

January 14, 2022

Commissioner Stewart,

Your letter of 1/8/22 contains a number of claims and misunderstandings which we feel compelled to address now. We are not willing to wait for whatever public meetings you decide to hold in the fall of this year after the destruction of another ATV/OHRV season occurs.

First, there is no recognition in your letter of the history of the creation of the Nash Stream Forest ("NSF"). We refer to the August 4, 1989 Easement Deed for the Nash Stream Forest, a copy of which is attached. Paragraph II C of the Easement Deed states that the State of New Hampshire reserved the right to preserve and manage certain specific uses in the NSF. It goes on to state, "Uses which are not expressly reserved by the State shall be prohibited by the State..." Nowhere in that Deed is there any mention of ATV, UTV or side by side motorized vehicle uses (hereinafter referred to as "ATV uses"). Such uses were not "expressly reserved." They are, therefore, prohibited. There is no room for exceptions or interpretation. ATV uses are prohibited. Period.

Your predecessors at the Department of Resources and Economic Development, NH Division of Forest and Lands ("DRED"), understood that language to mean exactly what it said. There could be no ATV recreational uses allowed in the Nash Stream Forest. In fact, that is exactly what they represented in writing to the people of New Hampshire when it published in November of 1994 its "Overview of the Nash Stream Forest," a copy of which is also attached. In the Overview at page 2, DRED specifically said that ATVs and Trail Bikes were not allowed in the Nash Stream Forest. Period.

The attorneys at the Boston law firm of Ropes & Gray understood this without difficulty after reading the Easement language. And they have advised the State of NH of their legal opinion on this matter in their memorandum of 2020 in support of the previously expressed position of the Appalachian Mountain Club of which you are well aware. For ease of reference we also attach a copy of the Ropes & Gray legal opinion.

Commissioner, why do you take a position that so misinterprets the Easement and so radically revises the clear and unequivocal representations and promises of your predecessors to the people of this State? Under the false construct that you and others have placed on the Easement and Overview are you not concerned that many will no longer trust the State to keep its promises? Are you not concerned that many will no longer trust the State to be a good steward and custodian of badly needed conservation easements? Are you willingly crushing good public policy to suit the whim of a minority of motorized recreational zealots?

As for the content of your letter, many of your other claims need response. You state that, "The NSFCC is comprised of public members who represent recreational uses, environmental/ecological, conservation, forest management and other interests." You may not realize that the list of NSFCC members posted on your site is out of date.

Second, “Traditional, dispersed, non-motorized recreationists” for whom the Nash Stream Forest was originally acquired, have no representation on the NSFCC. The ‘Snowmobile clubs’ designee Tim Emperor is the one who actually devised the 2021 Southern Connector route. He thus works with and for ATV interests. Third the so-called “Expertise in Recreation and Tourism” designee Bill Noons, is Director at Large of the NHOHVA (New Hampshire Off-Highway Vehicle Association). He owns Connolly Cabins and Campground in Stratford, New Hampshire and his daughter is trail master for the North Country ATV Club which maintains the illegally-existing Westside Trail in the Nash Stream Forest.

You state: “The November 17, 2021 NSFCC meeting was the appropriate venue for any committee member to raise a concern and make a motion for action. At the conclusion of that meeting’s formal agenda, ample time for public comment was provided; all of which was recorded in the meeting minutes.” At that meeting, Jamie Sayen raised several issues and the rest of the Nash Stream Forest Citizen’s Committee ignored them, including the violation of RSA 215-A:42(b) and his motion to cease further agency work on Southern Connector until and unless landowner #14 changed his mind. That Jamie Sayen was unable to secure a second for his motion suggests the NSFCC does not wish to get in the way of the demands of ATV lobby. Perhaps if there had been a true representative of traditional, non-motorized recreation, there could have been a second, and further discussion.

Your claim that “Existing OHRV trails are monitored annually by N.H. State Park’s Bureau of Trails, DFL and the N.H. Fish and Game (NHFG) staff” is incorrect. The illegal Kelsey Notch trail went un-monitored for the first four years of its “Trial” and monitoring was only instituted after CORD’s December 2016 ruling forced the Bureau of Trails to comply with the (still in effect) 1995 NSF Management Plan directive to monitor management and uses of the NSF. No annual monitoring has ever been performed on the illegal Westside Trail.

You claim that “Any issues related to OHRV trails on Nash Stream are identified in these reports and have been addressed to the satisfaction of all state agency resource managers and members of CORD.” But you ignore the fact that the Easement prohibits the State from permitting ATVs in the NSF to begin with. Aside from this obvious bar on ATVs, there hasn’t been any monitoring of Westside, so there are no issues on the record that need to be addressed “to the satisfaction of agency resource managers and members of CORD.” That the issues identified in reports on Kelsey Notch have not been addressed to the satisfaction of agency employees in the field is also clear in the documents.

You state: “Currently, the Bureau of Trails, DFL and NHFG staff are conducting a two-year field study granted by CORD to quantify site impacts of both Kelsey Notch and Westside OHRV trails.” Again this ignores the ban on ATVs that was established over 30 years ago. You are now conducting this two-year study on behalf of the ATV Clubs’ request for the Southern Connector despite its lack of necessary landowner permission and despite its violation of the terms of the Easement.

In contrast, repeated requests for the annual monitoring of forest management and other activities in the NSF that are required in the Management Plans, are denied because “We don’t have funding in our budget for monitoring.” But Fish & Game and Division of Forests and Lands staff time and budgets are available to do work on behalf of the ATV clubs’ endless demands for more ATV trails in Nash Stream Forest.

You state: “The issue of the legality of OHRV use at Nash Stream has been well established and documented to CORD’s satisfaction in past correspondence with the United States Forest Service (USFS), the easement holder of Nash Stream Forest. (See 9-25-01 letter from USFS White Mountain NF Supervisor, Thomas Wagner and follow-up memo from Deputy Associate Regional Attorney, Gene Alan Erl.)” That letter pertained to the Westside Trail only, and at the time Thomas Wagner of WMNF believed that the Westside Trail was internal and not a connector. More importantly and as pointed out in the attached Ropes & Gray legal memorandum, Mr. Wagner totally missed the language in the easement that made it clear that ATV uses would not be permitted because they were not “expressly reserved.” Even if you could overlook this explicit prohibition, the WMNF has not been consulted regarding either Kelsey Notch or the Southern Connector. If it has, please supply the documentation of the WMNF comments on the 2012-2013 Kelsey Notch and anything pertaining to the proposed Southern Connector since 2012.

You state: “The directors and key staff of NHFG and DNCR are meeting next week and the concerns regarding compliance with RSA 215-A:42 will be discussed.” There needs to be a public hearing on this topic, not a private discussion between the very agencies that have operated in violation of the Easement and the pertinent RSAs.

You wrote: “...a monitoring and review process is in place for OHRV trails on Nash Stream Forest.” Again, this claim is false as regards to the illegal Westside trail, the oldest, longest, and most environmentally damaging ATV trail in Nash Stream Forest. More importantly we want you to know that we claim a monitoring and review process is totally unwarranted since such uses are not permitted in the first place as clearly demonstrated in the Easement language itself.

You state: “Once the two-year field study is concluded, the data will be compiled and presented to CORD. After reviewing the report, a consensus by the resource managers, the NSFCC, CORD and ultimately the DNCR Commissioner will determine the future of these trails.” The Easement speaks to that issue and trails for ATVs are prohibited. Period. CORD has a legal duty to enforce the Easement language and shut down the operation of all recreational ATV activity in Nash Stream Forest. Neither CORD nor the DNCR Commissioner has any legal right to overrule or change the language of the Easement.

DNCR has ignored its monitoring responsibilities for over 25 years, and has operated in violation of RSA 215-A:42(b) since 2002. That it is now “monitoring” a small portion of the NSF that happens to be desired by the ATV lobby suggests that DNCR serves the motorized recreation lobby and has essentially shut out the general public that is concerned with the ecological welfare of Nash Stream Forest that DNCR is co-

responsible for safeguarding, and has relegated “traditional, low impact, dispersed recreation” to second-class status, or worse.

Public comment after the Committee has wrapped up its business for another calendar year and is already packing up to head home is easy to ignore. No one on the Citizens Committee responded to any of the public concerns raised by the public at the November 16, 2021 meeting. Members of the public have a right to address the CC and the Tech Team and DNCR officials, to ask questions, and to receive the courtesy of an honest answer. None of this happens at the CC meetings—unless the “public” is defined as the ATV Lobby.

Your letter failed to address the carbon footprint of ATVs. The climate crisis is even more acute than it was in 1988. NSF should be making important contributions to the mitigation of the climate emergency yet climate change isn’t even on the agenda of a NSFCC meeting. It was not even mentioned in the original draft revision of the management plan in 2017. The DNCR was shamed by public commenters into taking an extra six months to add a section on climate change. But it seems that under your administration, ATVs, one of the most-non-essential uses of fossil fuels that exists, will be given all the time and agency budget they need to complete their takeover of Nash Stream Forest. Is that the legacy by which you wish to be remembered?

You state: “Thank you for bringing these concerns to our attention and for participating in the recent Nash Stream Forest Citizens Committee meeting. We look forward to continuing the dialogue with you and all those concerned about the management of this important and highly valued public forest.”

Refusing to convene a meeting where the public is allowed to ask questions and receive real answers, is refusing to engage in dialogue, not “continuing the dialogue.”

Sincerely,

Kris Pastoriza, Easton, N.H.

Rick Audy, Shelburne, N.H.

Campbell McLaren, M.D., F.A.C.E.P., Easton, N.H.

Abby Evankow, Gorham, N.H.

Lucy Wyman, Lancaster, N.H.

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Michael Kellett, Executive Director, RESTORE: The North Woods, Concord, MA
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Margaret and Eric Jones, Trustees of the Legacy Forest Trust
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Sarah Doucette, Whitefield, N.H.
David Van Houten, Bethlehem, N.H.
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