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TO: Council on Resources and Development (CORD)
FROM: Jamie Sayen, Stratford
RE: ATVs in Nash Stream
DATE: January 17, 2023

Dear CORD Members:

Introductory Comments: I addressed the Council on January 12 during its discussion of the trial Kelsey Notch Trail in Nash Stream. I serve as Stratford's representative on the Nash Stream Forest Citizens Committee, but the following comments represent my views as a private citizen. I have been involved in the Nash Stream saga since the Diamond land sale first became known to the general public in February 1988. I participated in the process that produced the 1995 Nash Stream Forest Management Plan. I also wrote *You Had a Job for Life* (2018), a history of the Groveton paper mill that closed in 2007. In the fall 2023, Yale University Press will publish my book about the red spruce-balsam fir-northern hardwood forests of northernmost New England, *Children of the Northern Forest*.

Climate change, under current carbon emission conditions, will likely drive the red spruce forest out of northern New Hampshire and northern New England by the end of the century. To prevent this ecological, cultural, and economic catastrophe, Coos County needs help transitioning from its current high carbon-emitting, commodity-based economy to a low-carbon, low impact & high value-adding forest and farm economy, supplemented by low-carbon, low impact recreational and tourism businesses and services. Over-reliance on ATVs to rescue our depressed economy is an unwise strategy.

The story of ATVs in the Nash Stream is long and complex. I provide an 8-page "Chronology" for the background of the various issues I discuss below.

ORIGINAL INTENT OF STATE: MAINTAIN BAN ON ATVs IN NASH STREAM
Prior to 1988, the private owner banned ATVs in the Nash Stream. When New Hampshire acquired the 40,000-acre Nash Stream Watershed in 1988, it maintained that ban. The State did not claim the right to regulate ATVs in Nash Stream in the 1989 Easement with the US Forest Service. (Sections II-C and II-E in the Easement). The original management plan, released in 1995, maintained the ban on ATVs. (See [Chronology, p. 1.](#))

The 1995 Plan's Vision Statement (p. 61 of the Plan) stated: "*Protect the natural qualities and integrity of the land, natural communities, native species, and ecological processes.... Manage the land with as little interference as possible with natural ecological functions.*"

2001-2002 OPENING OF NASH STREAM TO ATVs VIOLATED ORIGINAL INTENT

- The WMNF bans ATVs because of their impacts on wildlife and ecosystem integrity. WMNF Superintendent Tom Wagner in September 2001 advised DRED that the Easement permitted internal, but not connecting or through, roads. The Westside Trail, opened in 2002, connects to the Stratford Trail system outside the NSF. Wagner ignored Easement Section II-C.
- The NH Legislative Committee on ATVs in December 2001 allowed ATVs in NSF provided Fish & Game could provide adequate safety and enforcement, and it required regular, comprehensive monitoring and swift action to address threats to ecological integrity. These requirements were later codified into RSA 215-A:42, I(b).
- The Nash Stream Citizens Advisory Committee's ATV subcommittee met once for ninety minutes, requested no data or studies, and refused to convene a second meeting. It ignored the WMNF opinion that connecting or through roads were not permitted by the Easement.
- Noise and baseline studies conducted at the time lacked credibility. No credible studies have ever been conducted. (See Chronology, p. 1-3.)

2012-2013: KELSEY NOTCH TRAIL OPENING WAS ILLEGAL

- The 2002 amendment to the Nash Stream management plan only permitted the Westside Trail, adding, "*No other roads or trails are open to ATVs on the property* (emphasis added)."¹ DRED never amended the 2002 plan to permit the opening of a second trail. The state did not secure the permission of the Forest Service, and it never conducted a formal assessment of potential impacts to fish, wildlife, and their habitats. It only conducted a coarse filter-fine filter analysis of the proposed trail route after CORD required one in December 2016. DRED ignored the warning that Fish and Game was unable to guarantee it could meet law enforcement needs. (See Chronology, p. 4-5)

2016 CONSERVATION GROUPS APPEAL TO CORD

On May 5, 2016, the Appalachian Mountain Club, the Forest Society, and The Nature Conservancy wrote to CORD: "Existing [ATV] Trails in Nash Stream [are] in Clear Violation of RSA 215-A: 42." The three groups quoted the 2002 amendment to the management plan that opened the Westside Trail: "No other roads or trails are open to

¹ State of New Hampshire, Department of Resources and Economic Development, "Nash Stream Forest Management Plan Updates and Revisions," 2002, 50.

ATVs on this property.”² Jeffrey Rose, Commissioner of DRED, incorrectly informed CORD; “Baseline information was gathered beginning in 2002, including a bird survey, baseline noise study, surface water study, mammal track study, turtle survey, and the studies continued.”³

RSA 162-C:6, III instructs CORD: *The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.*

On December 8, 2016 CORD ruled that the KN trial could continue, but Nash Stream managers must meet the following conditions (in italics, followed; my comments are in plain type):

(Condition 1) *the trail must be designed, sited, and used so that it preserves and does not adversely impact natural resources and conservation attributes of the property and does not interfere with or detract from the other uses of Nash Stream Forest.* Comment: DRED conducted no monitoring of Kelsey Notch during the first four seasons. In November 2015 a F&G biologist reported “Tremendous erosion” coming from one spot on the trail. BOT kept the trail open for two more seasons before delivering 105 loads of gravel and fill (12 cubic yards per load) to replace the eroded gravel and soil.⁴ Where did 1,260 cubic yards of eroding materials end up? There is no water quality study to assess the damage. (See Chronology, p. 5-6)

(Condition 2) *the trail must be authorized in a current management plan, which has been reviewed by CORD for consistency with RSA 162-C:6 and has had appropriate public and state agency input.* Comment: In April 2013, the amended 2002 plan was still the governing plan. It prohibited any trail other than the Westside Trail: *No other roads or trails are open to ATVs on the property* (emphasis added).⁵ The plan was not amended in 2013 to permit the KN Trail.

(Condition 3) *the trail must comply with the requirements of RSA 215-A and all other applicable ATV/UTV and environmental regulations and standards...* Comment: The RSA requires regular monitoring and a guarantee from Fish and Game that it can provide adequate safety and enforcement. From 2002 through 2016, neither of those conditions

² Letter from the Appalachian Mountain Club, The Nature Conservancy, and the Society for the Protection of New Hampshire Forests to Council on Resources and Development, May 5, 2016.

³ Jeffrey Rose, Commissioner of New Hampshire Department of Resources and Economic Development to Council on Resources and Development, July 6, 2016.

⁴ Minutes of the Nash Stream Forest Citizens Committee, November 2, 2017.

⁵ State of New Hampshire, Department of Resources and Economic Development, “Nash Stream Forest Management Plan Updates and Revisions,” 2002, 50.

had been met. In January 2013, Jim Oehler of F&G warned that F&G lacked the resources to meet its statutory enforcement obligations. (See Chronology, p. 4-5)

(Condition 4) *after construction, the trail must be continually managed to protect natural resources and conservation attributes and to limit interference with other uses of Nash Stream Forest.* Comment: BOT failed to address the 1,260 cubic yard erosion problem until the conclusion of the 2017 season, allowing an additional two full ATV seasons to exacerbate the problem. (See Chronology, p. 5-6)

(Condition 5) *CORD must be adequately informed on an ongoing basis of the status of management, maintenance, and enforcement efforts related to ATV/UTV use, as well as impacts of ATV/UTV trails on the Nash Stream Forest.* Comment: See below for an assessment of DNCR's monitoring of KN since 2017.

- **Monitoring Occurs After Fall Trail Maintenance, and after the sources of erosion have been groomed over.** In each of the first four monitoring reports, DFL complained: "It would be beneficial to visit the trail earlier several times throughout the season to see the level of use prior to maintenance." Monitoring still is scheduled for after fall maintenance.

- **There have been no credible water quality studies that address the impacts of ATVs on water quality.** Currently, the monitors eyeball streams to evaluate water quality. The 2022 report stated: "Then the monitoring crew looked at the large bridge over the East Branch of Simms Stream, which also seemed in good condition. *There was no apparent sediment getting into the brooks* that flowed underneath the bridges at these locations." (emphasis added) The Nash Stream Citizens Committee was informed in November 2021 that water quality studies are very expensive. Eyeballing streams for sediment may be less costly to agency budgets, but surely it is more costly to the ecological integrity of the NSF streams. This is an argument for shutting down ATV trails in Nash Stream, not a justification for permitting ecologically degrading practices to continue year after year *while we remain ignorant of potential harmful impacts of ATVs.*

- **Monitoring does not always lead to prompt action to address significant problems.** In the 2020 Kelsey Notch Environmental Compliance Report, Fish and Game wildlife biologist, Jacob DeBow expressed "continued concern" over the impacts of noise pollution on wildlife: "we have concern about potential increases in flight behavior around active trails. . . . We have concern for how this may disrupt the normal cycles of wildlife within ear shot of the trail by interfering with breeding behavior, decreasing time spent foraging, and increasing time spent on alert and on edge as machines constantly pass by."⁶

The Kelsey Notch Environmental Compliance report of 2022 stated: "Fish and Game continues to have concern regarding wildlife impact of ATV noise during high volume trail use days. This is of particular concern during spring and early summer months

⁶ Kelsey Notch Trail Environmental Compliance Report to CORD, December 2020.

(May/June) when song birds are nesting/ fledging and mammals are in the early days of raising young.”⁷ The Bureau of Trails only developed reliable data from counters in 2021 when they recorded 12,293 ATVs during the 137-day season, an average of 90 trips a day. In 2022, counters recorded 10,167 ATVs. On Saturday, May 28, 2022 there were 427 trips and 629 the following day, for a total of 1,056 trips in a two-day period. These figures raise concern that wildlife is being adversely affected. The precautionary principle dictates that Kelsey Notch Trail should be closed rather than risk additional harms to wildlife exposure to ATV noise.

(Condition 6) *CORD reserves the right to periodically reassess whether ATV/UTV use in the Nash Stream Forest, or on any of the trails therein, remains consistent with RSA 162-C:6 and reserves the right to temporarily or permanently close trails if necessary as circumstances change over time.* Comment: After a ten year trial, the presence of ATVs on Nash Stream trails remain in violation of RSA 162 and 215. The climate crisis continues to worsen, and ATVs, a non-essential recreation technology, is a major emitter of carbon. (See Chronology, p. 7-8)

Recommendation: The ten-year history of the Kelsey Notch Trail has been riddled with illegal actions, lack of credible studies and monitoring reporting, and worrisome, sometimes unaddressed findings. To comply with RSA 162-C:6,III, RSA 215-A:42,I(b), the 1989 Easement, and the original intent of those who acquired the property and those who authored a model land management plan, CORD must immediately and permanently close the Kelsey Notch Trail to ATV/OHRV traffic.

JANUARY 2021 CORD GRANTS TWO-YEAR EXTENSION OF THE TRIAL PERIOD FOR THE KELSEY NOTCH TRAIL

CORD’s January 14, 2021 Conditions for the Kelsey Notch Trail. (CORD Minutes January 14, 2021) (Conditions in italic and my comments in plain type)

(1) *annual reports submitted by November 15th with CORD to review and accept them if they are satisfactory.*

(2) *as early as practicable within that year, the recommendations within 2020 Environmental Compliance report should be addressed, including mitigation of invasive species so that problems don’t build up. And CORD should be notified when projects are completed.* **Comment:** Recommendations in compliance reports do not always get addressed “as early as practicable within that year.” The wildlife-noise issue remains unaddressed.

(3) *CORD should also request an independent monitoring report from the OSI Conservation Land Stewardship Program.* **Comment:** the unsatisfactory monitoring

⁷ Department of Resources and Economic Development RSA 215:A-42 & A-43. “ATV and Trail Bike Operation on State Land Coarse and Fine Filter Worksheet: Kelsey Notch ATV/UTV Trail,” no date, but probably 2017; Kelsey Notch Trail Environmental Compliance Report to CORD, December 2021; Kelsey Notch Trail Environmental Compliance Report to CORD, December 2022.

protocol of DNCR ought to be supplanted by annual independent scientists with expertise in a variety of fields, including wildlife (habitat and noise issues), water quality (with appropriate water quality testing), exotic species (and expertise in non-toxic, non-carcinogenic treatments). The full costs of these third-party monitoring visits, mitigation, and reporting should be paid out of the BOT's ATV registration revenues. If this is an unfair economic burden, the only other option is immediate, permanent closing of Nash Stream to ATVs.

CORD's March 9, 2021 Conditions for the Kelsey Notch Trail (CORD Minutes March 9, 2021)

(1) *Invasive species identified during monitoring and a plan for treatment of these species.* **Comment:** The 2020 monitoring team discovered phragmites, a nonnative invasive reed that almost certainly entered the Nash Stream on ATVs and trail maintenance vehicles. The Division of Forests and Lands requires its contractors and logging operations to wash their machines before entering the Nash Stream Forest, but the BOT, as of November 2021, did not. Has BOT begun to require washing of all their machines?

New Hampshire Fish and Game treated the phragmites with glyphosate, a popular herbicide that according to the World Health Organization is a probable carcinogen. In June 2020, Bayer, the maker of Roundup, the most popular commercial glyphosate herbicide, paid \$9.6 billion to settle more than one hundred thousand lawsuits brought by people exposed to Roundup before learning they suffered from non-Hodgkin's lymphoma.⁸ **If the state banned ATVs in the Nash Stream, there would be no need to apply herbicides on invasives transported into the watershed by ATVs and BOT and ATV club maintenance vehicles.**

(2) *Plan for restoration of trail erosion.* **Comment:** At the January 12, 2023 meeting, a CORD member asked if unaddressed trail erosion issues on KN would be addressed before the ATV season opened. DFL Director Hackley expressed openness to this, but BOT's Clint Savage warned it might not be possible to effect these restoration efforts before the scheduled May 23 opening date, implying that the trail would be opened *before* necessary, and overdue maintenance was completed. CORD must protect the surrounding fresh waters from further erosion and degradation. CORD must either permanently close Kelsey Notch to ATVs, or it must delay trail opening until CORD has certified that necessary repairs have been properly performed and completed. CORD should also require the results of a credible, independently conducted water quality test before re-opening the trail.

(3) *Annual trail counts from counters.* **Comment:** The huge volume of ATV traffic on Kelsey Notch Trail very likely is adversely impacting climate-stressed wildlife during critical courtship, breeding, and rearing periods. CORD must either permanently close

⁸ Kelsey Notch Trail Environmental Compliance Report to CORD, December 2020. "Probable Carcinogenicity of Glyphosate," *British Medical Journal*, April 8, 2019, available at <https://www.bmj.com/content/365/bmj.l1613>; Tom Hals and Tina Bellon, "Bayer Reaches \$2 Million Deal over Future Roundup Cancer Claims," Reuters, February 3, 2021.

Kelsey Notch to ATVs, or close it to ATV traffic until credible, independent wildlife and noise studies have been properly performed, completed, and their recommendations implemented.

(4) *Adequacy of staffing and budget levels.* **Comment:** The 1995 NSF Management Plan contained multiple directives for monitoring of human and management impacts upon the health of the NS watershed. Since 1995, none of these directives have been complied with. At the November 2021 NSF Citizens Committee meeting, and on multiple other occasions, I have been informed that there is no money in DFL, BOT, or F&G budgets for monitoring. Response: 1) If we cannot afford to monitor, we certainly cannot afford to gamble with the health of the NSF, especially in global climate change and habitat degradation crises. 2) I inquired how many hours DFL and Fish and Game staff spend on ATV issues instead of their Agency missions. I was told there were no records, but staff spends “substantial” time on ATVs, mostly responding to demands for more ATV trails in the Nash Stream. **If the agencies charged with preserving the ecological integrity of Nash Stream can afford to divert substantial staff time to serve the insatiable demands of the ATV lobby, but cannot afford to credibly monitor the impacts of ATVs, something is very wrong in New Hampshire.** An easy solution: close Nash Stream Forest to ATVs. This reduces the amount of monitoring and liberates staff time to attend to their respective agency missions.

NO CREDIBLE EVIDENCE THAT ATVs STRENGTHEN COOS COUNTY ECONOMY
When DRED pitched the Kelsey Notch Trail to CORD in 2013, it claimed that the trail was a “vital part of the economic initiative of the North Country OHRV Coalition.”⁹ To this day, no credible study has examined the role ATVs play in the Coos economy. Claims of the economic benefits of the Coos ATV economy are exaggerated or false.

The ATV lobby commissioned a study of the economic benefits of OHRVs to the New Hampshire economy that was released in 2021. This study, cited in a public comment at the January 12 CORD meeting, failed to ask if there are any adverse costs to OHRVs. Obvious negative impacts include: massive carbon emissions by recreation vehicles; ecological degradation including noise, mud, siltation of water bodies, and dust; increasing conflicts with citizens whose neighborhoods are overrun by ATVs on town roads open to ATVs; the incompatibility of ATVs with low impact, non-motorized recreation; and loss of low impact recreationists who prefer quieter, less overrun places to hike, bike, horse ride, photograph, birdwatch, botanize, picnic, and spend money.

Two of the 2021 economic study’s positive findings raised red flags: 1) Roughly half of the “benefits” to the state were from sales of machines and gasoline to operate them. These profits leak out of the state economy to fossil fuel corporations and ATV manufacturers. 2) The study claimed that the ATV economy created 18 new physician jobs. Given the dangerous nature of ATV operation and the recklessness of some riders,

⁹ DRED, “Response to CORD Management Concerns Pursuant to RSA 163-C:6,” prepared for CORD’s meeting of April 11, 2013.

one can presume many of those new physician jobs are in the emergency room. Serious injuries should not be counted as economic benefits.¹⁰

Coos County's economy will only recover when we develop high value-adding for our farm and forest sectors. We need greater diversification of our non-motorized, low-impact recreation sectors. We need revitalized downtowns. Lancaster began to come back to life when one private citizen made modest, but creative, investments into the downtown. Downtown Berlin, an area that has seen over half a billion dollars of public funds spent to build two prisons, and a bioenergy plant that is a major carbon emitter and driver of whole tree forest liquidation, remains a depressed area. New Hampshire needs to invest modestly, but creatively, in its local communities, and locally-owned value adding potential instead of subsidizing low value, ecologically degrading wood chipping and incineration via policies that include tax-payer and rate-payer subsidies to absentee investors.

ATVs UNDERMINE NASH STREAM CLIMATE CHANGE MITIGATION

• **ATVs in Nash Stream are Incompatible with Efforts to Mitigate Climate Change:** The 1989 easement and the original Nash Stream Forest Management Plan pledged to preserve the health of the forests and fresh waters of the Nash Stream. Global climate and biodiversity crises have grown more acute since then. The Red Spruce-balsam fir forest of Nash Stream may not survive in New Hampshire unless atmospheric carbon levels are immediately reduced substantially. Climate-stressed wildlife seeking more favorable climate conditions should not have to negotiate heavily trafficked, noisy ATV trails. Nash Stream can serve as a model for public and private landowners who wish to optimize the potential of their forests to remove carbon from the atmosphere and store it long term. The Nash Stream sets a poor example by allowing non-essential recreation vehicles to emit large amounts of carbon into the atmosphere when all the climate science is crying out that we need to reduce emissions immediately. It really is a choice between claims that ATV riders in northern New Hampshire may be inconvenienced versus the certainty that promoting ATVs on public lands undermines progress in mitigating the existential threat of climate change. CORD, DNCR and NH F&G cannot meet their responsibilities to mitigating the climate crisis by ignoring the heavy carbon footprint of ATVs and their harmful impacts on climate-stressed wildlife.

CORD must re-align the management of Nash Stream with the terms—*and intent*—of the Easement and New Hampshire law by restoring the ban on ATVs in Nash Stream.

¹⁰ Daniel Lee, "The Economic Contributions of OHRV Riders in New Hampshire," New Hampshire Off Highway Vehicle Association, September 2021, 9-11.

<https://milantrailhuggersatvclub.wildapricot.org/resources/Documents/2020 Economic Study.pdf>