



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION of FORESTS and LANDS

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

GEORGE M. BALD  
Commissioner

PHILIP A. BRYCE  
Director

603-271-2214  
FAX: 603-271-6488  
www.nhdf.org

December 18, 2001

To Nash Stream Forest Citizen Advisory Committee Members:

As reported, this agency requested from the US Forest Service their legal interpretation of the Nash Stream Forest Conservation Easement held by the United States of America relative to public recreational use of ATV's at Nash Stream.

Enclosed for your reference is a copy of the request to Thomas Wagner, Acting Forest Supervisor White Mountain National Forest and response from USDA Office of General Counsel Gene Alan Erl, Deputy Associate Regional Attorney.

In essence, their opinion is that the decision to allow ATV use at Nash Stream rests with the state of New Hampshire. This is a welcome decision that now allows us to move ahead with this question behind us.

Sincerely,

Thomas C. Miner, Administrator  
Forest Management Bureau

TCM/mg

cc: Wayne Millen  
Robert MacGregor  
John Lanier  
Edith Tucker  
Barbara Tetreault  
Paul Gray  
Albert Cloutier

Philip Bryce  
Susan Francher ✓  
Ted Burns  
Brad Presby  
Chris Gamache  
Ken Oakes

Forest Protection  
Forest Management

(603) 271-2217  
(603) 271-3456



Land Management  
Community Forestry

(603) 271-3456  
(603) 271-3457

Natural Heritage Inventory (603) 271-3623

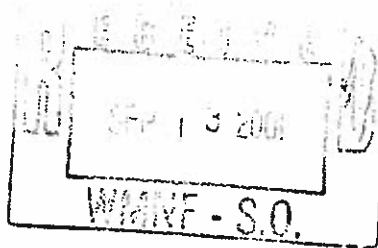


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GEORGE M. BALD  
 Commissioner

603-271-2214  
 FAX: 603-271-2629

PHILIP A. BRYCE  
 Director



September 10, 2001

Thomas Wagner  
 Acting Forest Supervisor  
 USDA Forest Service  
 White Mountain National Forest  
 719 Main Street  
 Laconia, New Hampshire 03246

Dear Mr. Wagner:

As a follow up to public requests for recreational use of all terrain vehicles (ATV's) in the 39,601 acre Nash Stream Forest we request a Forest Service legal interpretation of the Nash Stream Forest Conservation Easement held by the United States of America relative to this use. Since the Nash Stream Forest property is subject to the Easement and since it is administered through your office we request your assistance with this matter.

The 1995 Nash Stream Forest Management Plan currently prohibits public recreational use of ATV's. Should a decision be made to revise the current Plan to allow public ATV use, we plan to complete a 7-step plan revision process, including public comments, assessments, and final plan approval by August 2002. In order for us to complete this ambitious schedule, a timely response would be appreciated.

We intend to keep you informed of our progress and welcome oversight of the Conservation Easement terms by you and your staff. Thank you for your assistance.

Sincerely,



Philip A. Bryce  
 Director

Cc: Wayne Millen, Assistant Ranger, USFS, WMNF  
 George Bald, Commissioner, DRED  
 Rich McLeod, Director, Division of Parks and Recreation, DRED  
 Anne Edwards, Assistant Attorney General


TCM/PB

Forest Protection (603) 271-2217  
 Forest Management (603) 271-3456



Land Management (603) 271-3456  
 Information & Planning (603) 271-3457

Natural Heritage Inventory (603) 271-3623

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 DIVISION OF FORESTS AND LANDS 603-271-2214



United States  
Department of  
Agriculture

Forest  
Service

White Mountain  
National Forest

719 N. Main Street  
Laconia, NH 03246  
Comm (603) 528-8721  
TDD (603) 528-8722

File Code: 5440

Date: September 25, 2001

Route To:

Subject: Nash Stream Easement

To: Paul Stockinger

Enclosed is a request from the State of New Hampshire for a Forest Service legal interpretation of the Nash Stream Forest Conservation Easement relative to the recreational use of all terrain vehicles (ATV's) in the Nash Stream Forest. The State is currently looking at the possibility of revising their management plan and wants to be able to consider the possibility of this use in the update of their plan in response to public requests.

I have reviewed the easement, which was signed on August 4, 1989, and would like to have you and the Office of General Counsel review my findings prior to me providing the State with a Forest Service position on this matter. My review noted the following items, which appear to pertain to the issue of recreation use and access:

#### Introductory Statements (Whereas)

I found nothing in the introductory statements that indicated to me that the State's consideration of ATV use through their management plan would be inconsistent with the purposes of the easement.

#### II. Use of the Easement Area

Under C.1, the State has expressly reserved public recreation uses in order to construct, operate and maintain campsites, trails, internal access roads, picnic roads, boat launches, trailhead parking areas, visitors center and ranger station. The reserved right specifically highlights cross-country ski trails and snowmobile trails, but based on the way it is written it does not appear to preclude other kind of trails such as hiking and ATV trails or internal access roads.

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.

Under C.4, the State is required to manage the property for multiple uses consistent with the purposes and provisions of the easement. The instrument goes on to define multiple use as 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. The State redeems their responsibility for this provision



through the preparation and administration of the Nash Stream Forest Management Plan and subsequent revisions of this plan.


Under Section E.1, I find no prohibited or unreserved uses that apply to the possible management of ATV's on the Nash Stream Forest relative to trail and internal road use.

Under Section F.1 and F.2, I believe the State is considering a public access and use request and has the authority under the easement to reasonably restrict and regulate access.

### III. General Provisions

Under Section D, it would be my opinion as the Forest Supervisor that the State has the discretion to consider ATV use on the Nash Stream Forest during the revision of their Forest Management Plan. The decisions on use of ATV's in the plan would need to consider the purposes of the easement (public use and protection), Natural Resource Management (Section II.4) and the New Hampshire Forest Management Initiatives Act (III.E).

I would appreciate a review of my conclusions, so I can get back to Director Phil Bryce with a Forest Service position on his request for a legal interpretation. Please give me a call if you have any questions.



THOMAS G. WAGNER  
Forest Supervisor

Enclosure

Cc: George Pozzuto, District Ranger



United States  
Department of  
Agriculture

Forest  
Service

White Mountain  
National Forest

719 N. Main Street  
Laconia, NH 03246  
Comm (603) 528-8721  
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File Code: 1560

Date: December 11, 2001

Phil Bryce  
DRED  
172 Pembroke Road  
Concord, NH 03302

**RECEIVED**

DEC 13 2001

Dear Phil,

**D.R.E.D.**

Attached is the advice from our Office of General Counsel pertaining to ATV's on Nash Stream Forest. This advice is similar to what I communicated to you over the phone.

Please feel free to contact me if you have any questions or concerns.

THOMAS G. WAGNER  
Forest Supervisor

Enc.



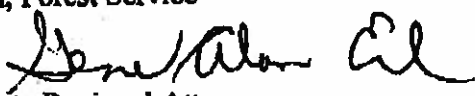


United States  
Department of  
Agriculture

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

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**