no other alternative than to close the trail. Mr. Beaulac stated that extending the timeframe of the pilot affords CORD the opportunity to more thoroughly investigate whether the trail complies with the requirements of RSA 162-C and therefore to carry out its responsibilities under RSA 162-C. Ms. Modigliani said a vote to extend the pilot is a vote from CORD saying that doing so will preserve the natural beauty, landscape, and rural character referred to in RSA 162-C.

Mr. Normandeau asked what the conditions are that members believe must be met. Ms. Muzzey said trails should comply with requirements under RSA 215-A as well as any other environmental regulations and standards.

Mr. Beaulac asked when trails re-open in the spring. Mr. Simpkins said ATV trails are open on May 23rd.

Ms. Modigliani asked if in order to finish the draft management plan DRED needs guidance from CORD. Mr. Simpkins said DRED is looking for guidance about what is considered legal ATV use in Nash Stream in terms of RSA 162-C. He noted DRED does not want to move forward in presenting the management plan to other committees and the public without guidance from CORD. Mr. Simpkins also noted it was made clear at a meeting of the Citizens Advisory Committee that the Kelsey Notch Trail could be closed at a future date. Mr. Beaulac said he is hesitant about setting the “side boards” requested by DRED, because each LCIP property needs to be looked at individually.

Chairperson Merrill said it was her understanding that the management plan update is intended to include specifics about trails and trail locations. Mr. Simpkins agreed, noting that there are other trail proposals for which CORD guidance will be sought. Chairperson Merrill noted that CORD does not dictate what DRED proposes in the management plan and that CORD will react to what is presented in the plan by DRED.

Ms. Modigliani asked if it is CORD’s intention to provide guidance that would be useful to agencies that are managing LCIP properties beyond Nash Stream. Chairperson Merrill reiterated that the goal is to work on developing additional general guidance, but that CORD is not in a position to produce such guidance at this time.
Ms. Muzzey asked: If CORD gives direction to DRED about continuing a pilot trail with conditions and the management plan states the same conditions, would that be sufficient? Mr. Simpkins said DRED can figure out a way to phrase CORD’s suggestions into the management plan.

Mr. Normandeau asked how long it would take to go through the criteria for the Kelsey Notch Trail and make sure it meets the requirements. Mr. Simpkins said most of that has been completed except for the updated agreement between Fish and Game and DRED.

Mr. Normandeau asked if it was possible for DRED to come to the next CORD meeting with information showing that Kelsey Notch Trail is in compliance with state law. Mr. Simpkins said DRED would be able to do so.

Ms. Muzzey noted the difficulties that have been brought up in regard to management and enforcement. She said that one of the conditions should be that the agencies report back to CORD as to whether or not enforcement and maintenance needs are being met and, if not, whether or not the agencies have the resources necessary to meet the needs. Chairperson Merrill agreed that the monitoring and evaluation of trail enforcement and ongoing maintenance are key.

Mr. O’Brien asked if CORD believes it is appropriate to give the okay for a pilot trail built outside of the management plan. He noted this may cause concern for future trails. Mr. Normandeau stated that CORD should specify that the Kelsey Notch Trail will be the last trail is established outside of a management plan. Several members expressed support for the idea of drafting a separate motion to prohibit the establishment of pilot trails outside the management plan process.

Ms. Muzzey requested that CORD staff, with the assistance of the Attorney General’s office, continue to work on draft motions and potential associated conditions and present them at either a special meeting or the next scheduled CORD meeting.

Mr. Ray suggested removing the word “pilot” from the motion. Ms. Spaulding stated that taking the word pilot out of the motion shows complete violation. Ms. Modigliani stated that taking the word pilot out is equivalent to making a determination that the trail will become permanent.

Mr. Simpkins asked: If the draft management plan includes the pilot trail, will it would be okay to open the trail May 23rd, provided that the draft management plan is completed? Mr. O’Brien suggested that CORD decide to close the Kelsey Notch Trail at the end of this season and then re-open the trail in the spring. Chairperson Merrill indicated that she would not support that action and believes that progress is being made in the direct of what she believes to be an appropriate
resolution of the matter before CORD. Ms. Machinist also noted that the trail is used by snowmobiles in the winter.

MOTION: Ms. Muzzey made a motion to table the discussion until CORD receives further materials from DRED, including the draft management plan update, the draft MOU between DRED and Fish and Game, and documentation of the Kelsey Notch filter analysis (completed checklist). Mr. Beaulac seconded the motion. The motion passed unanimously.

Chairperson Merrill stated that OEP staff will work with CORD’s AG Counsel to draft motions and associated conditions for the November CORD meeting.

Chairperson Merrill adjourned the meeting at 12:55p.m.

Respectfully Submitted,

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Amanda A. Merrill, Chair
Director, NH Office of Energy and Planning

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