



United States
Department of
Agriculture

Forest
Service

White Mountain
National Forest

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File Code: 5440
Route To:

Date: September 25, 2001

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.

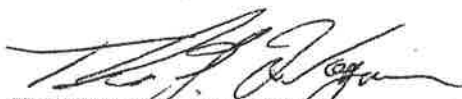
Under Section E.1, I find no prohibited or unreserved uses that apply to the possible management of ATV's on the Nash Stream Forest relative to trail and internal road use.

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