

February 14, 2022

Dear Forest Supervisor Ibarguen,

in response to a recent query about USFS responsibilities as an easement holder for Nash Stream State Forest, you stated:

“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.”

Paragraph III-D of the Nash Stream State Forest Easement states:

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.

"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."

ATV use was not reserved by the State. Snowmobiles are not ATVs. DNCR acknowledges this when it states that it assists in maintenance of “6,800 miles of snowmobile trail and over 700 miles of wheeled OHRV trails”. A snowmobile is now technically defined as an “Over Snow Vehicle (OSV.)

The Ropes and Gray Memorandum states: "The Opinion, citing the Easement Deed provisions quoted above, posits that the “mention of snowmobile 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.”  
2 This conclusion is inconsistent with my research of relevant New Hampshire law. New Hampshire law clearly distinguishes among types of motorized vehicles, including distinctly separating snowmobiles from ATVs by definition in Chapter 215-A and Chapter 215-C of Title XVIII of the Revised Statutes Annotated of the State of New Hampshire. 3 Further, snowmobiles are expressly excluded from the definition of OHRV 4 and are regulated pursuant to N.H. Rev. Stat. § 215-C whereas ATVs and other OHRVs are regulated pursuant to N.H. Rev. Stat. § 215-A."

If the Forest Service asserts that the Nash Stream Easement permits ATV use; “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, WMNF, shall administer this easement...Any Forest Service concurrences required under this easement shall be in writing...”

Tom Wagner, former WMNF employee, when queried in 2001 about the legality of permitting ATV use in Nash Stream discussed II-C.1 and II-C.2 but was curiously silent on II-C, “Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. He stated:

“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.”

Permission to install, operate and maintain roads does not alter the non-permitted status of ATVs. And, all the ATV trails in Nash Stream provide “through travel:”

Phil Bryce, Director of Forest & Lands, touched on this in a 2001 letter to Representative Alger: “Are requests for connecting trails across state lands handled differently than self-contained trail systems?”

In 2002 the Nash Stream ATV Study Subcommittee made a verbal report to the Nash Stream Citizen’s Committee. The ATV Study Committee rejected the “interior trail” and recommended a “connecting trail” providing the through travel that would require Forest Service permission.

Thus, the Forest Service is still left with the fact that the four ATV Trails in Nash Steam S.F. are all through trails, and lack the required “concurrence in writing”, a concurrence DRED, and its successor DNCR, never 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.

Sincerely,

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February 14, 2022  
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*1. Snowmobile Trail*



*2. Bordeau ATV Trail*



3. *Westside ATV Trail*



Figure 1, 2 and 3- Shows the broken boards on the bridges and the eroding approaches.

4. *Kelsey Notch ATV Trail*

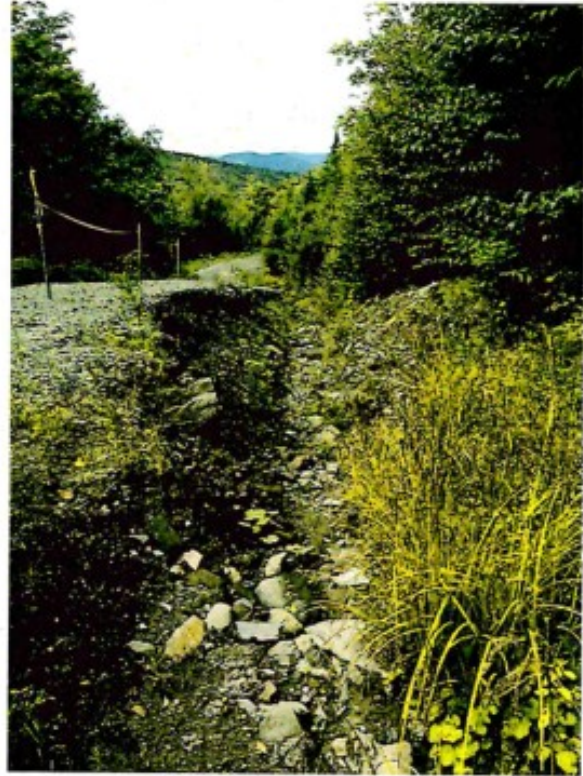


Figure 6 and 7- Depicts the washout along the trail.

5. *Kelsey Notch ATV Trail*

1. *Snowmobile trail, Stark, N.H. 2021*
2. *Bordeau Trail, July, 2019; DF&L files*
3. *Westside Trail, July, 2019; DF&L files*
4. [Kelsey Notch Monitoring Report 2018.](#)
5. *Kelsey Notch Monitoring Report 2018*