

From: Lemieux, Stacy -FS
Sent: Fri, 25 Feb 2022 18:43:33 +0000
To: Ibarguen, Derek -FS
Cc: Sjostrom, Joshua - FS
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: [REDACTED]
c: (b)(6)
stacy.lemieux@usda.gov

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



**Caring for the land and serving
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

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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: Hankens, Sarah -FS
Sent: Wed, 13 Apr 2022 12:32:39 +0000
To: Vukelich, Vincent - OGC, Milwaukee, WI; Vandlik, John - OGC, Milwaukee, WI
Cc: Detzel, James -FS; Olson, Shawn -FS; Ibarguen, Derek -FS
Subject: FW: Nash Response
Attachments: Nash_Stream_Response_Detzel .docx

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

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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
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Caring for the land and serving people

Dear Ms. Pastoriza,

In response to your letter dated March 21st 2022. I have thoroughly reviewed your concerns with counsel and staff and I appreciate the detail of the issues you have raised. However as noted in our prior letter, dated March 8th 2022, it is, and has been the Forest Service's position that the State of New Hampshire has discretion to manage for ATV trails within the conservation easement area. Our position as to whether the State of New Hampshire may permit the use of ATV's is, and has been based on the review of the conservation easement completed by Attorney Gene Erl cited in your letter as Schedule 2. 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 conclusion reached by Attorney Erl.

In the conservation easement under II (C) (2) the Forest Service is granted approval authority for public through travel. It is the Forest Service's discretion based on the terms defined in the easement when written consent is appropriate. We do not find the State's development of ATV trails inconsistent with our granted right.

Request for additional documents "that indicate it (USFS) had any involvement in Nash Stream after 2001; documents that would support a "longstanding position"" can be made via a modification of your current FOIA request or a new request.

Thank you for your involvement in the administration of the Nash Stream Conservation Easement. Your concerns with the management actions you identify should be directed to the State to assist in their development of guiding/operating plans.

From: Hankens, Sarah -FS
Sent: Mon, 18 Apr 2022 19:00:27 +0000
To: Vukelich, Vincent - OGC, Milwaukee, WI; Vandlik, John - OGC, Milwaukee, WI
Cc: Detzel, James -FS; Ibarguen, Derek -FS; Olson, Shawn -FS
Subject: FW: Nash Response
Attachments: Nash_Stream_Response_Detzel .docx

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

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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

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Caring for the land and serving people

Dear Ms. Pastoriza,

In response to your letter dated March 21st 2022. I have thoroughly reviewed your concerns with counsel and staff and I appreciate the detail of the issues you have raised. However as noted in our prior letter, dated March 8th 2022, it is, and has been the Forest Service's position that the State of New Hampshire has discretion to manage for ATV trails within the conservation easement area. Our position as to whether the State of New Hampshire may permit the use of ATV's is, and has been based on the review of the conservation easement completed by Attorney Gene Erl cited in your letter as Schedule 2. 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 conclusion reached by Attorney Erl.

In the conservation easement under II (C) (2) the Forest Service is granted approval authority for public through travel. It is the Forest Service's discretion based on the terms defined in the easement when written consent is appropriate. We do not find the State's development of ATV trails inconsistent with our granted right.

Request for additional documents "that indicate it (USFS) had any involvement in Nash Stream after 2001; documents that would support a "longstanding position"" can be made via a modification of your current FOIA request or a new request.

Thank you for your involvement in the administration of the Nash Stream Conservation Easement. Your concerns with the management actions you identify should be directed to the State to assist in their development of guiding/operating plans.

From: Lemieux, Stacy -FS
Sent: Tue, 1 Mar 2022 21:27:54 +0000
To: Hankens, Sarah -FS; Ibarguen, Derek -FS; Sjostrom, Joshua - FS
Subject: FW: Re: FOIA Acknowledgement - request refinement and fees
Attachments: FOIA_response_letter_2021-FS-R9-03823-F_ATV_esign_ocr.pdf

FOIA was narrowed to 'all documents responsive to ATVs and Nash Stream S.F.'

Also wanted to share the FOIA response on same topic from last year. Hopefully we won't have much more that is responsive. Theresa can provide the documents we sent to her in response to the previous FOIA if you want to see those.



Stacy Lemieux (she/her)
Natural Resources Staff Officer
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Caring for the land and serving people

From: Corless, Theresa -FS <theresa.corless@usda.gov>
Sent: Tuesday, March 1, 2022 2:16 PM
To: Lemieux, Stacy -FS <stacy.lemieux@usda.gov>
Subject: FW: [External Email]Re: FOIA Acknowledgement - request refinement and fees

FYI



Theresa Corless (she/her)
Forest Planner and Environmental Coordinator
Forest Service
White Mountain National Forest

p: 603-536-6135
theresa.corless@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: Tuesday, March 1, 2022 1:23 PM
To: Corless, Theresa -FS <theresa.corless@usda.gov>
Subject: [External Email]Re: FOIA Acknowledgement - request refinement and fees

[External Email]

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2022-FS-R9-02387-F

Dear Theresa,

I am requesting a fee waiver because the relationship between USFS and the State of New Hampshire, as joint easement holders of Nash Stream S.F., is very poorly documented, and it is in the public interest that any documents that would improve their understanding of this relationship be available to the public.

On 3/15/2021 I submitted this FOIA:

FOIA, Kris Pastoriza, 294 Gibson Rd., Easton, NH 03580 krispastoriza@gmail.com March 15, 2021

Tom Wagner, former Supervisor, WMNF re. ATV use Nash Stream State Forest:

"Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and **Forest Service involvement would only be required on roads that provide "through travel."** I see nothing in this provision that would preclude the State from considering internal access roads for ATV use." Tom Wagner, 2001

I am submitting a FOIA for any documents in the possession of the Forest Service responsive to Forest Service permission for ATVs to use the four through-trails that have been opened to them in Nash Stream State Forest.

I received three documents. I assumed that was all the USFS had responsive to Nash Stream S.F., because I assumed there were no other issues that had required USFS involvement in Nash Stream.

If I narrow it to 'all documents responsive to ATVs and Nash Stream S.F.' would that narrow it down enough?

The locations would be the Androscoggin Office and the Campton headquarters, since the latter is where the Forest Supervisor is based. That is based on the assumption that all records responsive to Nash Stream S.F. would be stored in the Androscoggin office because Nash Stream S.F. is in that district, or in Campton because they involved decisions by the Forest Supervisor, who would be in possession of any legal documents produced somewhere else.

Thanks,

Kris

On Tue, Mar 1, 2022 at 12:07 PM <theresa.corless@usda.gov> wrote:

March 01,

2022

2022-FS-R9-02387-F

Dear Kris Pastoriza:

Thank you for your recent Freedom of Information Act (FOIA) request to the United States Forest Service (FS) FS Region 9. This email acknowledges receipt of your FOIA request dated February 24, 2022 which was received in the FS Region 9 office on February 24, 2022.

Request

You requested: *"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." (Date Range for Record Search: From 1/1/2002 To 2/24/2022)*

Your request is considered "complex" under FOIA as it requires us to search physical and electronic records at multiple offices. Your request is very broad. If you could narrow or refine your request, we could make sure we are providing the information you seek and could provide the information you are seeking in a more timely manner.

Processing

For a FOIA request to be considered complete for processing, what is referred to as "perfected", it must meet three criteria: 1. Be submitted in writing, including paper submissions such as fax, mail, or delivery service and electronic submissions such as email or use of Web-based templates; 2. Clearly describe the records sought and where they are most likely to be located (if known); 3. Contain a statement requesting a fee waiver or indicate the willingness of the requester to pay fees.

Fees

As you have not asked for a fee waiver, you are asking for this information under the category of an "all other" requester. Because of this, and in accordance with 7 C.F.R. Subtitle A, Part 1, Subpart A, Appendix A, we are required to collect fees for search and duplication beyond the first two hours and 100 pages. These fees include the hourly wage of any employees involved plus 16% for search and .20 cents per page for duplication (hard copy). Once a requester agrees to pay fees they are "all in" for the total fees associated with processing their request. Please provide this office with a written statement that you agree to pay any fees assessed to process your request or stipulate the amount you are willing to pay. This is

another reason we ask you to provide us some additional information to narrow the scope of the search. Thus, your request will not be considered “perfected” until we have agreed upon the files to be provided and the cost to be covered.

I am the FOIA Coordinator on the White Mountain National Forest and will be your primary contact for processing your request. I can be reached can be reached at theresa.corless@usda.gov. If you have any questions, please feel free to contact me. I am happy to help you refine your request. Please reference your assigned case number, 2022-FS-R9-02387-F in all communications.

Best,

Theresa

Theresa Corless (she/her)
Forest Planner and Environmental Coordinator
Forest Service
White Mountain National Forest
theresa.corless@usda.gov
71 White Mountain Drive
Campton, NH 03223

File Code: 6270

Date: June 8, 2021

Ms. Kris Pastoriza
294 Gibson Road
Easton, NH 03580

Dear Ms. Pastoriza,

This is our final response to your Freedom of Information Act (FOIA) request #2021-FS-R9-03823-F of May 7, 2021 and your clarification of May 10, 2021. You requested the following information:

- “Documents in the possession of the Forest Service responsive to Forest Service permission for ATV’s to use the four (4) “through-travel” trails in Nash Stream State Forest.”

In response to your request, this office conducted a search for electronic and hardcopy information everywhere a reasonably knowledgeable professional might expect to find records, and no responsive pages were located that can be released in full. However, records were located that have been forwarded to the Regional Office (RO) for review and final release determination.

Once the RO completes their review, they will provide you with a final response, including appeal rights. If you would like to know the status of your referred request or have any questions about this referral, please contact the Regional FOIA Coordinator, Doug Meloche at (404) 347-4427 or via email (douglas.meloche@usda.gov).

The White Mountain National Forest considers our responsibility to you under the subject FOIA to be completed and closed. If you have any questions regarding the enclosed records, you may contact Theresa Corless at (603) 536-6135 or theresa.corless@usda.gov.

Sincerely,

**DEREK
XIBARGUEN**

Digitally signed by
DEREK IBARGUEN
Date: 2021.06.09
06:04:42 -04'00'

DEREK J.S. IBARGUEN
Forest Supervisor

cc: Doug Meloche, Stacy Lemieux, Theresa Corless, Josh Sjostrom



From: Detzel, James -FS
Sent: Mon, 7 Feb 2022 17:28:01 +0000
To: Carrier, Morgan - FS, CAMPTON, NH; Ibarguen, Derek -FS
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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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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Caring for the land and serving people

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 a 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

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Campton, NH 03223

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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

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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,

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: Olson, Shawn -FS
Sent: Fri, 4 Feb 2022 14:44:32 +0000
To: Detzel, James -FS; Hankens, Sarah -FS; Simino, James -FS
Cc: Ibarguen, Derek -FS
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: MilwaukeeScanner@ogc.usda.gov_20170222_155815.pdf

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.

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



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



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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**;
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Kris Pastoriza
Easton, N.H.

(b)(5)

-John V. 11/7/01

From: Ibarguen, Derek -FS
Sent: Wed, 2 Feb 2022 13:06:14 +0000
To: Olson, Shawn -FS
Cc: Vukelich, Vincent - OGC, Milwaukee, WI
Subject: FW: 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

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Forest Supervisor

Forest Service
White Mountain National Forest

p: 603-536-6202

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

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

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

Subject: [External Email]Nash Stream

[External Email]

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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.

D.R.E.D.

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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:

D.R.E.D.

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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.

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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

RECEIVED

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.

D.R.E.D.

AUG 16 1988

RECEIVED

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

From: Ibarguen, Derek -FS
Sent: Tue, 8 Feb 2022 17:04:00 +0000
To: Sjostrom, Joshua - FS
Subject: FW: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: MilwaukeeScanner@ogc.usda.gov_20170222_155815.pdf



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: Vukelich, Vincent - OGC, Milwaukee, WI <vince.vukelich@usda.gov>
Sent: Thursday, February 3, 2022 9:50 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.

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



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

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

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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: Ibarquen, Derek -FS <derek.ibarquen@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.

(b)(5)



-John V. 11/7/01

From: Ibarguen, Derek -FS
Sent: Fri, 4 Feb 2022 13:04:36 +0000
To: Hankens, Sarah -FS
Cc: Detzel, James -FS; Mcaloon, Lynn - FS
Subject: Fwd: Request for Assistance/Review - Nash Stream State Forest Easement (Held by USDA FS)
Attachments: MilwaukeeScanner@ogc.usda.gov_20170222_155815.pdf

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.

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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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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

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Campton, NH 03223

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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

(b)(5)



-John V. 11/7/01

From: Ibarguen, Derek -FS
Sent: Tue, 15 Mar 2022 17:22:28 +0000
To: Corless, Theresa -FS
Subject: Fwd: WMNF Response to 14 February 2022 Inquiry
Attachments: Ms Pastoriza Response Letter March 2022 Signed.pdf

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From: Currier, Morgan - FS, CAMPTON, NH <Morgan.Currier@usda.gov>
Sent: Tuesday, March 8, 2022 9:24 AM
To: krispastoriza@gmail.com ; (b)(6) >
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

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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
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: Mcaloon, Lynn - FS
Sent: Tue, 15 Feb 2022 21:04:36 +0000
To: Chuck_Henderson@shaheen.senate.gov
Subject: Kris Pastoriza Recent Inquiry Regarding easement.

Hi Chuck,

I hope this finds you well. I just wanted to let you know that in regards to the recent letter by Kris Pastoriza dated February 15, 2022, which you were cc'd on, we are currently working on a response concerning the USFS easement for Nash Stream State Forest. Please feel free to reach out if you have any questions or concerns.

Best,



Lynn McAloon (*she/her*)
**Public Affairs Officer &
Partnership Liaison**
Forest Service
White Mountain National Forest

c: (b)(6) (preferred)
p: 603-536-6215

lynn.mcaloon@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: Tue, 8 Mar 2022 19:06:55 +0000
To: Stewart, Sarah; Hackley, Patrick
Subject: Ms. Pastoriza - WMNF Response to 14 February 2022 Inquiry
Attachments: Ms Pastoriza Response Letter March 2022 Signed.pdf

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

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Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

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

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**Caring for the land and serving
people**

File Code: 5440
Date: March 8, 2022

Kris Pastoriza

(b)(6)

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Sincerely,

 X **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: Ibarguen, Derek -FS
Sent: Fri, 4 Feb 2022 13:58:07 +0000
To: Stewart, Sarah
Subject: Nash Stream Easement Deed

Sarah –

Left you a voicemail yesterday regarding the Nash Stream Deed and had an inquiry from the public I wanted to make you aware of regarding the Proposed Southern Connector and process for previously established ATV Trail. Let me know if you have time 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

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Campton, NH 03223

www.fs.fed.us



Caring for the land and serving people

From: Ibarguen, Derek -FS
Sent: Mon, 31 Jan 2022 12:45:26 +0000
To: Hankens, Sarah -FS; Sjostrom, Joshua - FS
Subject: Nash Stream OGC Opinion
Attachments: Opinion from Milwaukee USFS office.pdf



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

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

Ms. 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 reserved 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 raise the subject of so-called "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, though, 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. If you have concerns about ATV trails on the conservation easement area, those should be directed to the State.

Sincerely,

DEREK J.S. IBARGUEN
Forest Supervisor

CC: James Simino, Sarah Hankens, James Detzel, STATE FORESTER or appropriate State POC

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

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cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF

From: Currier, Morgan - FS, CAMPTON, NH
Sent: Thu, 24 Feb 2022 16:16:21 +0000
To: Ibarguen, Derek -FS
Subject: Pastoriza Letter
Attachments: Nash Stream State Forest_FS_Response.docx, Currier Edits FOIA response letter Nash Stream.docx

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

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Ms. 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 reserved 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.

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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. If you have concerns about ATV trails on the conservation easement area, those should be directed to the State.

Sincerely,

DEREK J.S. IBARGUEN
Forest Supervisor

CC: James Simino, Sarah Hankens, James Detzel, STATE FORESTER or appropriate State POC

Ms. 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.

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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 J.S. IBARGUEN
Forest Supervisor

CC: James Simino, Sarah Hankens, James Detzel, STATE FORESTER or appropriate State POC

From: Vandlik, John - OGC, Milwaukee, WI
Sent: Tue, 22 Feb 2022 21:20:31 +0000
To: Hankens, Sarah -FS; Vukelich, Vincent - OGC, Milwaukee, WI
Cc: Olson, Shawn -FS; Detzel, James -FS; Ibarguen, Derek -FS
Subject: RE: ACTION BY 2/25 - Nash Stream
Attachments: jvRe_Nash Stream State Forest_.docx

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 additionally 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

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Campton, NH 03223

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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

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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

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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: 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)

A large black rectangular redaction box covering the majority of the page content below the subject line.

(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

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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>; estill@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.

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.

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Dear Ms. Pastoriza,

This responds to your inquiry 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.”*

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 reserved 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 raise the subject of so-called “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, though, has no bearing on the reserved authority of the State with respect to recreational 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. Nor is there a requirement for of written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. If you have concerns about ATV trails on the conservation easement area, those should be directed to the State.

Commented [VJOMW1]: As previously mentioned, this “through trail” issue was not addressed by Gene's opinion and seems to have come from a [legislative?] subcommittee per 2/14 letter. Hard to follow origin. Perhaps you know. Don't know what else FS could say on this though. Seems obvious that trails aren't public roads under the CE, and CE doesn't distinguish between a through trail and a internal trail.

Commented [VJOMW2]: Don't know if you want to state this but seems like a logical statement to make given the underlying concerns driving the attempt to get FS involved.

From: Lemieux, Stacy -FS
Sent: Tue, 29 Mar 2022 20:45:26 +0000
To: Iburguen, Derek -FS
Subject: FW: [External Email]Re: FOIA 2022-FS-R9-02387-F Acknowledgement - request refinement and fees
Attachments: image001.png, image002.png, image003.png, image004.png, image005.png, image006.png, image007.png

FYI, Theresa and I worked together to identify what we thought Ms. Pastoriza was actually requesting (yellow highlight below) and verified it with her. End result is a much smaller ask affecting a handful of folks on the Forest



Stacy Lemieux (she/her)
Natural Resources Staff Officer
Forest Service
White Mountain National Forest

p:
c: (b)(6)
stacy.lemieux@usda.gov

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Campton, NH 03223
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From: Corless, Theresa -FS <theresa.corless@usda.gov>
Sent: Tuesday, March 29, 2022 2:52 PM
To: Lemieux, Stacy -FS <stacy.lemieux@usda.gov>
Subject: FW: [External Email]Re: FOIA 2022-FS-R9-02387-F Acknowledgement - request refinement and fees

Stacy,

See trailing emails. I think her response means we are narrowed down to what ai have highlighted below. Can we discuss when we meet Thursday? Don't want to do more than necessary.

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: Kris pastoriza <(b)(6)>
Sent: Thursday, March 17, 2022 4:23 PM
To: Corless, Theresa -FS <theresa.corless@usda.gov>
Subject: Re: [External Email]Re: FOIA 2022-FS-R9-02387-F Acknowledgement - request refinement and fees

Dear Theresa,

your understanding of my request as stated in your first paragraph is correct.

Please drop the second request about the documents mentioned in reference to the screen shot of the section of the 1995 Nash Stream Management Plan.

Thanks,

Kris

On Thu, Mar 17, 2022, 12:34 PM Corless, Theresa -FS <theresa.corless@usda.gov> wrote:
Kris,

In response to your latest email.

Fee Waiver

Your fee waiver request is being processed by the Regional Office.

Request Refinement

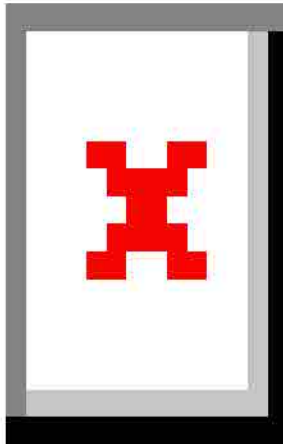
Your refinement of your request on March 14, 2022 was:

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)"*

Our FOIA policy is in accordance with your wording in italics above. I'd like to clarify your request to better ensure that you are receiving the information you are really seeking, make our records search efficient, and save you fees should your fee waiver not be granted. My understanding of your request is that you are looking for 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.)

Your first email on March 15th had a snapshot of part of a document released to you last year that had a file code of "F&L 15 (Gen)". I appreciate you trying to narrow the search in this way. However, this is not a file code the Forest Service currently uses, nor are any of us here familiar with it so we cannot narrow our search using it.

Your second email on March 15th discussed documents that might be referenced in the 1995 Nash Stream State Forest Plan. You stated "And some of the documents produced by these negotiations, referenced in the 1995 Nash Stream Management Plan, might be considered releasable or no longer subject to attorney-client privilege:" and included the language below.



Two thoughts: First, could you clarify in which document the above quote appears. Second, these documents would substantially predate the starting date of 2001 that you identified in your FOIA request.

Apologies for the long response. I appreciate your continued work with me to refine your request.

Best,
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: Kris pastoriza <(b)(6)>

Sent: Tuesday, March 15, 2022 7:13 AM

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

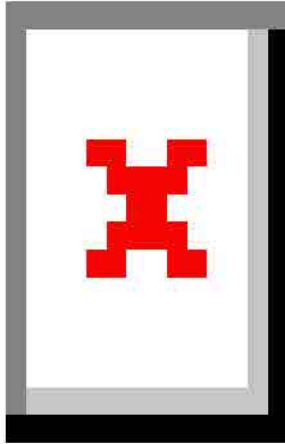
Subject: [External Email]Re: FOIA 2022-FS-R9-02387-F Acknowledgement - request refinement and fees

[External Email]

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And some of the documents produced by these negotiations, referenced in the 1995 Nash Stream Management Plan, might be considered releasable or no longer subject to attorney-client privilege:

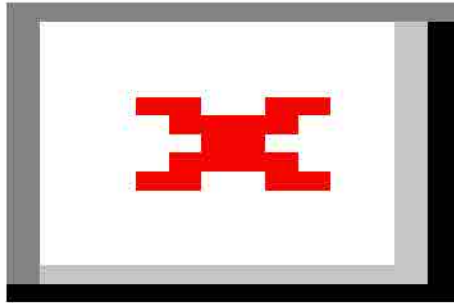


On Tue, Mar 15, 2022 at 6:57 AM Kris pastoriza <(b)(6)> wrote:

Dear Theresa,

below is a screenshot from one of the two documents released to me by USFS for my earlier FOIA re. Nash Stream ATV Trails.

FILE: F&L 15 (GEN) referenced in the letter might have other documents responsive to my current FOIA.



Kris

On Mon, Mar 14, 2022 at 5:30 AM Kris pastoriza <(b)(6)> wrote:

Dear Theresa,

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)"*

It has been my experience that USFA does the portion I put in bold as a matter of policy.

Thanks

Kris

On Fri, Mar 11, 2022 at 3:59 PM Corless, Theresa -FS <theresa.corless@usda.gov> wrote:

Kris,

In response to your last email I have addressed the issues of fee waiver and the records you are seeking with your request.

Fees and fee waiver

The criteria to be granted a fee waiver are listed below. You must address these specifically to be granted a fee waiver.

- (1) The subject of the request, i.e., whether the subject of the requested records concerns “the operations or activities of the government.*
- (2) The informative value of the information to be disclosed, i.e., whether the disclosure is “likely to contribute” to an understanding of government operations or activities. (The requester bears the burden of identifying “with reasonable specificity” the public interest served.”*
- (3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to “public understanding.” (Factor 3 concerns whether disclosure of the information will contribute to an understanding by “a reasonably broad audience of persons interested in the subject,” and requires the requester to have the ability to disseminate the information to the general public. Requesters cannot satisfy the standard merely by representing that they will make the information available to others. Requesters have the burden of demonstrating with particularity that the information will be communicated to the public.)*
- (4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. (The public benefit should be “identified with reasonably specificity”.)*
- (5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,*
- (6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” (Factor 6 requires an agency to balance the requester’s commercial interest against the identified public interest in disclosure and determine which interest is “primary.”)*

In addition to supplying information addressing each of the above fee waiver factors, you could submit copies of the articles of incorporation of your organization, the constitution and bylaws of the organization, and publications of your organization including, but not limited to, newsletters, membership brochures, and fund-raising solicitation.

If you can demonstrate past instances where your organization used information, provided by a government agency to significantly benefit the public at large, it may help you to qualify for the current fee waiver. To do this you could provide samples including brochures, books, educational videos, newsletters, internet submissions, memoranda from public meetings your organization has conducted, educational presentations your organization has given, television and radio interviews, testimony before Congress, and newspaper articles.

Should a fee waiver not be granted, you are provided 2 hours free search time (not including my time) and must agree to pay for any additional time spent searching for the records you seek.

Request

If I understand the refinement of your request, you are asking for records related to the Forest Service and use of ATVs on Nash Stream State Forest that were not released in your request in May 2021. The more we can refine your request, the faster we can find any documents and the less expensive it will be should you not be granted a fee waiver.

Once we have resolved the issue of fee waiver and we agree on the records you are seeking, we can process your request.

Best,
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: Kris pastoriza <(b)(6)>
Sent: Tuesday, March 1, 2022 1:23 PM
To: Corless, Theresa -FS <theresa.corless@usda.gov>
Subject: [External Email]Re: FOIA Acknowledgement - request refinement and fees

[External Email]

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Use caution before clicking links or opening attachments.

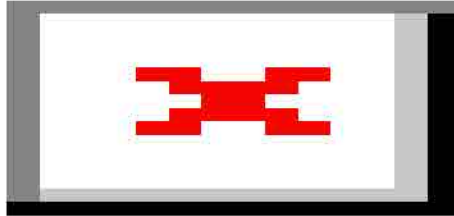
Please send any concerns or suspicious messages to: Spam.Abuse@usda.gov

2022-FS-R9-02387-F

Dear Theresa,

I am requesting a fee waiver because the relationship between USFS and the State of New Hampshire, as joint easement holders of Nash Stream S.F., is very poorly documented, and it is in the public interest that any documents that would improve their understanding of this relationship be available to the public.

On 3/15/2021 I submitted this FOIA:



I received three documents. I assumed that was all the USFS had responsive to Nash Stream S.F., because I assumed there were no other issues that had required USFS involvement in Nash Stream.

If I narrow it to 'all documents responsive to ATVs and Nash Stream S.F.' would that narrow it down enough?

The locations would be the Androscoggin Office and the Campton headquarters, since the latter is where the Forest Supervisor is based. That is based on the assumption that all records responsive to Nash Stream S.F. would be stored in the Androscoggin office because Nash Stream S.F. is in that district, or in Campton because they involved decisions by the Forest Supervisor, who would be in possession of any legal documents produced somewhere else.

Thanks,

Kris

On Tue, Mar 1, 2022 at 12:07 PM <theresa.corless@usda.gov> wrote:

March 01,

2022

2022-FS-R9-02387-F

Dear Kris Pastoriza:

Thank you for your recent Freedom of Information Act (FOIA) request to the United States Forest Service (FS) FS Region 9 This email acknowledges receipt of your FOIA request dated February 24, 2022 which was received in the FS Region 9 office on February 24, 2022.

Request

You requested: *"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." (Date Range for Record Search: From 1/1/2002 To 2/24/2022)

Your request is considered “complex” under FOIA as it requires us to search physical and electronic records at multiple offices. Your request is very broad. If you could narrow or refine your request, we could make sure we are providing the information you seek and could provide the information you are seeking in a more timely manner.

Processing

For a FOIA request to be considered complete for processing, what is referred to as “perfected”, it must meet three criteria: 1. Be submitted in writing, including paper submissions such as fax, mail, or delivery service and electronic submissions such as email or use of Web-based templates; 2. Clearly describe the records sought and where they are most likely to be located (if known); 3. Contain a statement requesting a fee waiver or indicate the willingness of the requester to pay fees.

Fees

As you have not asked for a fee waiver, you are asking for this information under the category of an “all other” requester. Because of this, and in accordance with 7 C.F.R. Subtitle A, Part 1, Subpart A, Appendix A, we are required to collect fees for search and duplication beyond the first two hours and 100 pages. These fees include the hourly wage of any employees involved plus 16% for search and .20 cents per page for duplication (hard copy). Once a requester agrees to pay fees they are “all in” for the total fees associated with processing their request. Please provide this office with a written statement that you agree to pay any fees assessed to process your request or stipulate the amount you are willing to pay. This is another reason we ask you to provide us some additional information to narrow the scope of the search. Thus, your request will not be considered “perfected” until we have agreed upon the files to be provided and the cost to be covered.

I am the FOIA Coordinator on the White Mountain National Forest and will be your primary contact for processing your request. I can be reached at theresa.corless@usda.gov. If you have any questions, please feel free to contact me. I am happy to help you refine your request. Please reference your assigned case number, 2022-FS-R9-02387-F in all communications.

Best,

Theresa

Theresa Corless (she/her)

Forest Planner and Environmental Coordinator

Forest Service

White Mountain National Forest

theresa.corless@usda.gov

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CONSERVATION EASEMENT

The state of New Hampshire sold a Conservation Easement on the Nash Stream Tract to the United States of America for \$3.95 million on August 4, 1989. This followed over nine months of intensive negotiations between representatives of the Land Conservation Investment Program (LCIP), the Office of Attorney General and the United States Department of Agriculture (Forest Service) and its attorneys, relative to the terms of the easement. These negotiations also involved inputs from various state and federal agencies, state and national conservation organizations and numerous congressional leaders. A considerable education effort was required to convince Congress of the wisdom of the federal/state partnership in land protection that would result from purchase of the Nash Stream Conservation Easement. Will Abbott,



DEC-10-2001 16:34

USDA-OGC Milwaukee

414 297 3763 P.02

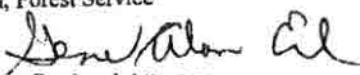


United States
Department of
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Office of the
General
Counsel

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 FILE: F&L 15 (GEN)
Eastern Region, Forest Service

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

FOIA, Kris Pastoriza, 294 Gibson Rd., Easton, NH 03580 krispastoriza@gmail.com March 15, 2021

Tom Wagner, former Supervisor, WMNF re. ATV use Nash Stream State Forest:

"Under C.2, the conservation easement discusses public roads and public utilities and requires prior written approval of the Forest Service for the installation, operation, and maintenance of these facilities. In the case of this instrument, "public roads" does not include internal access roads and **Forest Service involvement would only be required on roads that provide "through travel."** I see nothing in this provision that would preclude the State from considering internal access roads for ATV use." Tom Wagner, 2001

I am submitting a FOIA for any documents in the possession of the Forest Service responsive to Forest Service permission for ATVs to use the four through-trails that have been opened to them in Nash Stream State Forest.

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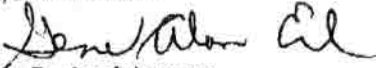


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Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite 200W
Milwaukee WI. 53203-2240
Telephone: (414) 297-3774
FAX: (414) 297-3763

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

FROM: Gene Alan Erl 
Deputy Associate Regional Attorney

Tom Wagner, former Supervisor, WMNF re. ATV use Nash Stream State Forest:

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I am submitting a FOIA for any documents in the possession of the Forest Service responsive to Forest Service permission for ATVs to use the four through-trails that have been opened to them in Nash Stream State Forest.

From: Hankens, Sarah -FS
Sent: Fri, 18 Feb 2022 22:09:38 +0000
To: Vukelich, Vincent - OGC, Milwaukee, WI; Vandlik, John - OGC, Milwaukee, WI
Cc: Olson, Shawn -FS; Detzel, James -FS; Ibarguen, Derek -FS
Subject: FW: ACTION BY 2/25 - Nash Stream
Attachments: Re_Nash Stream State Forest .docx

Greetings,

The draft response to Ms. Pastoriza's 2/14 letter is attached for your review. We appreciate any feedback or edits to provide additionally 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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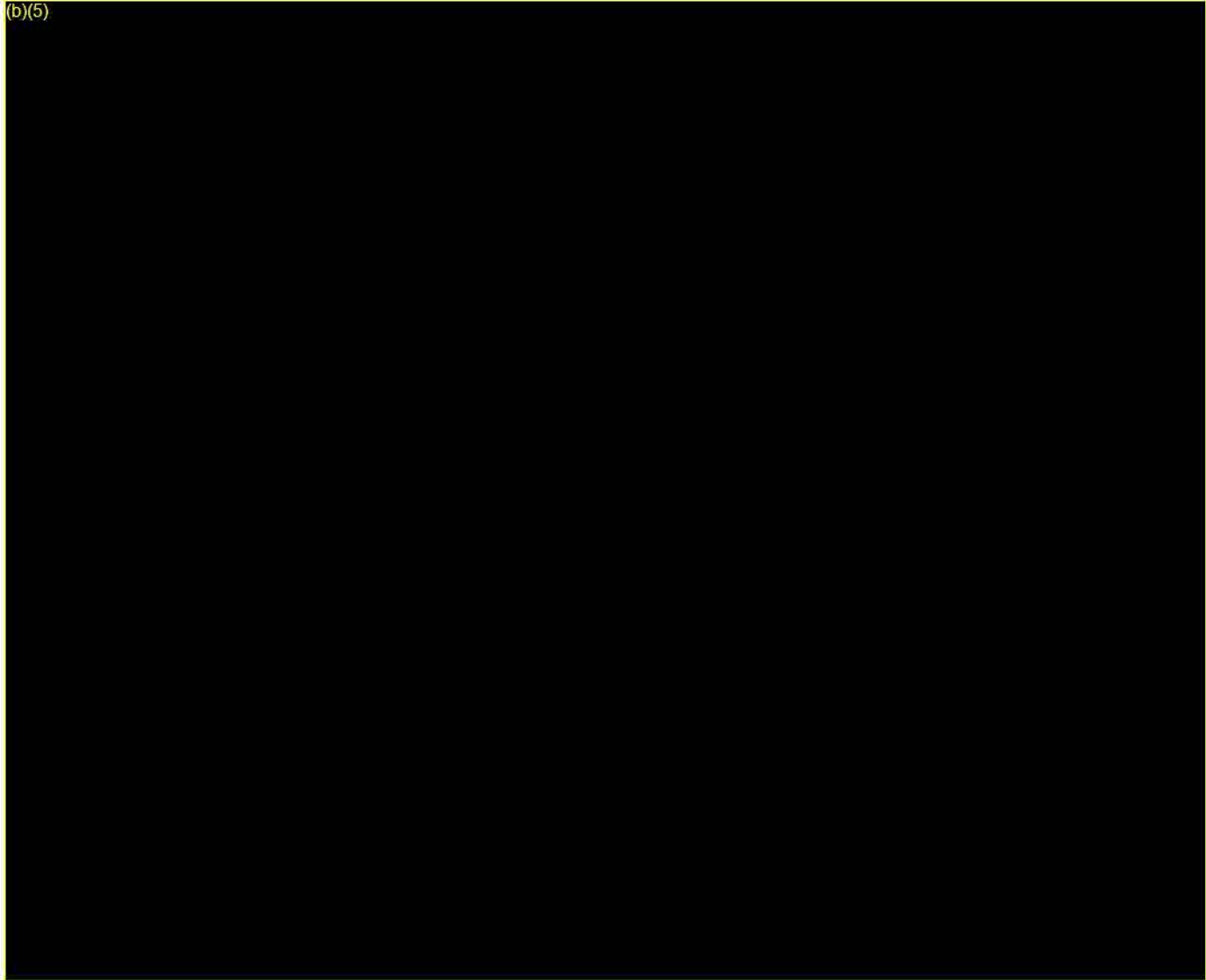


Caring for the land and serving people

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

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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,

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

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

Kris Pastoriza
Easton, N.H.

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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: Thu, 17 Feb 2022 14:08:19 +0000
To: Hankens, Sarah -FS
Subject: FW: ACTION BY 2/25 - Nash Stream

I can sit in on a call 1130-12 today. Would like to be a part of the initial conversation.

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

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Campton, NH 03223

www.fs.fed.us



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)
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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
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[<vince.vukelich@usda.gov>](mailto:vince.vukelich@usda.gov)

Subject: RE: ACTION BY 2/25 - Nash Stream

Attorney-Client Communication
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(b)(5)



Take care – vince v.



Vince Vukelich
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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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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

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c: (b)(6)

derek.ibarguen@usda.gov

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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)

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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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Use caution before clicking links or opening attachments.

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

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
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From: Hankens, Sarah -FS
Sent: Wed, 23 Feb 2022 18:11:05 +0000
To: Iburguen, Derek -FS
Cc: Detzel, James -FS
Subject: FW: ACTION BY 2/25 - Nash Stream
Attachments: jvRe_Nash Stream State Forest_.docx

Derek-

James and I have reviewed and discussed the additional edits by OGC and feel that they are appropriate in responding to Ms. Pastoriza. The additional "through trails" paragraph goes beyond her specific questions but addresses her points pertaining this topic well. Please let me know what your thoughts are regarding letter, if you want a meeting with us to discuss, OGC is available to meet as well, so we can continue to work towards finalizing a response by 2/25. I would suggest if you proceed with letter as drafted, we CC the appropriate State employees.

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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Caring for the land and serving people

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>; Iburguen, 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 additionally 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
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sarah.hankens@usda.gov

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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
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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

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Thanks - Derek



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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

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Thank You – Derek Ibarguen



Derek Ibarguen (he/him/his)
Forest Supervisor

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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 Ms. Pastoriza,

This responds to your inquiry 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.”*

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 reserved 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 raise the subject of so-called “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, though, has no bearing on the reserved authority of the State with respect to recreational 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. Nor is there a requirement for of written concurrence from the Forest Service for ATV trails on the lands encompassed by the conservation easement. If you have concerns about ATV trails on the conservation easement area, those should be directed to the State.

Commented [VJOMW1]: As previously mentioned, this “through trail” issue was not addressed by Gene's opinion and seems to have come from a [legislative?] subcommittee per 2/14 letter. Hard to follow origin. Perhaps you know. Don't know what else FS could say on this though. Seems obvious that trails aren't public roads under the CE, and CE doesn't distinguish between a through trail and a internal trail.

Commented [VJOMW2]: Don't know if you want to state this but seems like a logical statement to make given the underlying concerns driving the attempt to get FS involved.

From: Corless, Theresa -FS
Sent: Thu, 10 Jun 2021 13:30:51 +0000
To: Ibarguen, Derek -FS; Sjostrom, Joshua - FS
Cc: Lemieux, Stacy -FS
Subject: FW: Final Response FOIA #2021-FS-R9-03823-F
Attachments: 2021-FS-R9-03823-F_Pastoriza_Final.pdf, 2021-FS-R9-03823-F_Pastoriza_Redacted_Release.pdf

FYI, final response from RO on Kris Pastoriza FOIA request re ATV trails in Nash Stream State Forest. I understand you were all interested in tracking this. Please let me know if you need additional info.

Thanks,
Theresa



Theresa Corless
**Forest Planner/Environmental
Coordinator**
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people**

From: Meloche, Douglas - FS <douglas.meloche@usda.gov>
Sent: Thursday, June 10, 2021 9:22 AM
To: 'Kris pastoriza' <(b)(6)>
Cc: Corless, Theresa -FS <theresa.corless@usda.gov>
Subject: Final Response FOIA #2021-FS-R9-03823-F

Ms. Pastoriza:

Please find the attached file to be our final response to your FOIA request #2021-FS-R9-03823-F. If you have any questions, please contact me directly.

Best,
Doug M.



Douglas J. Meloche
Government Information Specialist
Regional FOIA/PA Coordinator

Forest Service
Southern (R8) & Eastern (R9) Regions

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Caring for the land and serving people



File Code: 6270
Date: June 9, 2021

Ms. Kris Pastoriza

(b)(6)

Dear Ms. Pastoriza:

This is our final response to your Freedom of Information Act (FOIA) request #2021-FS-R9-03823-F of May 7, 2021. You requested the following information:

- “Forest Service permission for ATVs to use four (4) "through-travel" trails in Nash Stream State Forest (NH)”

A reasonable search was conducted by the FOIA staff on the White Mountain National Forest and all responsive records (three pages) were forwarded to this office for review. Upon review of these records, we have determined that all three pages should be partially redacted pursuant to FOIA 5 U.S.C. § 552(b)(5).

Exemptions

FOIA Exemption 5 protects from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party, other than a party in litigation with the agency. Incorporated in Exemption 5 are three primary privileges:

1. The deliberative process privilege,
2. The attorney work-product privilege, and
3. The attorney-client privilege.

We have determined that portions of the records requested must be withheld pursuant to all three of the primary privileges of Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5).

Deliberative Process Privilege

The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to “prevent injury to the quality of agency decisions.” Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an



agency's action. Information contained within these records are deliberative conversations and recommendations from legal counsel and therefore deliberative in nature and are being withheld under the deliberative process privilege according to 5 U.S.C. 552(b)(5).

Attorney Work-Product Privilege

The attorney work-product privilege protects records and documents prepared by an attorney or at an attorney's direction in contemplation or anticipation of litigation, including administrative proceedings. Information shared with a party holding a common legal interest with the agency. Information contained in these records has been drafted by legal counsel for the agency and is being withheld under the Attorney Work-Product Privilege according to 5 U.S.C. 552(b)(5).

Attorney-Client Privilege

The attorney-client privilege protects confidential communication between an attorney and a client relating to a legal matter for which the client has sought professional advice. The privilege applies to facts divulged by a client to an attorney, and communications between attorneys which reflect client-supplied information. Information contained in these records includes confidential communication between legal counsel and the agency and they are being withheld under the Attorney-Client Privilege according to 5 U.S.C. 552(b)(5).

Fees

Pursuant to Title 7 Code of Federal Regulations (CFR), Subtitle A, Part 1, Subpart A, Appendix A, the FOIA allows for the assessment of search and duplication costs. The first 100 pages of duplication and two hours of research time are provided free of charge. Because the number of pages provided falls below the minimum for us to charge fees, no fees are being assessed with this release.

Appeal Rights

This concludes the Eastern Region's response to your FOIA request. The FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 90 days from the date of this letter to the Chief, USDA Forest Service.

Additionally, due to the concerns surrounding the COVID-19 virus we are only accepting appeals electronically at this time. Please email your appeal to SM.FS.WOFOIA@usda.gov. The term "FOIA APPEAL" should be placed in capital letters in the subject line of the email along with the FOIA case number (2021-FS-R9-03823-F) assigned to your request. To facilitate the processing of your appeal, please attach a copy of this letter to your request as well.

If you need further assistance or would like to discuss any aspect of your request, please contact the FOIA Public Liaison at (202) 205-1542. Additionally, you may contact the Office of Government Information Services (OGIS) National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
e-mail: ogis@nara.gov
telephone: (202) 741-5770
toll free: (877) 684-6448
facsimile: (202) 741-5769

Please contact Douglas Meloche douglas.meloche@usda.gov at (404) 293-8373 if you have questions regarding this FOIA request.

Sincerely,

GORDON
BLUM

Digitally signed by
GORDON BLUM
Date: 2021.06.09
07:54:57 -05'00'

GINA OWENS
Regional Forester

Enclosures

cc: Theresa Corless, Douglas Meloche

(b)(5); Deliberative Process Privilege; Attorney-Client Privilege



--John V. 11/7/01

Southern Region-Milwaukee Office
310 W. Wisconsin Avenue, Suite200W
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

(b)(5); Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege



(b)(5); Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege



cc: James Snow

Deputy Assistant General Counsel
Natural Resources Division, OGC

Thomas G. Wagner
Supervisor, White Mountain NF