

From: Vandlik, John - OGC, Milwaukee, WI
Sent: Wed, 16 Feb 2022 18:25:26 +0000
To: Iburguen, Derek -FS; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Lutz, Dean -FS
Subject: RE: ACTION BY 2/25 - Nash Stream

Can you please provide the 9/25/01 letter from Forest Sup Wagner to NH, which is referred to in some of the letters?

Also Derek, you're quoted too in one of the letters. Can you provide the full correspondence that contained the quote?



John M. Vandlik
Senior Counsel
Milwaukee Office
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Avenue, Suite 601
Milwaukee, WI 53202
☎ 414-297-3276 (Voice)
📱 (b)(6) (Mobile)
✉ John.Vandlik@usda.gov

From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Tuesday, February 15, 2022 5:32 PM
To: Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: ACTION BY 2/25 - Nash Stream
Importance: High



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
☎ 414-297-3786 (Voice)
📱 (b)(6) (Mobile)
☎ 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Olson, Shawn -FS <shawn.olson@usda.gov>
Sent: Tuesday, February 15, 2022 10:36 AM

To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: ACTION BY 2/25 - Nash Stream
Importance: High

FYI –

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, February 15, 2022 10:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>; Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>
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Sarah – Please see the email below and the attached letter to the FS and request OGC support in coordination with Director Shawn Olson. I would like to respond with a letter to Kris Pastoriza by 2/25.

Shawn – Including you here so I can point out the email below also went to Greg Smith at the WO.

Lynn – This went to Chuck Henderson of Senator Shaheen’s office as well. Please let him know we are working through a response regarding the easement.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor
Forest Service
White Mountain National Forest

p: 603-536-6202
c: (b)(6)
derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223
www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Tuesday, February 15, 2022 9:04 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Smith, Greg- FS <Gregory.Smith4@usda.gov>; eestill@fs.fed.us; Taylor, Suzanne -FS <suzanne.taylor@usda.gov>
Cc: Matt Leahy <mleahy@forestsociety.org>; sarnold@outdoors.org; Megan Latour <mlatour@tnc.org>; Sarah <Sarah.L.Stewart@dncr.nh.gov>; Chuck Henderson<shaheen.senate.gov>
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I request that the appropriate counsel at USFS render a legal opinion in response to the questions raised by me and others, concerning the easement terms for Nash Stream State Forest, N.H. (see first, AMC Memo. and letter to FS re Nash Stream.)

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To: Ibarguen, Derek -FS; Olson, Shawn -FS
Cc: Pardi, Nicholas - FS; Hankens, Sarah -FS; Vandlik, John - OGC, Milwaukee, WI;
Vukelich, Vincent - OGC, Milwaukee, WI
Subject: RE: ACTION BY 2/25 - Nash Stream

Attorney-Client Communication
Privileged and Confidential

(b)(5)



Take care – vince v.



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To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Pardi, Nicholas - FS <nicholas.pardi@usda.gov>; Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: Re: ACTION BY 2/25 - Nash Stream

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Yes I have asked Sarah to draft a response in coordination with you and OGC. They may need advice as they draft it before providing it for review.

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White Mountain National Forest

p: 603-536-6202
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From: Kris pastoriza <krispastoriza@gmail.com>

Sent: Monday, January 31, 2022 5:06 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

[External Email]

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From: Ibarguen, Derek -FS
Sent: Tue, 15 Feb 2022 23:33:59 +0000
To: Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Pardi, Nicholas - FS; Hankens, Sarah -FS
Subject: Re: ACTION BY 2/25 - Nash Stream

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[External Email]

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From: Ibarguen, Derek -FS
Sent: Tue, 15 Feb 2022 22:46:44 +0000
To: Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Pardi, Nicholas - FS; Hankens, Sarah -FS
Subject: Re: ACTION BY 2/25 - Nash Stream

We need to figure that out first in coordination with you and Vince given the specific request by Kris Pastoriza for legal counsel opinion on her three questions. Sarah Hankens or James Denzel will be in touch with you if they need assistance as they draft the letter. There are three questions posed in the letter from Kris Pastoriza we need to respond to with a request for a legal opinion of the 2001 legal opinion. We will need to include language in the letter related to reaffirming the 2001 opinion that Vince provided in an

Thanks - Derek

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Cc: Olson, Shawn -FS; Detzel, James -FS; Ibarguen, Derek -FS
Subject: RE: ACTION BY 2/25 - Nash Stream

Good morning-

Thank you for your edits and additions. The re-draft will be provided for Derek's review. We appreciate your continued support.



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

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From: Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Sent: Tuesday, February 22, 2022 4:21 PM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>; Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Cc: Olson, Shawn -FS <shawn.olson@usda.gov>; Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Attached is a suggested re-draft of the letter. Happy to talk more if you wish.



John M. Vandlik
Senior Counsel
Milwaukee Office
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Avenue, Suite 601
Milwaukee, WI 53202
☎ 414-297-3276 (Voice)
☎ (b)(6) (Mobile)
✉ John.Vandlik@usda.gov

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Friday, February 18, 2022 4:10 PM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Olson, Shawn -FS <shawn.olson@usda.gov>; Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: FW: ACTION BY 2/25 - Nash Stream

Greetings,

The draft response to Ms. Pastoriza's 2/14 letter is attached for your review. We appreciate any feedback or edits to provide additional clarity or value in our response. Please let us know if you'd like to meet again, we can make ourselves available.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Thursday, February 17, 2022 1:53 PM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Sarah, in thinking about this response I kept it short and general – let me know what you think if more narrative or detail should be added.

James

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Thursday, February 17, 2022 12:29 PM
To: Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>; Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS

<derek.ibarguen@usda.gov>; Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Good afternoon-

Thank you for your time earlier today to discuss Nash. James will continue to draft a response letter and I plan on sharing with OGC & RO staff for review late Friday or Tuesday.



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 17, 2022 9:06 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Olson, Shawn -FS <shawn.olson@usda.gov>; Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

My Outlook calendar is up to date if that helps...

Otherwise:

Today: I'm busy these times: 11:30 – 12:30 eastern
1:00 – 2:00 eastern (but if need be I can leave this call)
2:30 – 3:30 eastern

Tomorrow (Friday): I don't have anything scheduled that I can't move around.

Thanks - vv



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601

Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Thursday, February 17, 2022 7:22 AM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Olson, Shawn -FS <shawn.olson@usda.gov>; Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Greetings Vincent & John,

Thank you for your support and coordination with a response. With the response timeframe, it would be good for James & I to touch base with you and John this week, if possible. We can be available today or tomorrow after 1000, or early next week as needed.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

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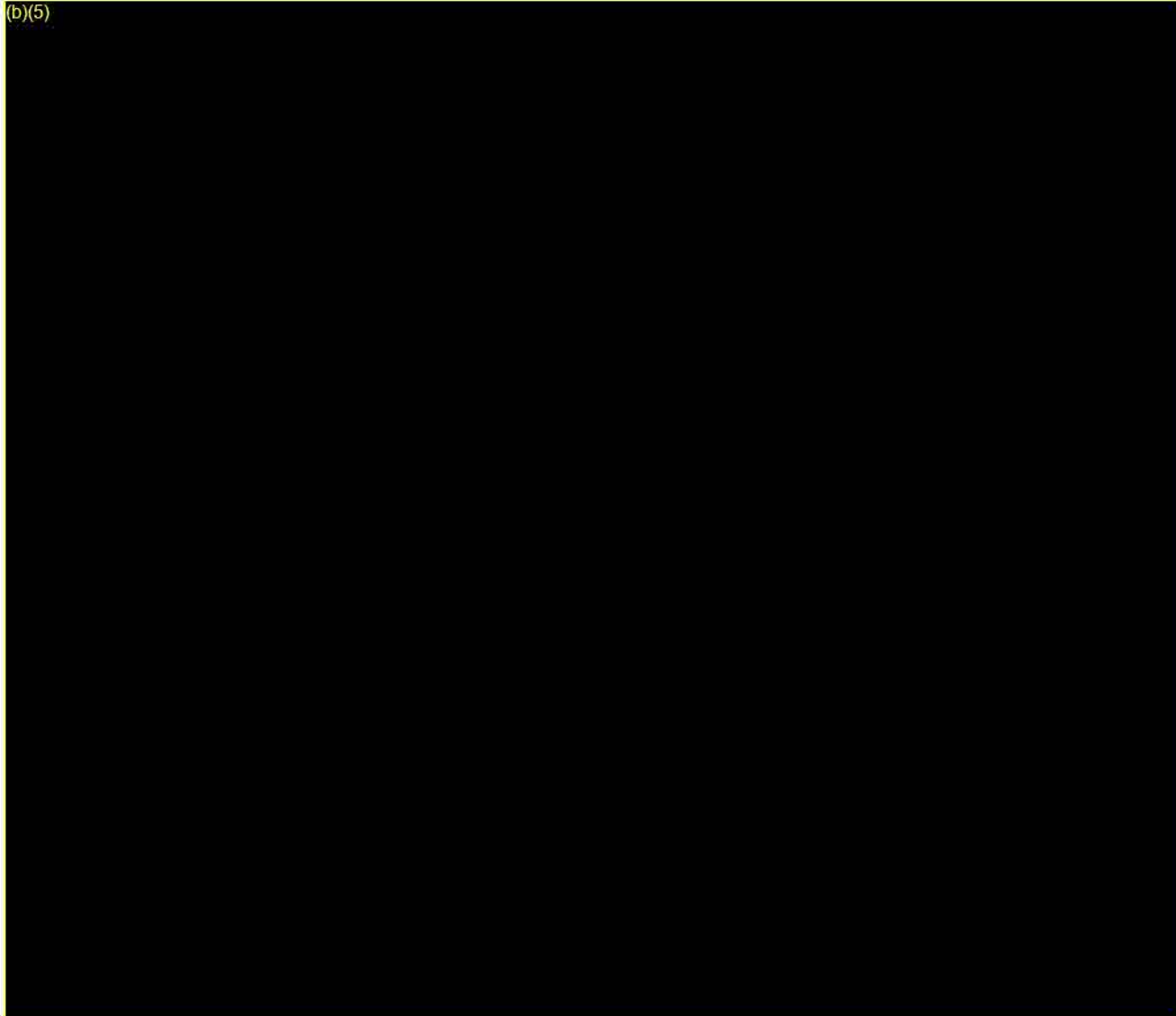


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From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Wednesday, February 16, 2022 9:13 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Pardi, Nicholas - FS <nicholas.pardi@usda.gov>; Hankens, Sarah -FS <sarah.hankens@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>; Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Attorney-Client Communication
Privileged and Confidential

(b)(5)



Take care – vince v.



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)

|  vince.vukelich@usda.gov

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, February 15, 2022 5:34 PM
To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Pardi, Nicholas - FS <nicholas.pardi@usda.gov>; Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: Re: ACTION BY 2/25 - Nash Stream

Shawn -

Yes I have asked Sarah to draft a response in coordination with you and OGC. They may need advice as they draft it before providing it for review.

Derek

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From: Olson, Shawn -FS <shawn.olson@usda.gov>
Sent: Tuesday, February 15, 2022 5:39 PM
To: Ibarguen, Derek -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Pardi, Nicholas - FS
Subject: RE: ACTION BY 2/25 - Nash Stream

Thanks Derek – Do I understand correctly that your staff will draft a response letter for RO/OGC review?

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, February 15, 2022 10:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>; Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>
Subject: ACTION BY 2/25 - Nash Stream
Importance: High

Sarah – Please see the email below and the attached letter to the FS and request OGC support in coordination with Director Shawn Olson. I would like to respond with a letter to Kris Pastoriza by 2/25.

Shawn – Including you here so I can point out the email below also went to Greg Smith at the WO.

Lynn – This went to Chuck Henderson of Senator Shaheen’s office as well. Please let him know we are working through a response regarding the easement.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>

Sent: Tuesday, February 15, 2022 9:04 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Smith, Greg- FS <Gregory.Smith4@usda.gov>;
eestill@fs.fed.us; Taylor, Suzanne -FS <suzanne.taylor@usda.gov>

Cc: Matt Leahy <mleahy@forestsociety.org>; sarnold@outdoors.org; Megan Latour <mlatour@tnc.org>;
Sarah <Sarah.L.Stewart@dncr.nh.gov>; Chuck_Henderson@shaheen.senate.gov

Subject: Re: [External Email]Nash Stream

I request that the appropriate counsel at USFS render a legal opinion in response to the questions raised by me and others, concerning the easement terms for Nash Stream State Forest. N.H. (see first, AMC Memo. and letter to FS re Nash Stream.)

Thank you,

Kris Pastoriza
Easton, N.H.

On Tue, Feb 8, 2022 at 9:04 AM Ibarguen, Derek -FS <derek.ibarguen@usda.gov> wrote:
Dear Ms. Pastoriza,

In response to your inquiry below, in which you asked, "Since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. (Revised Southern Connector Request) have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service? And could the same be said of the Kelsey Notch Trails and West Side Trails?"

The United States' role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal's consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the 'Forest Service' should or should not have been checked off on the State's trail proposal form.

Thank You – Derek Ibarguen



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza (b)(6) >

Sent: Monday, January 31, 2022 5:06 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>

Subject: [External Email]Nash Stream

[External Email]

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Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern

Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

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From: Ibarguen, Derek -FS
Sent: Fri, 25 Feb 2022 21:42:08 +0000
To: Lemieux, Stacy -FS
Cc: Sjostrom, Joshua - FS
Subject: RE: FOIA - Pastoriza Nash Stream State Forest

Thanks Stacy. This is broad and appreciate the effort to narrow it.

Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



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From: Lemieux, Stacy -FS <stacy.lemieux@usda.gov>
Sent: Friday, February 25, 2022 1:44 PM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Cc: Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>
Subject: FW: FOIA - Pastoriza Nash Stream State Forest

Derek, Kris Pastoriza withdrew her last FOIA, but then submitted this one related to Nash Stream, which is broad. Theresa is going to reach out and try to get her to narrow it.

Josh, I recommended Theresa start with you for this one, though I suspect Nash Stream info is scattered across a few folks there and a few at the SO. Hopefully the request will get narrowed



Stacy Lemieux (she/her)
Natural Resources Staff Officer

Forest Service
White Mountain National Forest

p:

c: (b)(6)

stacy.lemieux@usda.gov

71 White Mountain Drive
Campton, NH 03223

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people

From: Corless, Theresa -FS <theresa.corless@usda.gov>
Sent: Friday, February 25, 2022 10:15 AM
To: Lemieux, Stacy -FS <stacy.lemieux@usda.gov>
Subject: FW: [External Email]FOIA - Pastoriza Nash Stream State Forest



Theresa Corless (she/her)
**Forest Planner and Environmental
Coordinator**

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Stewart, Marry -FS <marry.stewart@usda.gov>
Sent: Thursday, February 24, 2022 12:22 PM
To: Corless, Theresa -FS <theresa.corless@usda.gov>
Subject: FW: [External Email]FOIA

Hi Theresa,

Please see the FOIA request below from Kris Pastoriza. I just received it and haven't entered it into FX.

Please let me know if you have any questions.



Marry Stewart (she/hers)
Acting Region 8&9 FOIA Coordinator

Forest Service
marry.stewart@usda.gov

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Thursday, February 24, 2022 10:20 AM
To: Stewart, Marry -FS <marry.stewart@usda.gov>
Subject: Re: [External Email]FOIA

WMNF. Nash Stream State Forest is in Coos County, N.H. and USFS is an easement holder along with the State.

Androscoggin would be the closest district office.

Kris

On Thu, Feb 24, 2022 at 12:00 PM Stewart, Marry -FS <marry.stewart@usda.gov> wrote:
Hi Kris,

It's fine to submit it to me but you may also want to send it to these inboxes in the even that I am unavailable:

SM.FS.R9FOIA@usda.gov

SM.FS.R8FOIA@usda.gov

For the FOIA below, can you tell me the office where these records would originate from?

Thank you,



Marry Stewart (she/hers)
Acting Region 8&9 FOIA Coordinator
Forest Service

marry.stewart@usda.gov

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Thursday, February 24, 2022 9:34 AM
To: Stewart, Marry -FS <marry.stewart@usda.gov>
Subject: [External Email]FOIA

[External Email]

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Dear Marry,

I hope it is ok to submit a FOIA to you but if not tell me and I will re-find the link.

I'm submitting a FOIA for all documents, including but not limited to emails, letters, maps, reports, memoranda and notes, including personal notes made in connection with the conduct of public business, in the custody or control of USFS, responsive to Nash Stream State Forest, from 2002-the present. This request includes any electronic documents stored in "deleted" or "trash" folders and any documents USFS has in its custody even if the statutory retention periods for those documents may have expired. It also includes any documents arbitrarily designated as confidential or attorney-client privileged which contain information which is not specifically exempt from disclosure.

I request any factual, non-deliberative portions of any document which may be categorized as a 'draft.

If any documents are subject to disclosure in part, I am asking for those parts to be disclosed, even if those parts only identify a topic or party to whom the document was circulated.

If any documents are withheld, please identify those documents on the basis of exclusion by category, and retain all of those documents for future release as their nature changes from not subject to disclosure to subject to disclosure.

This request includes all documents responsive to this request.

Thanks,

Kris

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From: Corless, Theresa -FS
Sent: Fri, 15 Apr 2022 15:32:29 +0000
To: Ibarguen, Derek -FS; Sjostrom, Joshua - FS; Lemieux, Stacy -FS; Wigler, Gail -FS
Cc: Detzel, James -FS
Subject: RE: FOIA 2022-FS-R9-02387-F Nash Stream State Forest

All,

Stacy wisely pointed out you may need a bit more direction as I gave you the refined request from Ms. Pastoriza. Her request included the following language:
for the record, I narrowed my request to 'Nash Stream and ATVs', but still want the rest of the wording to apply: *"This request includes any electronic documents stored in "deleted" or "trash" folders and any documents USFS has in its custody even if the statutory retention periods for those documents may have expired. It also includes any documents arbitrarily designated as confidential or attorney-client privileged which contain information which is not specifically exempt from disclosure. I request any factual, non-deliberative portions of any document which may be categorized as a 'draft. **If any documents are subject to disclosure in part, I am asking for those parts to be disclosed, even if those parts only identify a topic or party to whom the document was circulated. If any documents are withheld, please identify those documents on the basis of exclusion by category, and retain all of those documents for future release as their nature changes from not subject to disclosure to subject to disclosure. This request includes all documents responsive to this request.**" (Date Range for Record Search: From 1/1/2002 To 2/24/2022)"*

Thus, we do want drafts and records you may think are deliberative or attorney-client privilege. I will review for any items that need to be withheld, but please point out anything to me you think should be withheld and why.

Thanks,
Theresa



Theresa Corless (she/her)
**Forest Planner and Environmental
Coordinator**

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Corless, Theresa -FS
Sent: Friday, April 15, 2022 11:07 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>; Lemieux, Stacy -FS <stacy.lemieux@usda.gov>; Wigler, Gail -FS <gail.wigler@usda.gov>

Cc: Detzel, James -FS <james.detzel@usda.gov>
Subject: FOIA 2022-FS-R9-02387-F Nash Stream State Forest

Derek, Josh, Stacy, and Gail,

You should have received links to a folder in Box <https://usfs.box.com/s/ro3bqecxqeyfshtorbd2jeb79cdoqxea> to place your responsive documents to Kris Pastoriza's FOIA related to Nash Stream state Forest and forest policy on ATVs. There should be a sub-folder for each of you. The request is as follows:

documents related to Forest Service responsibility or input regarding the use of ATVs at Nash Stream State Forest, not everything we have that mentions both Nash Stream and ATVs individually (e.g. there may be comment letters to our 2005 plan revision that mention both ATVs and Nash Steam State Forest, but are not necessarily responsive to the Forest's responsibilities or input on use of ATVs at Nash Stream State Forest.)

Please let me know if you have any questions or issues with access to the Box folders. Please let me know if you cannot respond by Friday April 22 and how much time you need.

Thanks,
Theresa



Theresa Corless (she/her)
Forest Planner and Environmental
Coordinator

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223
www.fs.fed.us



Caring for the land and serving people

From: Ibarguen, Derek -FS
Sent: Fri, 8 Apr 2022 20:36:54 +0000
To: Corless, Theresa -FS
Subject: Re: FOIA request 2022-R9-02387-F Pastoriza re NSSF

Theresa -

I would estimate 2 hours.

Derek

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From: Corless, Theresa -FS <theresa.corless@usda.gov>

Sent: Friday, April 8, 2022 4:31:41 PM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>; Lemieux, Stacy -FS <stacy.lemieux@usda.gov>; Wigler, Gail -FS <gail.wigler@usda.gov>

Cc: Detzel, James -FS <james.detzel@usda.gov>

Subject: FOIA request 2022-R9-02387-F Pastoriza re NSSF

All,

We have a FOIA request from Kris Pastoriza related to Nash Stream State Forest and ATVs. She is looking for records from 1/1/2002 to 2/24/2022. For now, can you please give me a time estimate of how long it would take you to search your emails and other records to respond to this request. Once I have this time estimate I will see if we will need to charge her and provide her a cost estimate. Note that we already gave her two redacted documents with her request related to this topic last year. Also, please let me know if there is someone else I should be checking with that might have records that are not duplicative of the ones you have.

James, I just copied you as an FYI.

Thanks,

Theresa



Theresa Corless (she/her)
Forest Planner and Environmental
Coordinator

Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Ibarguen, Derek -FS
Sent: Tue, 8 Mar 2022 13:42:03 +0000
To: Currier, Morgan - FS, CAMPTON, NH
Cc: Hankens, Sarah -FS; Detzel, James -FS; Sjostrom, Joshua - FS
Subject: RE: For Review and Signature: Pastoriza Letter
Attachments: Formal Letter 1 Signature Pastoriza Response Letter March 2022.pdf

Signed letter.

Josh – FYI. This letter was draft in coordination with OGC regarding the conservation easement for Nash Stream.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>
Sent: Tuesday, March 8, 2022 8:16 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: For Review and Signature: Pastoriza Letter

Please let me know if you want any changes made. I know it's just the CC group on the second page, I can move your signature block down to the second page as well – it's weird either way



Morgan Currier
Executive Assistant

Forest Service
White Mountain National Forest

p: 603-536-6203

c: (b)(6)

f: 603-536-3673

morgan.currier@usda.gov

71 White Mountain Dr
Campton, NH 03223

www.fs.fed.us



**Caring for the land and serving
people**

File Code: 5440
Date: March 8, 2022

Kris Pastoriza
294 Gibson Rd
Easton, NH 03580

Dear Ms. Pastoriza,

This responds to your inquiry dated February 14th, 2022.

The Forest Service was the acquiring agency, on behalf of the United States of America, with respect to the 1989 Nash Stream conservation easement purchased from the State of New Hampshire. It has been the Forest Service's longstanding position that, under the terms of the conservation easement, the State of New Hampshire reserves the discretion to ban, authorize, or regulate ATV trails within the conservation easement area. Conversely, the Forest Service acquired no role in the exercise of the State's discretion in this regard. Our position has not changed, notwithstanding the 2020 Ropes and Gray memorandum which we previously reviewed.

Also, you raised the subject of "through trails." The conservation easement at II(C)(1) makes no distinction between a "through trail" and a "non-through trail," when it comes to the discretion reserved by the State. We note that II(C)(2) does make a distinction between internal roads that do not provide for "through travel" and "public roads." In the context of public roads, the Forest Service does have approval authority under the conservation easement terms. That provision has no bearing on the reserved authority of the State with respect to recreational trails.

As such, we do not have a role in the development or management of ATV trails. Nor is there a requirement for written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. Please direct any concerns about ATV trails on the conservation easement area to the State.

Sincerely,

 **DEREK
IBARGUEN**

Digitally signed by
DEREK IBARGUEN
Date: 2022.03.08
08:32:53 -05'00'

DEREK J.S. IBARGUEN
Forest Supervisor



CC: Sarah Stewart, Commissioner of the Department of Natural and Cultural Resources; Patrick Hackley, Director of the NH Division of Forests and Lands; James Simino; Sarah Hankens; James Detzel

From: Hackley, Patrick
Sent: Tue, 8 Mar 2022 21:34:29 +0000
To: Ibarguen, Derek -FS; Stewart, Sarah
Subject: RE: Ms. Pastoriza - WMNF Response to 14 February 2022 Inquiry

Derek:

Thank you for forwarding your response to Ms. Pastoriza.

Patrick

Patrick D. Hackley, Director
Department of Natural & Cultural Resources
Division of Forests & Lands
172 Pembroke Road
Concord, NH 03301
(603) 271-2214
www.nh.gov/nhdf/



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From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, March 8, 2022 2:07 PM
To: Stewart, Sarah <Sarah.L.Stewart@dncr.nh.gov>; Hackley, Patrick <Patrick.D.Hackley@dncr.nh.gov>
Subject: Ms. Pastoriza - WMNF Response to 14 February 2022 Inquiry

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Commissioner Stewart and Director Hackley –

Please find attached recent correspondence sent to Ms. Pastoriza.

Let me know if you would like to discuss.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor
Forest Service
White Mountain National Forest

p: 603-536-6202
c: (b)(6)
derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223
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From: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>
Sent: Tuesday, March 8, 2022 9:23 AM
To: krispastoriza@gmail.com
Cc: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: WMNF Response to 14 February 2022 Inquiry

Ms. Pastoriza,

Attached is the White Mountain National Forest's response to your inquiry dated 14 February 2022.

Thank you,

Morgan



Morgan Currier
Executive Assistant
Forest Service
White Mountain National Forest

p: 603-536-6203
c: (b)(6)
f: 603-536-3673
morgan.currier@usda.gov

71 White Mountain Dr
Campton, NH 03223
www.fs.fed.us



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From: Vandlik, John - OGC, Milwaukee, WI
Sent: Mon, 18 Apr 2022 19:33:08 +0000
To: Hankens, Sarah -FS; Vukelich, Vincent - OGC, Milwaukee, WI
Cc: Detzel, James -FS; Ibarguen, Derek -FS; Olson, Shawn -FS
Subject: RE: Nash Response
Attachments: jvrldNash_Stream_Response_Detzel_.docx

Vince and I were just talking about this before your message came through. See attached redline for suggested changes.

Please note, one of my margin comments questions whether (even as revised) the paragraph needs to be included. We don't want to open another debating front with them, especially since Gene's memo addressed ATV use on trails and roads. Again, his memo, which they have, explains the basis.

Nonetheless let us know if you have questions on the attached. As we mentioned before, this is probably more of a PR exercise at this point, and we're not PR specialists. --John



John M. Vandlik
Senior Counsel
Milwaukee Office
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Avenue, Suite 601
Milwaukee, WI 53202
☎ 414-297-3276 (Voice)
📱 (b)(6) (Mobile)
✉ John.Vandlik@usda.gov

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Monday, April 18, 2022 2:00 PM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Subject: FW: Nash Response

Good Afternoon!

I am hoping to get a draft for Derek's review by the end of the day Wednesday. I welcome any comments or edits you have before then- or if you prefer a call, we can make that happen.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Hankens, Sarah -FS
Sent: Wednesday, April 13, 2022 8:33 AM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: FW: Nash Response

Good Morning Vince & John-

We appreciate your review and feedback or edits on the attached draft response, thank you.



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Friday, April 8, 2022 2:31 PM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: Nash Response

Hi Sarah – I took a guess at the response, if you have thoughts feel free to edit or contact me to discuss



James Detzel, L.S. , P.L.S. (*he him his*)
Lands Program Manager

Forest Service
White Mountain National Forest

p: 603-348-3485

f: 603-536-3685

James.Detzel@usda.gov

71 White Mountain Drive

Campton, NH 03223

www.fs.fed.us



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Dear Ms. Pastoriza,

In response to your letter dated March 21st 2022. I have again thoroughly reviewed your concerns with counsel and staff, and I appreciate the detail of the issues you have raised. However as noted in my our prior letter, dated March 8th 2022 letter (responding to yours of February 14th), it ~~is, and~~ has been the Forest Service's longstanding position that the State of New Hampshire has discretion to determine whether or not to allow ~~manage for~~ ATV use on trails within the conservation easement area.

Commented [VJOMW1]: I am not sure what this is intended to indicate. Perhaps it should be re-worded to better reflect the intent.

Our position on this issue as to whether the State of New Hampshire may permit the use of ATV's is, and has been informed by based on the review of the conservation easement, as completed by USDA's Deputy Associate Regional Attorney Gene Erl more than 20 years ago. You include with your March 21st letter an unredacted copy of Mr. Erl's legal memorandum, cited in your letter as Schedule 2. We are not aware how this unredacted version became public, as typically the legal advice from USDA's Office of the General Counsel to the Forest Service is made on the premise that such advice remain privileged and confidential. Nonetheless, you possess the legal rationale that forms the basis of our position.

Your more recent letter draws particular attention to your concerns about ATV use on roads within the conservation easement area. We note that that the Erl memorandum concludes "that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes." The Forest Service's stance or legal interpretation on this question of ATV use then and now remains the same, based on the same rationale or conclusions reached in the Erl memorandum by Attorney Erl.

~~In~~ The conservation easement, under II (C) (2), requires that the Forest Service give its written approval before "public roads...may be granted by the State;" the term "public road" has a specific meaning under that paragraph of the conservation easement. ~~is granted approval~~

authority for public through travel. The Erl memorandum concludes that the authority for the allowance of ATV recreational use, on trails and roads, rests with the State, and that conclusion is based upon other provisions of the conservation easement. It is the Forest Service's discretion based on the terms defined in the easement when written consent is appropriate. As such, the State's management of recreational ATV use does not trigger the need for Forest Service approval under II(C)(2). We do not find the State's development of ATV trails inconsistent with our granted right.

Commented [VJOMW2]: Even as revised, I don't think that this paragraph is necessary for inclusion in the letter. Might just open another can of worm for debate, as to what constitutes "granting" and "operation" of a public road as those terms are used in CE. Are there public roads (as defined under the CE) that being used for recreational ATV use?

We understand that you, or others, might disagree with the position of the Forest Service or the legal rationale contained in the Erl memorandum. Yet, from a practical perspective, your concerns over ATV use within the Nash Stream conservation easement area can, and ought to be, addressed to the State. In the context of the State's management of the public's recreational use of ATV's within the conservation easement area, the State is certainly capable of listening and responding to your concerns, with adjustments to its current management prescriptions as it deems appropriate. The Forest Service simply has no property right under the terms of the conservation easement to interfere with the exercise of the State's discretion in managing the public's recreational use of ATVs.

Finally, your March 21st letter Requests for additional documents "that indicate it (USFS) had any involvement in Nash Stream after 2001; documents that would support a "longstanding position." We do not construe your March 21st letter as a FOIA request, consequently if you are now requesting more documents, please either formally modify ~~can be made via a modification~~ of your current FOIA request or make a new, separate FOIA request. Please let us know, how you intend to proceed on this FOIA front.

Commented [VJOMW3]: Is there a pending FOIA request? If so perhaps it should be identified in a footnote or with date.

Thank you for your involvement in the administration of the Nash Stream Conservation Easement. Again, your concerns with the ATV use due to the State's recreational management of Nash Stream actions you identify, should be directed to the State, as it ~~to assist in their~~ develops ~~ment of its~~ guiding/operating plans for the area.

Commented [VJOMW4]: Is there some sort of on-going plan development happening with the state? If so, might want to specifically mention.

From: Ibarguen, Derek -FS
Sent: Tue, 8 Mar 2022 12:50:43 +0000
To: Currier, Morgan - FS, CAMPTON, NH
Cc: Hankens, Sarah -FS
Subject: RE: Pastoriza Letter

Morgan –

This letter may be processed. Please use the letter you edited and send to me for signature. The cc list should include Sarah Stewart, Commissioner of the Department of Natural and Cultural Resources, Patrick Hackley, Director of the NH Division of Forests and Lands.

After I sign please send to Kris Pastoriza at (b)(6) with a cc to me. I will then forward the letter to those identified above.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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From: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>
Sent: Thursday, February 24, 2022 11:16 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: Pastoriza Letter

Derek,

I included the version Sarah sent as well as a version with my edits. I didn't change much. I took out 'so called' (it was in front of "through roads") because it came across as snarky (at least to me).



Morgan Currier
Executive Assistant

Forest Service
White Mountain National Forest

p: 603-536-6203

c: (b)(6)

f: 603-536-3673
morgan.currier@usda.gov

71 White Mountain Dr
Campton, NH 03223

www.fs.fed.us



**Caring for the land and serving
people**

From: Ibarguen, Derek -FS
Sent: Tue, 8 Feb 2022 13:16:27 +0000
To: Detzel, James -FS; Currier, Morgan - FS, CAMPTON, NH
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Thanks for putting together a response James.

Morgan – I would like to respond via email. Could you send the body of the letter to me in an email. I will take that and edit it to respond.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Monday, February 7, 2022 12:28 PM
To: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Morgan – there is a response letter for Derek awaiting your review in Mercury I believe he would like to respond asap.

James

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Monday, February 7, 2022 12:10 PM
To: Detzel, James -FS <james.detzel@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Done, thank you.



Sarah Hankens (she/her)
Technical & Public Services Staff Officer
Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



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From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Monday, February 7, 2022 11:36 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Sarah – there is a draft response in mercury for your review

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Friday, February 4, 2022 9:33 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek-

Thank you for sharing the below. James & I discussed and he feels with all the provided information he will have a drafted response to you on Monday. We did not discuss a need for further communication w/ Shawn or OGC, as no additional questions given the provided information- but open to revisiting that as needed. We are still planning to connect with Dean today if possible.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer
Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



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From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Friday, February 4, 2022 8:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>
Subject: Fwd: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Sarah –

Sharing email below. This is a response from OGC to an email I sent Wednesday. The email I sent yesterday requested advice on responding to Kris Pastoriza and updated review of the legal opinion. This email clearly defines our role and believe this supports our ability to respond to Kris Pastoriza.

The question that remains is our monitoring and enforcement of the easement deed. Please continue coordination with Director Shawn Olson and OGC for any additional clarifications you believe we need and draft a response for me to Kris Pastoriza. If you also believe the information below is adequate to draft a response I would like to send it as soon as possible.

Derek

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From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 3, 2022 9:50 PM
To: Ibarguen, Derek -FS; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek –

This issue has come up before from Tom Wagner in 2017, and both John and I have the e-mails in our files. John dealt with this issue in 2001, and I've attached John's print out he has from his e-mail at that time.

I'm not quite sure what the exact question you are seeking to have answered, but let me address a couple issues.

John remembers this acquisition and it was designed to enable the State to buy the underlying fee title after the Forest Service acquired a conservation easement over the property. Therefore, the rights and responsibilities of the Forest Service are defined by the easement.

To answer the question that I understand Mr. Pastoriza is asking: The Forest Service does not have a role in the development or management of ATV trails on the lands covered by the conservation easement. The easement allows for this type of use, and that is the end of the Forest Service involvement.

Where the Forest Service has a role on these lands is as an 'enforcer' of the terms of the conservation easement – if the State proposes or does something that is not consistent with the conservation easement the Forest Service has the legal right to prevent that use.

Based on Gene Erl's opinion (which we have reaffirmed in 2001, 2017 and I reaffirm here in 2022) if the State proposes to allow cross country ATV use, we have a strong argument that right was not reserved by the State and therefore we could block that type of use.

Obviously it appears there are more questions you have as this moves forward.

Feel free to give me or call, or if you would like we can arrange a call with you and the appropriate staff if you have more questions regarding the conservation easement on the Nash Stream Forest.

Take care – vince v.



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Wednesday, February 2, 2022 7:06 AM
To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Shawn –

See below for email I sent to Vince yesterday regarding an easement deed held by the USDA Forest Service on a State Forest in NH. The main point of contention is ATV use and the state authority to ban/allow and regulate that use. Tomorrow I will be having a conversation with Lands staff on the Forest regarding the easement deed and may have a request for review of the legal opinion attached.

In the meantime I wanted to get this on your radar in general and for assistance on the process question mentioned below. I have additional documents I may provide for context if we deem necessary in the form of letters from NGO's and the state of NH regarding this matter, including legal assertions regarding the easement deed. As far as a timeline I am looking to be responsive to the citizen's question below in the next week or so. The longer term is the potential need for having a review of the legal opinion. A request I am hearing may come externally as well.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



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From: Ibarguen, Derek -FS

Sent: Tuesday, February 1, 2022 2:06 PM

To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>

Subject: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Vince –

Attached is an OGC opinion from 2001 requested by previous Forest Supervisor, Tom Wagner, regarding an easement deed (attached) held by the USFS on Nash Stream State Forest in New Hampshire. The opinion states the easement deed provides the authority to the state of New Hampshire to ban/allow/regulate public ATV use on roads and trails for recreational purposes.

The below email is from a concerned and active citizen who poses the question to me regarding current and past processes for allowing ATV trail use on Nash Stream State Forest. See attached for current process - Revised Southern Connector Request Form. An internal state form used by the state of NH – Department of Conservation and Natural Resources.

Given the fact that we hold the easement deed do you believe the form should have been filled out and handled as questioned below for the Southern Connector request? The additional trails mentioned were established previously and the same question is posed for those (West Side/Kelsey Notch Trails).

Thanks - Derek

From: Detzel, James -FS
Sent: Fri, 4 Feb 2022 15:03:02 +0000
To: Olson, Shawn -FS; Hankens, Sarah -FS; Simino, James -FS
Cc: Ibarguen, Derek -FS
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Thanks Shawn, I would like to connect for a few minutes I am free after 13:30 today and will look to see if you are free then.

James

From: Olson, Shawn -FS <shawn.olson@usda.gov>
Sent: Friday, February 4, 2022 9:45 AM
To: Detzel, James -FS <james.detzel@usda.gov>; Hankens, Sarah -FS <sarah.hankens@usda.gov>; Simino, James -FS <james.simino@usda.gov>
Cc: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

FYI – (See Vince’s response below). Let me know if you would like to discuss Vince’s note. I have some availability this afternoon-

From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 3, 2022 8:50 PM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek –

This issue has come up before from Tom Wagner in 2017, and both John and I have the e-mails in our files. John dealt with this issue in 2001, and I’ve attached John’s print out he has from his e-mail at that time.

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John remembers this acquisition and it was designed to enable the State to buy the underlying fee title after the Forest Service acquired a conservation easement over the property. Therefore, the rights and responsibilities of the Forest Service are defined by the easement.

To answer the question that I understand Mr. Pastoriza is asking: The Forest Service does not have a role in the development or management of ATV trails on the lands covered by the conservation

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Where the Forest Service has a role on these lands is as an 'enforcer' of the terms of the conservation easement – if the State proposes or does something that is not consistent with the conservation easement the Forest Service has the legal right to prevent that use.

Based on Gene Erl's opinion (which we have reaffirmed in 2001, 2017 and I reaffirm here in 2022) if the State proposes to allow cross country ATV use, we have a strong argument that right was not reserved by the State and therefore we could block that type of use.

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Feel free to give me or call, or if you would like we can arrange a call with you and the appropriate staff if you have more questions regarding the conservation easement on the Nash Stream Forest.

Take care – vince v.



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
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626 E. Wisconsin Ave., Suite 601
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' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

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Sent: Wednesday, February 2, 2022 7:06 AM
To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Shawn –

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In the meantime I wanted to get this on your radar in general and for assistance on the process question mentioned below. I have additional documents I may provide for context if we deem necessary in the form of letters from NGO's and the state of NH regarding this matter, including legal assertions regarding the easement deed. As far as a timeline I am looking to be responsive to the citizen's question

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Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
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www.fs.fed.us



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From: Ibarguen, Derek -FS

Sent: Tuesday, February 1, 2022 2:06 PM

To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>

Subject: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

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Given the fact that we hold the easement deed do you believe the form should have been filled out and handled as questioned below for the Southern Connector request? The additional trails mentioned were established previously and the same question is posed for those (West Side/Kelsey Notch Trails).

Thanks - Derek

From: Hankens, Sarah -FS
Sent: Fri, 4 Feb 2022 14:32:55 +0000
To: Ibarguen, Derek -FS
Cc: Detzel, James -FS; Mcaloon, Lynn - FS
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek-

Thank you for sharing the below. James & I discussed and he feels with all the provided information he will have a drafted response to you on Monday. We did not discuss a need for further communication w/ Shawn or OGC, as no additional questions given the provided information- but open to revisiting that as needed. We are still planning to connect with Dean today if possible.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

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www.fs.fed.us



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From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Friday, February 4, 2022 8:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>
Subject: Fwd: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Sarah –

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and draft a response for me to Kris Pastoriza. If you also believe the information below is adequate to draft a response I would like to send it as soon as possible.

Derek

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From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 3, 2022 9:50 PM
To: Ibarguen, Derek -FS; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

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Feel free to give me or call, or if you would like we can arrange a call with you and the appropriate staff if you have more questions regarding the conservation easement on the Nash Stream Forest.

Take care – vince v.



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Wednesday, February 2, 2022 7:06 AM
To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

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Derek Ibarguen (he/him/his)
Forest Supervisor
Forest Service
White Mountain National Forest

p: 603-536-6202
c: (b)(6)
derek.ibarguen@usda.gov

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Campton, NH 03223
www.fs.fed.us



Caring for the land and serving people

From: Ibarguen, Derek -FS
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Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Monday, January 31, 2022 5:06 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

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Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

From: Vukelich, Vincent - OGC, Milwaukee, WI
Sent: Fri, 4 Feb 2022 02:50:23 +0000
To: Ibarguen, Derek -FS; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: MilwaukeeScanner@ogc.usda.gov_20170222_155815.pdf

Derek –

This issue has come up before from Tom Wagner in 2017, and both John and I have the e-mails in our files. John dealt with this issue in 2001, and I've attached John's print out he has from his e-mail at that time.

I'm not quite sure what the exact question you are seeking to have answered, but let me address a couple issues.

John remembers this acquisition and it was designed to enable the State to buy the underlying fee title after the Forest Service acquired a conservation easement over the property. Therefore, the rights and responsibilities of the Forest Service are defined by the easement.

To answer the question that I understand Mr. Pastoriza is asking: The Forest Service does not have a role in the development or management of ATV trails on the lands covered by the conservation easement. The easement allows for this type of use, and that is the end of the Forest Service involvement.

Where the Forest Service has a role on these lands is as an 'enforcer' of the terms of the conservation easement – if the State proposes or does something that is not consistent with the conservation easement the Forest Service has the legal right to prevent that use.

Based on Gene Erl's opinion (which we have reaffirmed in 2001, 2017 and I reaffirm here in 2022) if the State proposes to allow cross country ATV use, we have a strong argument that right was not reserved by the State and therefore we could block that type of use.

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Kris Pastoriza
Easton, N.H.

(b)(5)



-John V. 11/7/01

From: Ibarguen, Derek -FS
Sent: Thu, 3 Feb 2022 18:03:26 +0000
To: Olson, Shawn -FS; Vukelich, Vincent - OGC, Milwaukee, WI
Cc: Hankens, Sarah -FS; Detzel, James -FS; Simino, James -FS
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: nash-stream-easement.pdf, Opinion from Milwaukee USFS office.pdf, Revised Southern Connector Request.pdf

Shawn and Vince –

Today WMNF staff met to discuss this easement. WMNF Staff Officer Sarah Hankens and Lands Program Manager James Detzel will be coordinating with you on our request for advice and counsel. They can provide the referenced additional information as necessary.

We have a request for two items;

1. Assistance to answer the question below regarding trail proposal process from Kris Pastoriza – if possible would like advice on this in the next week so I may provide a timely response.
2. Review of the attached OGC legal opinion and provide an updated response.

Thanks - Derek



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White Mountain National Forest

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STATE LAND RECORD

TRACT NASH STREAM FOREST # 3

GRANTOR State of NH

DATE OF DEED 8/4/89

DATE OF RECORD 8/7/89

GRANTEE US Forest Service
Dept. of Agriculture
Washington, DC 20250

COUNTY Coos

BOOK 752 PAGE 252

CONSIDERATION \$3,950,000. — 100/AC

CHARACTER Conservation Easement

ACRES

TREAS. BOOK PAGE

TOWN

DESCRIPTION

CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

D.R.E.D.

AUG 16 1989

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE

By: *William G. Abbott*
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

D.R.E.D.

AUG 16 1988

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
 12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

D.R.E.D.

AUG 16 1989

RECEIVED

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF



STATE AND FEDERAL LAND PROJECT EVALUATION FORM

PLEASE PRINT ALL INFORMATION

Section A (To Be Completed by BOT District Supervisor for Club's District)

Property Name: West side rd area Nash Stream

Town Property In: Stark NH

State Land

Federal Land

- DNCR Forest and Lands
- DNCR Parks and Recreation
- NH Department of Environmental Services
- NH Fish and Game Department
- NH Department of Transportation
- Other: _____

- National Park Service
- US Army Corps of Engineers
- US Fish and Wildlife Service
- US Forest Service
- Other: _____

Property Contact: M Machinist

Title: Regional Forester

Telephone: 603 788-4157

FAX: _____

Section B (To Be Completed by Club Trail Administrator)

Remember to ATTACH a DETAILED MAP and other required supporting documents

PROJECT DESCRIPTION (Why is the project necessary, purpose, benefits, etc.):

Utilize approx 1100 feet of existing snowmobile Primary corridor 5 for combined ATV/Snowmobile/Hiking route.
The property lies between existing ATV route and ATV route D and the newly constructed ATV exclusive bridge
spanning NASH Stream. This parcel already in recreational use will complete the tie between both North
South and East West ATV system adding to the economy of the entire Southern Coos county area and
more importantly eliminate the need potentially forever for ATV access to NASH Stream Road and areas.

A. If the project involves bridges, please describe them (how many, span, proposed materials, width, etc.):

NO Bridges as a 100ft bridge spanning NASH Stream has been erected already

B. Are there wetlands in the project area? Yes No

If yes, will the project require a Trails Notification be filed with DES? Yes No

If yes, describe how the club will deal with them:

NOTE: As reviewed with NH Dept of Forest and NH Bureau of Trails representatives appropriate trail culvert(s) and trail upgrades in materials will be done.

While at this time no permitting appears to be required under existing rules/statutes, should that change the NG Trails club is prepared to navigate any and all compliance needs as prescribed by rule or statute.

C. Describe existing roads/trails that are in the project area (uses, etc.):

Existing State of NH trails and logging roads known as West-side road and ATV trail C/D

The area adjacent to the 1100 foot area of consideration to the North and South are already maintained as snow corridor 5.

The only other alternative to link the existing ATV route would be to open a portion of NASH Stream road which is an undesirable option.

D. Are there any wildlife concerns in the project area such as deer yards? Yes No

If yes, describe here:

Additional Comments:

The area in question is of course owned by the State of NH and maintained for the public's use and benefit. Currently 8 mos of the year this small link is literally mostly unused by the public due to gates and bars. While not only completing the link of ATV trail system to all areas North/South/East/West and the struggling economic areas of all Coos county, the opening of this link will ensure appropriate motorized and non-motorized recreation to all of NASH Stream

Date: 01 MAR 2021

Signature of Club Trail Administrator:


1. EMPEROR - 603-477-3333

Date: _____

Signature of BOT District Supervisor: _____

From: Olson, Shawn -FS
Sent: Wed, 2 Feb 2022 15:52:56 +0000
To: Ibarguen, Derek -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Heyl, Jonathan -FS; Schleif, Elizabeth - FS; Gries, James -FS
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Thanks Derek – Let us know how we can assist after your conversation.

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Wednesday, February 2, 2022 7:06 AM
To: Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Shawn –

See below for email I sent to Vince yesterday regarding an easement deed held by the USDA Forest Service on a State Forest in NH. The main point of contention is ATV use and the state authority to ban/allow and regulate that use. Tomorrow I will be having a conversation with Lands staff on the Forest regarding the easement deed and may have a request for review of the legal opinion attached.

In the meantime I wanted to get this on your radar in general and for assistance on the process question mentioned below. I have additional documents I may provide for context if we deem necessary in the form of letters from NGO's and the state of NH regarding this matter, including legal assertions regarding the easement deed. As far as a timeline I am looking to be responsive to the citizen's question below in the next week or so. The longer term is the potential need for having a review of the legal opinion. A request I am hearing may come externally as well.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive

Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Ibarguen, Derek -FS
Sent: Tuesday, February 1, 2022 2:06 PM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Vince –

Attached is an OGC opinion from 2001 requested by previous Forest Supervisor, Tom Wagner, regarding an easement deed (attached) held by the USFS on Nash Stream State Forest in New Hampshire. The opinion states the easement deed provides the authority to the state of New Hampshire to ban/allow/regulate public ATV use on roads and trails for recreational purposes.

The below email is from a concerned and active citizen who poses the question to me regarding current and past processes for allowing ATV trail use on Nash Stream State Forest. See attached for current process - Revised Southern Connector Request Form. An internal state form used by the state of NH – Department of Conservation and Natural Resources.

Given the fact that we hold the easement deed do you believe the form should have been filled out and handled as questioned below for the Southern Connector request? The additional trails mentioned were established previously and the same question is posed for those (West Side/Kelsey Notch Trails).

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza (b)(6) >
Sent: Monday, January 31, 2022 5:06 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;

Use caution before clicking links or opening attachments.

Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

From: Currier, Morgan - FS, CAMPTON, NH
Sent: Tue, 8 Feb 2022 13:18:20 +0000
To: Ibarguen, Derek -FS; Detzel, James -FS
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: Formal Letter 1 Signature Response, Nash Stream.docm

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, February 8, 2022 8:16 AM
To: Detzel, James -FS <james.detzel@usda.gov>; Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Thanks for putting together a response James.

Morgan – I would like to respond via email. Could you send the body of the letter to me in an email. I will take that and edit it to respond.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Monday, February 7, 2022 12:28 PM
To: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Morgan – there is a response letter for Derek awaiting your review in Mercury
I believe he would like to respond asap.

James

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Monday, February 7, 2022 12:10 PM
To: Detzel, James -FS <james.detzel@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Done, thank you.



Sarah Hankens (she/her)
Technical & Public Services Staff Officer

Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Detzel, James -FS <james.detzel@usda.gov>
Sent: Monday, February 7, 2022 11:36 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Sarah – there is a draft response in mercury for your review

From: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Sent: Friday, February 4, 2022 9:33 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek-

Thank you for sharing the below. James & I discussed and he feels with all the provided information he will have a drafted response to you on Monday. We did not discuss a need for further communication w/ Shawn or OGC, as no additional questions given the provided information- but open to revisiting that as needed. We are still planning to connect with Dean today if possible.

Thank you,



Sarah Hankens (she/her)
Technical & Public Services Staff Officer
Forest Service
White Mountain National Forest

c: (b)(6)
sarah.hankens@usda.gov

71 White Mountain Drive
Campton, NH 03223

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From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Friday, February 4, 2022 8:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>
Cc: Detzel, James -FS <james.detzel@usda.gov>; Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>
Subject: Fwd: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Sarah –

Sharing email below. This is a response from OGC to an email I sent Wednesday. The email I sent yesterday requested advice on responding to Kris Pastoriza and updated review of the legal opinion. This email clearly defines our role and believe this supports our ability to respond to Kris Pastoriza.

The question that remains is our monitoring and enforcement of the easement deed. Please continue coordination with Director Shawn Olson and OGC for any additional clarifications you believe we need and draft a response for me to Kris Pastoriza. If you also believe the information below is adequate to draft a response I would like to send it as soon as possible.

Derek

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From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 3, 2022 9:50 PM
To: Ibarguen, Derek -FS; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: RE: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Derek –

This issue has come up before from Tom Wagner in 2017, and both John and I have the e-mails in our files. John dealt with this issue in 2001, and I've attached John's print out he has from his e-mail at that time.

I'm not quite sure what the exact question you are seeking to have answered, but let me address a couple issues.

John remembers this acquisition and it was designed to enable the State to buy the underlying fee title after the Forest Service acquired a conservation easement over the property. Therefore, the rights and responsibilities of the Forest Service are defined by the easement.

To answer the question that I understand Mr. Pastoriza is asking: The Forest Service does not have a role in the development or management of ATV trails on the lands covered by the conservation easement. The easement allows for this type of use, and that is the end of the Forest Service involvement.

Where the Forest Service has a role on these lands is as an 'enforcer' of the terms of the conservation easement – if the State proposes or does something that is not consistent with the conservation easement the Forest Service has the legal right to prevent that use.

Based on Gene Erl's opinion (which we have reaffirmed in 2001, 2017 and I reaffirm here in 2022) if the State proposes to allow cross country ATV use, we have a strong argument that right was not reserved by the State and therefore we could block that type of use.

Obviously it appears there are more questions you have as this moves forward.

Feel free to give me or call, or if you would like we can arrange a call with you and the appropriate staff if you have more questions regarding the conservation easement on the Nash Stream Forest.

Take care – vince v.



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>

Sent: Wednesday, February 2, 2022 7:06 AM

To: Olson, Shawn -FS <shawn.olson@usda.gov>

Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>

Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Shawn –

See below for email I sent to Vince yesterday regarding an easement deed held by the USDA Forest Service on a State Forest in NH. The main point of contention is ATV use and the state authority to ban/allow and regulate that use. Tomorrow I will be having a conversation with Lands staff on the Forest regarding the easement deed and may have a request for review of the legal opinion attached.

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Thanks - Derek



Derek Ibarquen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarquen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Ibarquen, Derek -FS

Sent: Tuesday, February 1, 2022 2:06 PM

To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>

Subject: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)

Vince –

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Given the fact that we hold the easement deed do you believe the form should have been filled out and handled as questioned below for the Southern Connector request? The additional trails mentioned were established previously and the same question is posed for those (West Side/Kelsey Notch Trails).

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

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Caring for the land and serving people

From: Kris pastoriza <(b)(6)>

Sent: Monday, January 31, 2022 5:06 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>

Subject: [External Email]Nash Stream

[External Email]

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And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

From: Vandlik, John - OGC, Milwaukee, WI
Sent: Thu, 17 Feb 2022 17:26:07 +0000
To: Detzel, James -FS; Ibarguen, Derek -FS; Hankens, Sarah -FS
Cc: Olson, Shawn -FS
Subject: RE: Teams connection died
Attachments: Nash Stream Conservation Easement.pdf

When I lost connection, James was talking about “through trails”. In a quick review of CE just now, I don’t see that the CE addresses through **trails**. Rather, it appears to only address “through roads.” Am I missing something? If Tom Wagner mentioned “through **trails**,” in 2001, that was not based on any legal conclusion Gene had made. Trails are only addressed at II(C)(1) while roads are addressed at II (C) (2). II (C) (1) makes no mention of through trails. Per II (C)(2) , it would seem that new through roads would require prior FS written approval. (As we mentioned, generally such “concurrence” must be in writing per III(D), though in this case II(C)(2) itself speaks of written approval). BTW, seems like various logging practices also implicate need for FS approval. Let me know if we need to talk more about this so called through trail issue.



John M. Vandlik
Senior Counsel
Milwaukee Office
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Avenue, Suite 601
Milwaukee, WI 53202
☎ 414-297-3276 (Voice)
📱 (b)(6) (Mobile)
✉ John.Vandlik@usda.gov

From: Vandlik, John - OGC, Milwaukee, WI
Sent: Thursday, February 17, 2022 11:00 AM
To: Detzel, James -FS <james.detzel@usda.gov>; Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Hankens, Sarah -FS <sarah.hankens@usda.gov>
Cc: Olson, Shawn -FS <shawn.olson@usda.gov>
Subject: Teams connection died

I’m sorry but I lost my Teams connection and couldn’t get back on. Let me know if you need further info, otherwise, I’ll just look for a draft to review.



John M. Vandlik
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Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Avenue, Suite 601

Milwaukee, WI 53202

📞 414-297-3276 (Voice)

📱 (b)(6) (Mobile)

✉️ John.Vandlik@usda.gov

CONSERVATION EASEMENT DEED

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE

By: *William G. Abbott*
WILLIAM G. ABBOTT

Its Executive Director of The
New Hampshire Land Conservation
Investment Program

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Barto
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
 12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

*Recording Office
Stack # 12 at 1/14*

Cons. County Register of Deeds

Received *Aug 7*, 19*89*

Recorded Volume 152, Page 252

Examined Attest
Charles H. ...

Dear Ms. Pastoriza,

In reference to your response dated February 14th, 2022 you requested:

"In conclusion:

- *Please state whether the USFS concurs with the Ropes and Gray memorandum.*
- *If the USFS does not concur with the Ropes and Gray Memorandum, please provide it's interpretation of the easement as it relates to ATV use, and specifically its interpretation of section II-C.*
- *If the USFS does not concur with the Ropes and Gray memorandum, please state whether the USFS denies responsibility for its concurrence (III-D) on the siting of through trails."*

In granting the conservation easement the State of New Hampshire reserved *"Public Recreation"* (Section II C 1.) This reservation allows for the construction, operation and maintenance of trails. We interpret the use, and construction of ATV trails consistent with this reservation. The United States role as defined in Section III D. allows for *"a right to manage any resource or land use acquired by this easement not reserved by the State"*. As such we do not have a role in the development or management of ATV trails or a requirement of written concurrence on the lands encompassed by the conservation easement.

From: Ibarguen, Derek -FS
Sent: Tue, 1 Feb 2022 19:05:30 +0000
To: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: Revised Southern Connector Request.pdf, Opinion from Milwaukee USFS office.pdf, nash-stream-easement.pdf

Vince –

Attached is an OGC opinion from 2001 requested by previous Forest Supervisor, Tom Wagner, regarding an easement deed (attached) held by the USFS on Nash Stream State Forest in New Hampshire. The opinion states the easement deed provides the authority to the state of New Hampshire to ban/allow/regulate public ATV use on roads and trails for recreational purposes.

The below email is from a concerned and active citizen who poses the question to me regarding current and past processes for allowing ATV trail use on Nash Stream State Forest. See attached for current process - Revised Southern Connector Request Form. An internal state form used by the state of NH – Department of Conservation and Natural Resources.

Given the fact that we hold the easement deed do you believe the form should have been filled out and handled as questioned below for the Southern Connector request? The additional trails mentioned were established previously and the same question is posed for those (West Side/Kelsey Notch Trails).

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive

Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Monday, January 31, 2022 5:06 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;

Use caution before clicking links or opening attachments.

Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.



STATE AND FEDERAL LAND PROJECT EVALUATION FORM

PLEASE PRINT ALL INFORMATION

Section A (To Be Completed by BOT District Supervisor for Club's District)

Property Name: West side rd area Nash Stream

Town Property In: Stark NH

State Land

Federal Land

- DNCR Forest and Lands
- DNCR Parks and Recreation
- NH Department of Environmental Services
- NH Fish and Game Department
- NH Department of Transportation
- Other: _____

- National Park Service
- US Army Corps of Engineers
- US Fish and Wildlife Service
- US Forest Service
- Other: _____

Property Contact: M Machinist

Title: Regional Forester

Telephone: 603 788-4157

FAX: _____

Section B (To Be Completed by Club Trail Administrator)

Remember to ATTACH a DETAILED MAP and other required supporting documents

PROJECT DESCRIPTION (Why is the project necessary, purpose, benefits, etc.):

Utilize approx 1100 feet of existing snowmobile Primary corridor 5 for combined ATV/Snowmobile/Hiking route.
The property lies between existing ATV route and ATV route D and the newly constructed ATV exclusive bridge
spanning NASH Stream. This parcel already in recreational use will complete the tie between both North
South and East West ATV system adding to the economy of the entire Southern Coos county area and
more importantly eliminate the need potentially forever for ATV access to NASH Stream Road and areas.

A. If the project involves bridges, please describe them (how many, span, proposed materials, width, etc.):

NO Bridges as a 100ft bridge spanning NASH Stream has been erected already

B. Are there wetlands in the project area? Yes No

If yes, will the project require a Trails Notification be filed with DES? Yes No

If yes, describe how the club will deal with them:

NOTE: As reviewed with NH Dept of Forest and NH Bureau of Trails representatives appropriate trail culvert(s) and trail upgrades in materials will be done.

While at this time no permitting appears to be required under existing rules/statutes, should that change the NG Trails club is prepared to navigate any and all compliance needs as prescribed by rule or statute.

C. Describe existing roads/trails that are in the project area (uses, etc.):

Existing State of NH trails and logging roads known as West-side road and ATV trail C/D

The area adjacent to the 1100 foot area of consideration to the North and South are already maintained as snow corridor 5.

The only other alternative to link the existing ATV route would be to open a portion of NASH Stream road which is an undesirable option.

D. Are there any wildlife concerns in the project area such as deer yards? Yes No

If yes, describe here:

Additional Comments:

The area in question is of course owned by the State of NH and maintained for the public's use and benefit. Currently 8 mos of the year this small link is literally mostly unused by the public due to gates and bars. While not only completing the link of ATV trail system to all areas North/South/East/West and the struggling economic areas of all Coos county, the opening of this link will ensure appropriate motorized and non-motorized recreation to all of NASH Stream

Date: 01 MAR 2021

Signature of Club Trail Administrator:


1. EMPEROR - 603-477-3333

Date: _____

Signature of BOT District Supervisor: _____

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
Deputy Associate Regional Attorney

SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

STATE LAND RECORD

TRACT NASH STREAM FOREST # 3

GRANTOR State of NH

DATE OF DEED 8/4/89

DATE OF RECORD 8/7/89

GRANTEE
US Forest Service
Dept. of Agriculture
Washington, DC 20250

COUNTY Coos

BOOK 752 PAGE 252

CONSIDERATION \$3,950,000. — 100/AC

CHARACTER Conservation Easement

ACRES

TREAS. BOOK PAGE

TOWN

DESCRIPTION

CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE

By: William G. Abbott
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
 12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

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From: Currier, Morgan - FS, CAMPTON, NH
Sent: Tue, 8 Mar 2022 14:23:21 +0000
To: (b)(6)
Cc: Ibarguen, Derek -FS
Subject: WMNF Response to 14 February 2022 Inquiry
Attachments: Ms Pastoriza Response Letter March 2022 Signed.pdf

Ms. Pastoriza,

Attached is the White Mountain National Forest's response to your inquiry dated 14 February 2022.

Thank you,

Morgan



Morgan Currier
Executive Assistant
Forest Service
White Mountain National Forest

p: 603-536-6203

c: (b)(6)

f: 603-536-3673

morgan.currier@usda.gov

71 White Mountain Dr

Campton, NH 03223

www.fs.fed.us



**Caring for the land and serving
people**

File Code: 5440
Date: March 8, 2022

Kris Pastoriza

(b)(6)

Dear Ms. Pastoriza,

This responds to your inquiry dated February 14th, 2022.

The Forest Service was the acquiring agency, on behalf of the United States of America, with respect to the 1989 Nash Stream conservation easement purchased from the State of New Hampshire. It has been the Forest Service's longstanding position that, under the terms of the conservation easement, the State of New Hampshire reserves the discretion to ban, authorize, or regulate ATV trails within the conservation easement area. Conversely, the Forest Service acquired no role in the exercise of the State's discretion in this regard. Our position has not changed, notwithstanding the 2020 Ropes and Gray memorandum which we previously reviewed.

Also, you raised the subject of "through trails." The conservation easement at II(C)(1) makes no distinction between a "through trail" and a "non-through trail," when it comes to the discretion reserved by the State. We note that II(C)(2) does make a distinction between internal roads that do not provide for "through travel" and "public roads." In the context of public roads, the Forest Service does have approval authority under the conservation easement terms. That provision has no bearing on the reserved authority of the State with respect to recreational trails.

As such, we do not have a role in the development or management of ATV trails. Nor is there a requirement for written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. Please direct any concerns about ATV trails on the conservation easement area to the State.

Sincerely,

DEREK
X IBARGUEN

Digitally signed by
DEREK IBARGUEN
Date: 2022.03.08
08:32:53 -05'00'

DEREK J.S. IBARGUEN
Forest Supervisor



CC: Sarah Stewart, Commissioner of the Department of Natural and Cultural Resources; Patrick Hackley, Director of the NH Division of Forests and Lands; James Simino; Sarah Hankens; James Detzel

From: Ibarguen, Derek -FS
Sent: Wed, 16 Feb 2022 21:00:21 +0000
To: Vandlik, John - OGC, Milwaukee, WI; Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI; Lutz, Dean -FS; Hankens, Sarah -FS
Subject: RE: ACTION BY 2/25 - Nash Stream
Attachments: RE: [External Email]Nash Stream

John – We will have to do some searching for the letter from Tom Wagner to the state of NH. I haven't seen that letter - paper or electronic.

The letter quotes me from an email I sent recently to Kris Pastoriza. That email is attached.

Thanks – Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



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From: Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Sent: Wednesday, February 16, 2022 1:25 PM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>; Lutz, Dean -FS <dean.lutz@usda.gov>
Subject: RE: ACTION BY 2/25 - Nash Stream

Can you please provide the 9/25/01 letter from Forest Sup Wagner to NH, which is referred to in some of the letters?

Also Derek, you're quoted too in one of the letters. Can you provide the full correspondence that contained the quote?



John M. Vandlik
Senior Counsel
Milwaukee Office
Office of the General Counsel
U.S. Department of Agriculture

626 E. Wisconsin Avenue, Suite 601
Milwaukee, WI 53202
☎ 414-297-3276 (Voice)
☎ (b)(6) (Mobile)
✉ John.Vandlik@usda.gov

From: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Tuesday, February 15, 2022 5:32 PM
To: Vandlik, John - OGC, Milwaukee, WI <john.vandlik@usda.gov>
Cc: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: ACTION BY 2/25 - Nash Stream
Importance: High



Vince Vukelich
Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
626 E. Wisconsin Ave., Suite 601
Milwaukee, WI 53202
' 414-297-3786 (Voice)
' (b)(6) (Mobile)
' 844-288-3359 (Fax)
✉ vince.vukelich@usda.gov

From: Olson, Shawn -FS <shawn.olson@usda.gov>
Sent: Tuesday, February 15, 2022 10:36 AM
To: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Subject: FW: ACTION BY 2/25 - Nash Stream
Importance: High

FYI –

From: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>
Sent: Tuesday, February 15, 2022 10:05 AM
To: Hankens, Sarah -FS <sarah.hankens@usda.gov>; Olson, Shawn -FS <shawn.olson@usda.gov>
Cc: Mcaloon, Lynn - FS <Lynn.Mcaloon@usda.gov>; Sjostrom, Joshua - FS <Joshua.Sjostrom@usda.gov>
Subject: ACTION BY 2/25 - Nash Stream
Importance: High

Sarah – Please see the email below and the attached letter to the FS and request OGC support in coordination with Director Shawn Olson. I would like to respond with a letter to Kris Pastoriza by 2/25.

Shawn – Including you here so I can point out the email below also went to Greg Smith at the WO.

Lynn – This went to Chuck Henderson of Senator Shaheen’s office as well. Please let him know we are working through a response regarding the easement.

Thanks - Derek



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c (b)(6)

derek.ibarguen@usda.gov

71 White Mountain Drive
Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Kris pastoriza (b)(6) >

Sent: Tuesday, February 15, 2022 9:04 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Smith, Greg- FS <Gregory.Smith4@usda.gov>;
eestill@fs.fed.us; Taylor, Suzanne -FS <suzanne.taylor@usda.gov>

Cc: Matt Leahy <mleahy@forestsociety.org>; sarnold@outdoors.org; Megan Latour <mlatour@tnc.org>;
Sarah <Sarah.L.Stewart@dncr.nh.gov>; Chuck_Henderson@shaheen.senate.gov

Subject: Re: [External Email]Nash Stream

I request that the appropriate counsel at USFS render a legal opinion in response to the questions raised by me and others, concerning the easement terms for Nash Stream State Forest, N.H. (see first, AMC Memo. and letter to FS re Nash Stream.)

Thank you,

Kris Pastoriza
Easton, N.H.

On Tue, Feb 8, 2022 at 9:04 AM Ibarguen, Derek -FS <derek.ibarguen@usda.gov> wrote:
Dear Ms. Pastoriza,

In response to your inquiry below, in which you asked, "Since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. (Revised Southern Connector Request) have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service? And could the same be said of the Kelsey Notch Trails and West Side Trails?"

The United States' role is defined in Section III-D of the conservation easement deed. Allowing for administration of the terms and conditions set forth in the easement, the United States can only evaluate a proposal's consistency with those terms of the easement. In this case we do not have a role in the development or management of ATV trails on the lands covered by the easement; as such, we also do not have a role in determining whether the 'Forest Service' should or should not have been checked off on the State's trail proposal form.

Thank You – Derek Ibarguen



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

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Campton, NH 03223

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Caring for the land and serving people

From: Kris pastoriza <(b)(6)>

Sent: Monday, January 31, 2022 5:06 AM

To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>

Subject: [External Email]Nash Stream

[External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;
Use caution before clicking links or opening attachments.

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Dear Derek and Brooke,

since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. ('Revised Southern Connector Request') have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service?

And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.

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From: Ibarguen, Derek -FS
Sent: Tue, 8 Feb 2022 14:04:12 +0000
To: Kris pastoriza
Bcc: Stewart, Sarah; Patrick.D.Hackley@dncr.nh.gov; Sjostrom, Joshua - FS
Subject: RE: [External Email]Nash Stream
Attachments: Revised Southern Connector Request.pdf, nash-stream-easement.pdf

Dear Ms. Pastoriza,

In response to your inquiry below, in which you asked, "Since the Forest Service is an easement holder for Nash Stream State Forest, should this application for another ATV trail in Nash Stream S.F. (Revised Southern Connector Request) have had 'Forest Service' checked off on the application, and a copy have sent to the Forest Service? And could the same be said of the Kelsey Notch Trails and West Side Trails?"

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Thank You – Derek Ibarguen



Derek Ibarguen (he/him/his)
Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

c: (b)(6)

derek.ibarguen@usda.gov

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Campton, NH 03223

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Caring for the land and serving people

From: Kris pastoriza <(b)(6)>
Sent: Monday, January 31, 2022 5:06 AM
To: Ibarguen, Derek -FS <derek.ibarguen@usda.gov>; Brown, Brooke - FS <brooke.brown@usda.gov>
Subject: [External Email]Nash Stream

[External Email]

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Dear Derek and Brooke,

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And could the same be said of the Kelsey Notch Trails and West Side Trails?

Kris Pastoriza
Easton, N.H.



STATE AND FEDERAL LAND PROJECT EVALUATION FORM

PLEASE PRINT ALL INFORMATION

Section A (To Be Completed by BOT District Supervisor for Club's District)

Property Name: West side rd area Nash Stream

Town Property In: Stark NH

State Land

Federal Land

- DNCR Forest and Lands
- DNCR Parks and Recreation
- NH Department of Environmental Services
- NH Fish and Game Department
- NH Department of Transportation
- Other: _____

- National Park Service
- US Army Corps of Engineers
- US Fish and Wildlife Service
- US Forest Service
- Other: _____

Property Contact: M Machinist

Title: Regional Forester

Telephone: 603 788-4157

FAX: _____

Section B (To Be Completed by Club Trail Administrator)

Remember to ATTACH a DETAILED MAP and other required supporting documents

PROJECT DESCRIPTION (Why is the project necessary, purpose, benefits, etc.):

Utilize approx 1100 feet of existing snowmobile Primary corridor 5 for combined ATV/Snowmobile/Hiking route.
The property lies between existing ATV route and ATV route D and the newly constructed ATV exclusive bridge
spanning NASH Stream. This parcel already in recreational use will complete the tie between both North
South and East West ATV system adding to the economy of the entire Southern Coos county area and
more importantly eliminate the need potentially forever for ATV access to NASH Stream Road and areas.

A. If the project involves bridges, please describe them (how many, span, proposed materials, width, etc.):

NO Bridges as a 100ft bridge spanning NASH Stream has been erected already

B. Are there wetlands in the project area? Yes No

If yes, will the project require a Trails Notification be filed with DES? Yes No

If yes, describe how the club will deal with them:

NOTE: As reviewed with NH Dept of Forest and NH Bureau of Trails representatives appropriate trail culvert(s) and trail upgrades in materials will be done.

While at this time no permitting appears to be required under existing rules/statutes, should that change the NG Trails club is prepared to navigate any and all compliance needs as prescribed by rule or statute.

C. Describe existing roads/trails that are in the project area (uses, etc.):

Existing State of NH trails and logging roads known as West-side road and ATV trail C/D

The area adjacent to the 1100 foot area of consideration to the North and South are already maintained as snow corridor 5.

The only other alternative to link the existing ATV route would be to open a portion of NASH Stream road which is an undesirable option.

D. Are there any wildlife concerns in the project area such as deer yards? Yes No

If yes, describe here:

Additional Comments:

The area in question is of course owned by the State of NH and maintained for the public's use and benefit. Currently 8 mos of the year this small link is literally mostly unused by the public due to gates and bars. While not only completing the link of ATV trail system to all areas North/South/East/West and the struggling economic areas of all Coos county, the opening of this link will ensure appropriate motorized and non-motorized recreation to all of NASH Stream

Date: 01 MAR 2021

Signature of Club Trail Administrator:


1. EMPEROR - 603-477-3333

Date: _____

Signature of BOT District Supervisor: _____

STATE LAND RECORD

TRACT NASH STREAM FOREST # 3

GRANTOR State of NH

DATE OF DEED 8/4/89

DATE OF RECORD 8/7/89

GRANTEE
US Forest Service
Dept. of Agriculture
Washington, DC 20250

COUNTY Coos

BOOK 752 PAGE 252

CONSIDERATION \$3,950,000. — 100/AC

CHARACTER Conservation Easement

ACRES

TREAS. BOOK PAGE

TOWN

DESCRIPTION

CONSERVATION EASEMENT DEED

RECORDED
AUGUST 7, 1989
BOOK 752
PAGE 252

THIS DEED made this 4th day of August, 1989, by and between the STATE OF NEW HAMPSHIRE, Concord, New Hampshire (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA, Washington, District of Columbia (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", 102 Stat. 1805, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, under the New Hampshire Land Conservation Investment Program, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture. The mailing address of the acquiring agency is United States Department of Agriculture, Washington, D.C. 20250.

NOW THEREFORE, for and in consideration of \$3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby grants, with warranty covenants, unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter referred to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses.

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4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including watershed, fish and wildlife, recreation, scenic, education and research, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840. For purposes of this conveyance, multiple uses means the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio Pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Although the State remains the fee owner of the property, uses which are not reserved by the State are prohibited of the State and deemed acquired by the United States. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

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1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

5. Mineral, oil, and gas, and related operations and developments, subject to rights outstanding in third parties and except for the sand and gravel rights reserved to the State in Part II-C-4.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The

State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with State laws and regulations and the terms of this easement. The State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties. Subject to outstanding rights in third parties, the State shall receive all revenues derived from the management and use of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to

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acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

THE STATE OF NEW HAMPSHIRE

By: *William G. Abbott*
WILLIAM G. ABBOTT

Its EXECUTIVE DIRECTOR OF THE
NEW HAMPSHIRE LAND CONSERVATION
INVESTMENT PROGRAM

State of *New Hampshire*
County of *Merrimack*

The foregoing instrument was acknowledged on behalf of the State of New Hampshire before me this 4th day of August, 1989 by William G. Abbott, Executive Director of the New Hampshire Land Conservation Investment Program.

John W. Burt
Notary Public/Justice of the Peace

Exhibit A

THE PROPERTY

I. Property in Columbia:

1. That property conveyed by Natural Dam Pulp and Paper Company, Inc., to Rushmore Paper Mills, Inc., dated August 15, 1963, recorded at Coos Deeds, Volume 477, Page 327.
2. Certain property described as Lot 1, Range 4, of the Lots and Ranges in said Town of Columbia and being a portion of the premises described and conveyed in a warranty deed from Nelson Bunnell to Groveton Papers Company, dated July 9, 1965, recorded at Coos Deeds, Volume 490, Page 344.
3. That property conveyed by Ada K. Marshall et al. to Groveton Papers Company, dated January 12, 1966, recorded at Coos Deeds, Volume 495, Page 301.
4. Parcel 1 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, page 165.
5. Parcel 2 as it is described in a deed from Clyde Shallow to Groveton Papers Company, dated December 20, 1966, recorded at Coos Deeds, Volume 503, Page 165.
6. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated January 21, 1966, recorded at Coos Deeds, Volume 495, Page 199.
7. That property conveyed by Louis Grandmaison to Groveton Papers Company, dated June 24, 1966, recorded Coos Deeds, Volume 497, Page 177 subject to a right of way created by instrument dated November 14, 1962, recorded at Coos Deeds, Volume 475, Page 24.
8. That property conveyed by Green Acre Woodlands, Inc. to Diamond International Corporation, dated July 30, 1973, recorded at Coos Deeds, Volume 554, Page 646.
9. That property situated in Columbia conveyed by James J. Phelan, et al., Trustees of Connecticut Valley Lumber Company, to Groveton Paper Co., Inc., dated September 29, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Co., Inc. to Coos Realty Corporation January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131, and part of land conveyed by Coos Realty Corporation to Groveton Papers Company, August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.

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II. Property in Odell:

1. Parcel 1 as described in a deed from Henry R. Reed, et al. to Odell Manufacturing Company, dated August 22, 1904, recorded at Coos Deeds, Volume 124, Page 138, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

III. Property in Stark

1. Property described in deed from Percy Lumber Company to Odell Manufacturing Company, dated April 30, 1917, recorded at Coos Deeds, Volume 181, Page 351, (being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184); excepting and reserving that portion of the property described as Lots Nos. 103, 96, 38 and 54 and excepting and reserving Lot 5 and that portion of Lot 6 north of the railroad in Range 2 and subject to rights of way conveyed to the United States of America, dated December 8, 1969, recorded at Coos Deeds, Volume 526, Page 251, and dated September 18, 1939, recorded at Coos Deeds, Volume 304, Page 279, and to George G. Steady, April 18, 1977, recorded at Coos Deeds, Volume 596, Page 66.
2. Property described in deed from Paul Cole, et al. to Groveton Paper Company, Inc., dated March 6, 1936, recorded at Coos Deeds, Volume 279, Page 279, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
3. Property described in deed from Town of Stark to Groveton Paper Company, Inc., dated April 15, 1939, recorded at Coos Deeds, Volume 301, Page 341, being part of land conveyed by Groveton Paper Company, Inc. to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 187.
4. Property described in deed from Frank G. Blake to Odell Manufacturing Company, dated August 6, 1910, recorded at Coos Deeds, Volume 120, Page 235, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

5. Property described in deed from G. W. Smith to Odell Manufacturing Company, dated November 14, 1910, recorded at Coos Deeds, Volume 151, Page 102, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds Volume 311, Page 184.
6. Property described in deed from Henry Pike to Groveton Paper Company, dated July 15, 1919, recorded at Coos Deeds, Volume 194, Page 235.
7. Property described in deed from Lester D. Fogg to Groveton Papers Company, dated September 6, 1945, recorded at Coos Deeds, Volume 340, Page 190.
8. Property described in deed from Frank E. Moses to Groveton Papers Company, dated March 30, 1948, recorded at Coos Deeds, Volume 361, Page 54.
9. Property conveyed by Richard Emery to Diamond International Corporation, dated December 14, 1982, recorded at Coos Deeds, Volume 654, Page 571.
10. Property described in deed from Charles A. Cole to Groveton paper Company, Inc., dated June 2, 1920, recorded at Coos Deeds, Volume 198, Page 246 (being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and by deed of Coos Realty Corporation to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189) excepting therefrom conveyance to Town of Stark, dated March 24, 1959, recorded at Coos Deeds, Volume 442, Page 44 and easements to Public Service Company of New Hampshire, dated August 22, 1946 and August 22, 1947, recorded at Coos Deeds, Volume 350, Page 212 and Volume 359, Page 134.
11. Property described in deed from Santina E. McVetty to Groveton Papers Company, dated May 25, 1951, recorded at Coos Deeds, Volume 384, Page 297 (Corrective Deed recorded at Coos Deeds, Volume 653, Page 587).
12. Property described in deed from Robert Poisson to Groveton Papers Company, dated June 30, 1960, recorded at Coos Deeds, Volume 453, Page 192.

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IV. Property in Stratford:

1. Property described in a deed from Town of Stratford to Groveton Papers Company, dated June 15, 1959, recorded at Coos Deeds, Volume 444, Page 362.
2. Property described in a deed from Andrew Jackson, et al. to Odell Manufacturing Company, dated February 5, 1908, recorded at Coos Deeds, Volume 138, Page 137, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
3. Property described in a deed from R. L. Lumber Company, Inc. to Groveton Papers Company, Inc., dated July 24, 1972, recorded at Coos Deeds, Volume 549, Page 112.
4. Property described in a deed from Andrew Jackson to Odell Manufacturing Company, dated February 7, 1908, recorded at Coos Deeds, Volume 138, Page 136 being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
5. Parcel 1 as it is described in a deed from Zephir Riendeau to Groveton Papers Company, dated May 22, 1961, recorded at Coos Deeds, Volume 459, Page 247.
6. Property described in a deed from Town of Stratford to Groveton Papers Company, dated September 21, 1966, recorded at Coos Deeds, Volume 502, Page 238.
7. Property described in a deed from Lynam A. Jackson to Odell Manufacturing Company, dated January 15, 1910, recorded at Coos Deeds, Volume 120, Page 215, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
8. Property described in a deed from George W. Smith to Odell Manufacturing Company, dated November 28, 1916, recorded at Coos Deeds, Volume 178, Page 372, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.

9. Property described in a deed from Fred N. Wheeler to Odell Manufacturing Company, dated February 27, 1912, recorded at Coos Deeds, Volume 156, Page 72, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 10. Property described in a deed from Royal M. Cole, et al. to Odell Manufacturing Company, dated August 2, 1912, recorded at Coos Deeds, Volume 158, Page 356, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 11. Property described in a deed from Zephir Riendeau to Groveton Papers Company, dated January 12, 1960, recorded at Coos Deeds, Volume 451, Page 293.
 12. Property described in a deed from Connecticut Valley Lumber Company to Odell Manufacturing Company, dated October 8, 1918, recorded at Coos Deeds, Volume 190, Page 344, being part of land conveyed by Odell Manufacturing Company to Groveton Papers Company, dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 184.
 13. Land in Stratford described in a Deed from James Phelan, et al. to Groveton Papers Company, Inc., dated September 20, 1920, recorded at Coos Deeds, Volume 204, Page 273, being part of land conveyed by Groveton Paper Company, Inc. to Coos Realty Corporation, dated January 1, 1926, recorded at Coos Deeds, Volume 236, Page 131 and from Coos Realty Corporation to Groveton Papers Company dated August 14, 1940, recorded at Coos Deeds, Volume 311, Page 189.
- V. Excepting and reserving from the above, certain earth and granular materials situated within the property described herein and certain easements relating to the right to enter upon the property and remove such materials for a period of seven (7) years from the date hereof, all as more specifically described in an agreement between the State of New Hampshire and Rancourt Associates of New Hampshire, a New Hampshire general partnership, dated August 24, 1988. All earth and granular materials and easement rights excepted and reserved herein were conveyed by Diamond International Corporation to Rancourt Associates of N.H., Inc. by deed dated October 27, 1988 and recorded in Coos County Registry of Deeds Book 737, Page 840.

D.R.E.D.

AUG 16 1989

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