



July 14, 2016

Amanda Merrill
Chair, NH Council on Resources and Development
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301

Dear Director Merrill and Council members:

Thank you for this opportunity to address the issues raised in our May 5, 2016 letter to the Council (CORD) regarding the ATV trail system in Nash Stream State Forest. While we appreciate the response from DRED Commissioner Jeffrey Rose dated July 6, 2016, we continue to have substantial concerns regarding the existing ATV trails on the property. Therefore, our organizations reiterate our May 5th request that CORD determine whether the existing ATV trail system is in compliance with state law.

CORD is statutorily obligated to play an important role in the management of Nash Stream State Forest. RSA 162-C very explicitly provides authority to CORD to “manage and administer” the lands acquired under the Land Conservation Investment Program (LCIP). The statute says (and we’ve added the emphasis in bold):

*II. 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 agreements entered into with persons with ownership interests in such lands.*

*III. 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.*

In our view, DRED’s recent letter underscores the need for the Council to exert its oversight and management role. While we appreciate that that the relationship between DRED and CORD regarding the management of Nash Stream has been evolving over the last twenty-plus years, it

is clear that CORD has statutory authority to do more than merely review and provide input into DRED's on-the-ground activities on Nash Stream State Forest. In the specific case of the two existing ATV trails that are the subject of our May 5th letter, we urge CORD to first clarify its role as manager and administrator of these lands, and ultimately exercise its statutory mandate to ensure that DRED is fully complying with existing law.

While Commissioner Rose's letter provides clarity on some issues, we continue to be concerned about the lack of specifics and supporting documentation, as well as assertions made about the Agency's management of Nash Stream, that we believe do not meet the requirements of RSA 215-A.

For example, Commissioner Rose suggests that DRED has voluminous records to document that the two existing ATV trails are in compliance with the coarse and fine filter requirements of RSA 215-A. While we certainly hope that this review has taken place, we are not aware of any written record which fully and properly documents how the so-called "West Side ATV Trail" or the "Kelsey Notch ATV Trail" are in compliance with the coarse and fine filter assessments required by RSA 215-A: 42 and 43. CORD should ask DRED to produce these documents for public review, and CORD should make the determination as to whether the statutory requirement for the coarse and fine filter review has been met. It is our understanding that CORD has not undertaken such a determination, which seems a core function of its administration and management of this important natural resource. It should not be a burden for DRED to produce these documents for review.

Commissioner Rose also suggests that RSA 215-A:42,1(b), requiring a Memorandum of Understanding, has been met by "verbal" MOUs until 2013, and subsequently written MOUs which have been approved annually by Governor and Council.

The most recent Memorandum of Agreement between DRED and NHFG that we are aware of is dated March 4, 2016, (authorized at the April 6th Governor and Council Meeting) for the "purpose of providing OHRV Enforcement Patrols on the CT Lakes Headwaters, Jericho State Park, Nash Stream Forest and other areas of the state under their jurisdiction and adjacent properties." The agreement provides only \$2,100 for April 1 – June 30 2016 from NHFG to DRED for this purpose. Previous MOUs covering FY 15 and FY 14 were for \$2,720 and \$2,160.

We maintain that neither the earlier "verbal" MOUs, nor the written MOUs for FY 14, 15, and three months of FY 16, regarding enforcement of OHRV/ATV laws on Nash Stream meet the spirit or the letter of this statutory provision (emphasis added):

*b) A memorandum of understanding (memorandum) exists between the bureau, the fish and game department, the department of resources and economic development, division of forests and lands, **and all other state agencies that are custodians of the property.** The memorandum shall include, but not be limited to, the responsibilities that each agency has in monitoring, maintaining, and enforcing relevant laws relative to the*

*trail and the type of OHRV permitted on approved trails. The bureau shall enter into the memorandum only if it is certain that proper monitoring and maintenance of the trail shall occur, either through its own resources or those of others. **The fish and game department shall enter into the memorandum only if it can commit sufficient resources to reasonably monitor for proper ATV or trail bike use on the property and enforce the applicable laws.***

The NHFG testified before legislative committees in the 2016 session that it does not believe it can commit sufficient resources to appropriately monitor ATV or trail bike use on state properties and enforce applicable laws. It is difficult to see how these limited MOUs, and the small monetary transaction between the agencies, provides the “sufficient resources” required to reasonably monitor and enforce the hundreds of miles of ATV trails on these lands.

The latest MOU mentioned above covers only three months of FY 2016 (April, May and June). As the Agencies are now in the first month of FY 17, it would be appropriate for CORD to understand what, if any, formal agreement between NHFG and DRED is currently in place to ensure adequate monitoring and enforcement of ATV use on the Nash Stream property.

Furthermore, the law makes clear that this MOU needs to include **“all other state agencies that are custodians of the property.”** By statute CORD is more than simply a custodian; it has important management and administrative obligations to Nash Stream. We believe CORD needs to be a party to any MOU under RSA 215-A:42, I(b). In this instance, we believe CORD needs to exert its existing statutory authority to make certain that any agreement will adequately provide the monitoring and enforcement needed to protect the important natural resources in Nash Stream.

Commissioner Rose suggests the current Nash Stream Management Plan appropriately authorizes the two existing ATV trails allowed by DRED. We disagree. The existing management plan explicitly authorizes only the West Side Trail, and explicitly prohibits any additional ATV trails of any kind. The amendment to the 2002 Management Plan is quite clear in this regard (emphasis added):

*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)*

There is no legal foundation for the argument that the Kelsey Notch ATV Trail, which is prohibited by the current Nash Stream Management Plan, meets the statutory standard in RSA 215-A:42 (d) for the establishment of new ATV trails:

*d) A management plan exists for the property that specifically allows ATV or trail bike use on the property, **and the ATV or trail does not otherwise conflict with the management plan.***

It is clear that the Kelsey Notch Pilot Trail is in direct conflict with the existing Nash Stream Management Plan. The Commissioner argues in his letter that there is no statutory restriction on DRED establishing Pilot Trails in Nash Stream. RSA 215:A-42(d), along with the language contained in the Management Plan, together seem unequivocal that only the West Side Trail is allowed. While DRED may believe that it has acted responsibly in establishing the Kelsey Notch Trail, we believe that the agency had no statutory authority to do so, and the existence of the Pilot Trail is in direct conflict with the existing Nash Stream Management Plan.

We urge CORD to determine whether the Kelsey Notch Pilot Trail meets all the statutory requirements of RSA 215-A, and if it is in compliance with the existing Management Plan. If CORD determines that the Trail does not meet statutory requirements, including non-compliance with the current Management Plan, then it must take appropriate administrative and management action.

While we respect DRED's authority to provide the day to day stewardship of LCIP lands, we believe CORD must step up to its own statutory responsibility to "*manage and administer*" LCIP lands such as the Nash Stream State Forest. We ask CORD to thoroughly review the relevant statutes governing management of the land, and the records DRED has indicated it is prepared to provide to document compliance with these laws. CORD must reach an independent determination as to whether DRED's stewardship is appropriate given the provisions of RSA 215-A:42, I, (a) through (d). Finally, we also believe that CORD needs to be a party in discussions about as well as signatory to any MOUs for monitoring and enforcement of ATV use on Nash Stream.

We encourage CORD to spend the time needed to complete such an independent determination. The state's protection of its investment in the Nash Stream State Forest requires no less.

We thank you for your consideration of this request.

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Society for the Protection
Of NH Forests

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