



August 20, 2020

Mr. Jared Chicoine, Chair
New Hampshire Council on Resources and Development
c/o New Hampshire Office of Strategic Initiatives
107 Pleasant Street, Johnson Hall, 3rd Floor
Concord, NH 03301

Dear Mr. Chicoine:

Thank you for this opportunity to express our continued opposition to the operation of the Kelsey Notch ATV Trail in Nash Stream State Forest. As you recall, in 2016 the undersigned organizations first raised concerns regarding the process used to establish this trail.

We argued in our May 5, 2016 letter to CORD that the Nash Stream management plan in effect at that time explicitly authorized only the West Side Trail, and also explicitly prohibited any additional ATV trails of any kind. The amendment to the 2002 Management Plan clearly stated this prohibition:

*Beginning in the summer of 2002, about 7.6 miles of trail are now available for ATV travel utilizing the Bordeaux Trail, the West Side Road, and the Andritz Trail. This is a pass through trail set up as a pilot for 3 to 5 years beginning the summer of 2002. **No other roads or trails are open to ATV's on the property.**" (page 50)(emphasis added)*

We appreciate the actions CORD took in its December 14, 2016 Findings. Those steps both articulated CORD's responsibilities for the oversight of LCIP-acquired properties and highlighted the importance of properly following applicable state law. Specifically, CORD found that "the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV environmental laws and regulations."

RSA 215-A:42 and 43 establishes the evaluation process for ATV trails on public lands. We have been provided an undated analysis for the Kelsey Notch ATV/UTV Trail conducted by the Department of Natural and Cultural Resources (DNCR) for the requirements enumerated in RSA

215-A: 42 and 43. In reviewing the document, we have identified several areas that raise questions about the environmental impacts of the trail.

First, and perhaps most important, the process outlined in statute was designed to be conducted on a proposed trail PRIOR to construction in order to site the trail with the least possible environmental impact to state lands. In the case of the Kelsey Notch Trail, there is no evidence that such a coarse and fine filter analysis was conducted as required by statute prior to the establishment of the trail. Rather, the analysis we received was conducted after the trail was already constructed and being used for years by ATV riders. The fact that the trail already existed, in violation of the statute, should not mean that the standards set forth in RSA 215-A:43 should be lowered, amended, dismissed or in any way altered to benefit the trail remaining open and operational. The Kelsey Notch Trail should be held to the same legal standard as any other proposed trail.

RSA 215-A:43, II (g) asks if the “proposal is reasonably compatible with existing uses.” In the comments from DNCR, they only reference snowmobile use on the trail in winter and limited summertime trail use. While additional use of the trail is interesting, we are not sure that is what the Legislature meant by the question. There are many existing uses of the Nash Stream Forest that are not articulated in the comments – including the trails compatibility with hiking, wildlife viewing, scientific research, and fishing to name a few. The only existing use referenced in the comments is hunting, and the analysis finds that “conflict during hunting season is anticipated to be limited as ATV use decreases after Labor Day.” While we do not necessarily dispute this general claim, no documentation or data on this point- or any of the other legitimate existing uses has been made available. We believe that the comments provided do not adequately address the impacts of the trail with existing uses as it currently exists, as well as with anticipated future ATV traffic

RSA 215-A:43, II (k) requires that the proposed trail layout minimizes further fragmentation of blocks of forestland by locating trails on areas with existing development whenever possible. In the comments, it is stated that in the opinion of a Fish and Game biologist that “should traffic become heavier on the trail in the future, it might preclude some animals from crossing or denning near the trail and could potentially cause avoidance by some wildlife species in the area.” It would be important to understand the current and projected usage of the trail, and the impacts on wildlife of the increased level of traffic – and how that increase would impact existing uses of the property as discussed in the preceding paragraph.

There are additional requirements in RSA 215-A:43, II that the comments do not fully or adequately address including : (n) states that “the proposed trail avoids areas having soil types classified as important forest soil group IIA or IIB as defined and mapped by the Natural Resources Conservation Service, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (o) the proposed trail is not within 100 feet of the ordinary high water mark of first and second order streams, 330 feet of third order streams, and 600 feet of fourth order and higher streams, except for purposes of stream crossing,

unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts; (q) The proposed trail is not within 200 feet of any water body, forested or non-forested wetland, or vernal pool, unless there is an existing soil condition or surface roadway that can be used to reduce adverse environmental impacts.

In the comments for these requirements, DNCR responds that “the ATV trail was located on existing roadways as well as a snowmobile trail that was built the season prior.” However, it is not clear that the Kelsey Notch Trail meets the important environmental standards enumerated in the preceding paragraph. Further, while RSA 215-A:43 does allow that a “surface roadway” can be used “to reduce adverse environmental impacts,” an existing snowmobile trail does not meet that standard. An existing snowmobile trail is not a “surface roadway.” Furthermore, snowmobile trails are not subject to the analysis outlined in RSA 215-A, so it is unacceptable to rely on them as part of an ATV trail without conducting the required analysis for an ATV trail.

RSA 215-A: 43, II (u) requires the proposed trail avoid known locations of rare plants and exemplary natural communities, as specified on a site-specific basis by the natural heritage inventory. Again, the comments by DNCR suggest that disturbances are minimized because the trail was built on a new snowmobile trail – although there is no indication that such an analysis was conducted prior to the snowmobile trail being built, nor that the trail avoids such rare plants. In fact, the analysis itself notes that “an extensive inventory has not been completed.”

We are aware that the 2019 Kelsey Notch Trail Environmental Compliance Report stated the trail was in very good condition and that it appeared to be in compliance with expectations. But it is important to note that the report also stated, “The trail had just been re-shaped and graded from top to bottom, therefore the condition of the trail when we were there was very good.” In other words, the maintenance that occurred immediately prior to the site visit clearly addressed any erosion or other degradation issues prior to the site visit. It is also important to note that in his 2018 report, Lt. Mark W. Ober, Jr. District One Chief of the Fish and Game Department wrote, “I personally conducted a patrol of the Kelsey Notch Pilot Trail in September and found it to be extremely bumpy and eroded. I could find no obvious signs of off-trail use and with the condition of the trail concluded that conducting speed enforcement would not be justified.”

In addition to the fact that the Kelsey Notch Trail does not meet the requirements of RSA 215-A, we continue to have two additional overriding concerns. First, the fact the trail may currently be in good condition immediately following top to bottom maintenance does not negate our position that it should not have been established as a Pilot Trail under the previous management plan. As we noted, the management plan in effect in 2012 did not permit the creation of the trail.

Second, the State of New Hampshire lacks a comprehensive master plan for the ATV system in New Hampshire, especially in the North Country. With the continued marketing and popularity of Ride the Wilds, expanded trail infrastructure, and safety related issues associated with increased use, we believe the Department of Natural and Cultural Resources and the New Hampshire Department of Fish and Game should lead a comprehensive planning process to develop such a master plan. The state should allocate sufficient resources to complete this

comprehensive planning effort. Key goals should include 1) development of criteria needed to determine appropriate areas to build new trails; 2) identification of the resources necessary to maintain NH's ATV trail system and enforce the laws governing ATV use; and 3) documentation of ecologically-sensitive areas that conflict with ATV use.

To be clear, our organizations recognize the growth of OHRV use here over the last decade. We 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. But, unfortunately, this growth has also presented the State and local communities with trail use management challenges.

Despite those challenges, an opportunity exists to balance the benefits of OHRV recreation with the concerns expressed by private property owners and others. Good planning, ongoing and effective communication, increased education of OHRV users, established avenues to resolve specific conflicts when they occur, and visible law enforcement, are all critical ingredients to a successful OHRV program in our state. Furthermore, if the increase in ATV use has provided new economic opportunities, the financial resources needed to achieve those goals should be available. However, that balance will be difficult to achieve if state agencies continue to allow the expansion of the ATV trail system without also having the capacity to manage it.

To summarize, the establishment of the Kelsey Notch Trail failed to follow both state law and the management plan for the Nash Stream State Forest. Because of those facts, coupled with the State's lack of capacity to maintain, manage and enforce the existing OHRV trail system, we would request that CORD close down this trail.

Thank you. We would be happy to answer any questions you may have.

Sincerely,

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