

MAINE STATE LEGISLATURE

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**Report on Natural Resource Agency
Policies for Accessing Private Lands
to the
Joint Standing Committee on
Agriculture, Conservation and Forestry
of the
124th Maine Legislature,
Second Regular Session**



**29 January 2010
Submitted by
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SUMMARY

Resolves 2009, Chapter 30 directed the state's natural resource departments - the Department of Inland Fisheries and Wildlife, the Department of Environmental Protection (DEP), the Department of Marine Resources (DMR), the Department of Agriculture, Food and Rural Resources (DAFRR) and the Department of Conservation (DOC) to develop written policies regarding entering private woodland, farmland or coastal lands for nonemergency purposes to collect information. The Resolve directed that these policies must address such items as when pre-notification or permission is appropriate; when no notification or permission is needed; what constitutes notification or permission; motorized and non-motorized access; and when woodland or farmland owners or owners of coastal lands should be informed regarding potential uses of data or information collected.

The Resolve recognized that departments may have different policies for accessing woodland, farmland or coastal lands for different purposes. The Resolve further acknowledged that it did not interfere with the departments' enforcement authorities.

Finally, the Resolve directed the departments to report to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2010 on their policies for accessing private lands.

As required by the Resolve, this report includes a copy of each department's policies pertaining to accessing private woodlands, farmlands and coastal lands, a summary of input received from farmland and woodland owners and owners of coastal lands during the development of these policies. The report includes a description of how information collected on private land is used by the agencies, the types of information that are available to the public and how that information is provided.

Development of this report was coordinated by Donald J. Mansius, Director, Forest Policy & Management, Maine Forest Service.

SUMMARY OF INPUT RECEIVED FROM LANDOWNERS DURING DEVELOPMENT OF POLICIES

Each department adopted a different approach in seeking input from landowners during the development of their respective policies. The Department of Conservation met with representatives of the Small Woodland Owners of Maine (SWOAM) and the Maine Farm Bureau (MFB) to discuss early drafts of its policy. DOC's outreach efforts focused on these two organizations, because they represent landowners who own woodlands, farms, and coastal lands. The key concerns of these groups largely focused on the intended uses and dissemination of data collected by agents of the state on private land and the concept of assumed permission (whereby non-response within a certain time to a written or phone message requesting permission is assumed to grant permission). Copies of correspondence from the organizations are found in the appendixes.

DEP provided its existing guidance document to SWOAM and MFB to solicit comments. Although DEP will at any time discuss comments or answer questions about its guidance document, it had received no comments as of the time of preparation of this report.

HOW INFORMATION COLLECTED ON PRIVATE LAND IS USED BY THE DEPARTMENTS

Department of Conservation

In its non-regulatory roles, the Department of Conservation collects information on private land during the execution of a number of its statutorily prescribed duties, including, but not limited to:

- Forest inventory;
- Monitoring of implementation and effectiveness of Best Management Practices to protect water quality;
- Monitoring of post-harvest conditions;
- Ecological inventory; and,
- Potential public boat ramp locations.

Forest inventory information is collected on behalf of the USDA Forest Service's Forest Inventory and Analysis program for the purpose of reporting on conditions and trends in the state's forest resources. Individual landowner information is designated as confidential by federal law. The forest inventory program is authorized in statute. Landowner permission for access is always sought.

Monitoring of Best Management Practices is conducted for the purpose of reporting on the effectiveness of non-regulatory measures in protecting water quality, as required by the US Environmental Protection Agency and by statute. Individual landowner information is not disclosed. The Best Management Practices monitoring program is authorized in statute. Landowner permission for access is always sought.

Monitoring of post-harvest conditions is a relatively new initiative which originated as a result of debates over forest practices regulations during the past decade. The purpose of this monitoring is to better characterize what actually results from timber harvesting

operations as regards the future productivity of forest stands and impacts on biodiversity, soils, and other non-timber resources. Monitoring of post-harvest conditions is authorized in statute. Landowner permission for access is always sought.

The Maine Natural Areas Program conducts ecological inventory for the purpose of assessing the status and trends of rare, threatened, and endangered plant species and rare and exemplary natural communities. Data collected through the ecological inventory are used to:

- inform landowners of the presence of the respective features and to help the landowners manage, if interested, for the features;
- demonstrate compliance with various forest certification standards;
- assess the rarity of plant species and natural communities in Maine; and,
- inform conservation and development planning.

Landowner permission for access is always sought.

Public boat access site evaluations normally take place on sites where owners have listed their property for sale. However, the Boating Facilities Division of the Bureau of Parks and Lands has a list of high priority waters on which public boat access is desired and where suitable sites are not offered for sale. 12 MRSA §1894 states, "In carrying out the purposes of this subchapter, the bureau and its authorized agents and employees may enter upon any lands or waters in the state to make surveys and examinations it determines necessary or convenient, and such entry is not considered trespass." However, in such cases, in order to comply with departmental policy, landowner permission will be sought.

Department of Agriculture, Food and Rural Resources

The Department of Agriculture has certain statutory authorities statutorily prescribed authority to enter farmland for enforcement or regulatory reasons. For other reasons, gathering information or assisting farmers, entry is either at the request of or with the permission of the farmer.

In one case, employees from the Division of Quality Assurance and Regulations certify compliance of crop production with "good agricultural practices" (GAP). These GAP standards are demanded by a variety of food processors and retailers. A farmer would request an audit, which would be performed by division staff. In another case, field staff of the Board of Pesticides Control collect samples, but do so only with the written permission of the landowner.

Department of Environmental Protection

DEP does not routinely collect environmental data on private land. The typical circumstance where DEP collects data relates to regulatory action and enforcement. Should environmental data collection for purposes other than those be necessary in the future, DEP would only do so with consent of the owner and an understanding from them regarding the use and dissemination of the data to be collected.

Department of Marine Resources

The Department of Marine Resources' Bureau of Sea Run Fisheries and Habitat, in its role to conserve, protect and restore Maine's marine resources, must access or cross private land during the execution of a number of its statutorily prescribed duties, including, but not limited to:

- Diadromous fisheries population assessments;
- Fisheries research;
- Fishway maintenance and inspections;
- In-stream habitat restoration and manipulation; and,
- Monitoring of riparian zone easements.

In its regulatory roles, DMR's Public Health Division collects information on or via access through private land during the execution of a number of its statutorily prescribed duties, including, but not limited to:

- Water and shellfish sampling;
- Inspection and evaluation of actual and potential pollution sources; including, but not limited to, septic systems, manure handling, fertilizer and pesticide application, marina/mooring evaluation, grey water discharge, etc.; and,
- Potential private boat ramp and pier locations.

Water and shellfish samples are collected for the purpose of monitoring fecal coliform levels in order to protect public health through growing area classification as required by the U.S. Food and Drug Administration and the National Shellfish Sanitation Program and by statute. Individual landowner information is not disclosed. The Growing Area Classification Program is authorized in statute. Landowner permission for access is always sought. Data is provided online, at the request of the public and in annual reports written by the Department but does not include landowner information.

Shellfish samples are collected for the purpose of monitoring paralytic shellfish poisoning (PSP) in order to protect public health through PSP closures as required by the U. S. Food and Drug Administration and the National Shellfish Sanitation Program and by statute. Individual landowner information is not disclosed. The Biotxin Monitoring Program is authorized in statute. Landowner permission for access is always sought. Sample scores are used for the determination of closures and openings for public health protection and are provided to the general public, academia, scientists and other agencies but no landowner information is included.

Shoreline survey of properties within 500' of the shore or conduit to the shore to investigate sources of actual and potential pollution sources; including but not limited to, septic and grey water system information is collected for the purpose of reporting on conditions along shellfish harvesting areas and conduits to shellfish harvest areas as required by the U. S. Food and Drug Administration and the National Shellfish Sanitation Program and by statute. Individual landowner information is provided to other agencies, municipal codes enforcement officers, and licensed plumbing inspectors who have statutory authority to address violations. The information is occasionally, but rarely

provided to municipal shellfish committees upon request. The growing area classification program shoreline survey inventory is authorized in statute. Landowner permission for access is always sought. Actual and potential pollution sources are documented in reports written by the department but specific landowner information is not included in the reports. The reports are posted online and are provided to the general public, agencies and other groups upon request.

TYPES OF INFORMATION AVAILABLE TO THE PUBLIC AND HOW THE INFORMATION IS PROVIDED

Department of Conservation

Forest Inventory: The USDA Forest Service and Maine Forest Service periodically publish forest inventory reports that tabulate and summarize the data collected during the inventory process. These reports are available in hard copy and on line. The USDA Forest Service also posts inventory information on line; however, in keeping with federal statute, the identification of individual landowners is never revealed, nor are actual inventory plot locations.

Best Management Practices for water quality: The Maine Forest Service periodically publishes a report that tabulates and summarizes the data collected during the monitoring process. These reports are available in hard copy and on line. The activities of individual landowners are not revealed.

Post-harvest monitoring: This program is still in its infancy. The policies and procedures for making this information available to the public are the same as above.

Ecological Inventory: Maine Natural Areas Program routinely provides data and relevant management suggestions for specific properties to landowners after the completion of inventory work. Prior to surveys, Maine Natural Areas Program notifies landowners that any data collected will be public and that it may under some circumstances be used by regulatory agencies in reviewing permit applications and by planning agencies in managing the state's natural resources. The data are also available for use in conservation and development planning by towns and other non-governmental planning organizations. Digital and mapped data are public records and are provided as requested to landowners and others listed above.

Boat access: Information collected on potential boat access site inspections is normally not made public unless a landowner enters into a purchase and sale agreement.

Department of Agriculture, Food and Rural Resources

Information gathered by the Department of Agriculture is subject to Maine's Freedom of Access Law. There are a few exceptions: nutrient management plans, pesticide formulations shielded by federal law, and the authority granted by 7 MRSA, §20, when a request for information is made by a person and the department determines that the information is considered proprietary.

Department of Environmental Protection

Unless an exception specific to certain data exists, Maine law requires DEP to treat the data it collects as a public record.

Department of Marine Resources

The Department of Marine Resources makes all assessment information and portions of its landing data available via the web and/or in hard copy. Individual landowner information is not disclosed.

DEPARTMENT OF CONSERVATION POLICY

Subject: Entering private lands for non-law enforcement activities

I. PURPOSE

To establish guidelines and procedures for Department of Conservation (department) staff entering private lands pursuant to legislative direction in Resolve 2009, Chapter 30 (LD 561, Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands),

II. OVERVIEW

- A. Certain bureaus and divisions of the department have specific statutory authority to access property for the purposes of determining compliance with the state's forest practices and forest protection laws; surveying to detect the presence of dangerous and/or public nuisance forest insect and disease pests; and, where exigent circumstances exist relative to forest fire suppression.
- B. Department staff routinely access private land with the voluntary cooperation of landowners for various purposes, including, but not limited to: inventorying biological and geological features; monitoring timber harvest outcomes; and, land use inventories.
- C. 12 MRSA §685-C, sub-§8, §1828, §1884, §1894, §8201, §8869, sub-§11, and §8901, sub-§2 all provide specific authorities for entry by agents of the department onto private lands.
- D. These guidelines are designed to inform department staff members, agents and contractors (hereinafter referred to as "staff") of the steps which should be taken in accessing private property for authorized purposes. If a staff person has any questions or doubts, the appropriate supervisor or assistant attorney general should be consulted before entering the property involved.

III. APPLICABILITY

This policy applies to all employees of the Department of Conservation, subject to the following exceptions.

IV. EXCEPTIONS TO THIS POLICY

- A. All department staff performing duties explicitly authorized by one of the statutes listed above; and,
- B. All Forest Ranger classifications within the Bureau of Forestry, Forest Protection Division who are acting in compliance with Forest Protection Division policy #LE 10 (Law Enforcement, Conducting Site Inspections).

V. GUIDELINES

- A. Department staff should be dressed in any standard issue clothing and/or carrying their official departmental identification credentials on their person prior to accessing private property.
- B. Department staff, when engaged in their official activities, will respect the desires of landowners regarding access over and across private property when

the landowner has made his or her desires known. Consequently, before entering private land that is posted to "No Trespassing," department staff will obtain the verbal or written permission of the landowner, a member of his or her immediate family, or agent. If permission is granted verbally, department staff will document the conversation for their files. If permission is denied, department staff must not enter the property. This paragraph does not apply to department staff responding to emergencies, nor does it apply to passage over privately-owned roads that generally are open to the public (e.g. the Golden Road).

- C. If department staff have requested permission to enter private property via regular mail, and the correspondence sent to the landowner contains a phrase stating that the department will assume permission is granted unless the landowner responds within a specified reasonable time, department staff may assume that permission is granted if the landowner does not respond with the time specified.
- D. The verbal permission of the landowner, a member of an immediate family, or a landowner specified agent must be obtained before crossing over or through any pasture or other enclosed area containing livestock or other domesticated animals. If permission is granted verbally, department staff will document the conversation for their files. This paragraph does not apply to department staff responding to emergencies.
- E. When contacting a landowner, whether in person, by regular mail, telephone, email, or other means, department staff must:
 - 1. Explain the reason they need to access the property;
 - 2. Identify the time period for which access is requested;
 - 3. If collecting and recording data for any purpose, department staff will inform the landowner: (1) whether the data is designated as confidential by state or federal law; and (2) the proposed uses of the data collected; and,
 - 4. Offer to share the information collected and any analysis of the information collected with the landowner, when such information is not designated by state or federal statute as confidential.

If a landowner denies access after having granted permission previously, department staff must respect the landowner's wishes and cease entering the property.

- F. Department staff may use the most appropriate, efficient, and safe method available to enter the property. Vehicular access is permissible on roads, and snowmobile and ATV access are permissible on trails; however, department staff must use good judgment in determining how to access a property. If the landowner has made known specific objections regarding restrictions on methods of access to a property, consultation should occur with a supervisor or the Attorney General's Office as appropriate.

- G. Department staff will respect the rights of the landowner, will complete their tasks in a professional and timely manner, and will not engage in extraneous activities that are not part of their assignment.
- H. Unless explicitly allowed by statute, no permanent markings or placement of signs should be left without landowner permission, except when posting public health advisories or regulations. This paragraph does not apply to staff of the Bureau of Forestry, Forest Health and Monitoring Division performing duties in compliance with their statutory authorities to conduct forest inventory.
- I. If there is any uncertainty as to whether or by what means staff persons should enter a property, consultation should occur with a supervisor or the Attorney General's Office as appropriate.
- J. If requested by the landowner, any information obtained from entry onto the landowner's property and which is not designated by state or federal statute as confidential will be provided to the landowner.

These guidelines do not have the force or effect of law and do not confer legal rights or impose legal duties. Any more stringent requirements of the agency's enabling statute and/or the U.S. Constitution's 4th Amendment must always be adhered to. If there is any uncertainty regarding the application of this policy, consultation should occur with appropriate supervisors and/or the Attorney General's Office or District Attorney's Office.

DEPARTMENT OF AGRICULTURE, FOOD, AND RURAL RESOURCES POLICY

Subject: Entering private farmlands

PURPOSE

To establish guidelines and procedures for Department of Agriculture (Department) staff entering private farmlands pursuant to legislative direction in Resolve 2009, Chapter 30 (LD 561, Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands),

I. OVERVIEW

- A. The 4th Amendment to the U.S. Constitution protects citizens from unreasonable searches of their person, house, papers and effects. Certain divisions of the department have specific statutory authority to access property for the purposes of determining compliance with the agricultural laws and regulations; surveying to detect the presence of animal or plants diseases and pests; and, where exigent circumstances exist relative to pest eradication.
- B. Specific authority for agents of the Department to enter onto private land is provided by 7 MRSA §956, §1007-A, §1342, §1753, §2805, §3936; 10 MRSA §2403; and 22 MRSA §2164.
- C. These guidelines are designed to inform Department staff members, agents and contractors (hereinafter referred to as "staff") of the steps which should be taken in accessing private property for authorized purposes. If a staff person has any questions or doubts, the appropriate supervisor or assistant attorney general should be consulted before entering the property involved.

II. APPLICABILITY

This policy applies to all employees of the department, subject to the following exceptions.

III. EXCEPTIONS TO THIS POLICY

Any staff person acting under the authorities specified in I. B.

IV. GUIDELINES

- A. Department staff should be dressed in any standard issue clothing, with their official departmental identification credentials on their person, prior to accessing private property.
- B. Department staff, when engaged in their official activities, will respect the desires of landowners regarding access over and across private property when the landowner has made his or her desires known. Consequently, before department staff enter private land that is posted to "NO TRESPASSING," the verbal permission of the landowner, a member of his or her immediate family, or agent, must be obtained. Department staff responding to emergencies will be exempt from this requirement. Where the landowner has not made his or her desires known, a reasonable attempt will be made to obtain verbal permission from the landowner or a representative of the landowner (if known) or verbal notification (your name, purpose for entering private property) will be

given to an occupant of a home or business, if present, in the immediate vicinity of your point of entry onto private property.

- C. The verbal permission of the landowner, a member of his immediate family, or his agent must be obtained before crossing over or through any pasture or other enclosed area containing livestock or other domesticated animals.
- D. Department staff will respect the rights of the landowner, will complete their tasks in a professional and timely manner, and will not engage in extraneous activities that are not part of their assignment.
- E. Unless explicitly allowed by statutory authority, under no circumstances should any permanent markings or placement of signs be done without landowner permission, except when posting quarantines, public health advisories or regulations.
- F. If there is any uncertainty as to whether staff persons should enter a property, consultation should occur with a supervisor or the Attorney General's Office as appropriate.
- G. If requested by the landowner, any information obtained from entry onto the landowner's property and which is not designated by state or federal statute as confidential must be provided to the landowner.

These guidelines do not have the force or effect of law and do not confer legal rights or impose legal duties. Any more stringent requirements of the agency's enabling statute and/or the U.S. Constitution's 4th Amendment must always be adhered to. If there is any uncertainty as to whether staff should enter a property, consultation should occur with appropriate supervisors and/or the Attorney General's Office or District Attorney's Office.

DEPARTMENT OF ENVIRONMENTAL PROTECTION POLICY

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

PROPERTY ACCESS GUIDELINES

(JANUARY 2004)

1. **OVERVIEW.** The 4th Amendment to the U.S. Constitution protects citizens from unreasonable searches of their person, house, papers and effects. Maine DEP has specific statutory authority to access property for the purpose of determining compliance with our laws, rules, licenses and orders, 38 M.R.S.A. § 347-C¹. Program-specific authority also exists in certain areas, e.g., § 1304(4-A), for enforcement of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*. These guidelines are designed to inform DEP staff members, agents and contractors (hereinafter referred to as "investigators") of the steps which should be taken in accessing private property for these purposes. If the investigator has any questions or doubts, the appropriate supervisor or assistant attorney general should be consulted before entering the property involved.
2. **FIELD PREPARATION.** Investigators should be dressed in any standard issue clothing, with their official DEP identification credentials visible, prior to accessing private property.
3. **PROPERTY ENTRY**
 - A. **Consent.** The overriding principle in conducting investigations is respect of private property rights. Whenever possible, investigators should seek the consent of the landowner or a person on-site who has the apparent authority to give consent prior to gathering evidence or beginning a clean-up. Investigators may proceed up a driveway, walkway or otherwise directly to the door of a building to seek consent. In all cases, an investigator should respect the desire of a person who refuses to provide consent; when this occurs, the investigator should leave the property and seek advice from an appropriate supervisor, the DEP Enforcement Director, or an assistant attorney general or other law enforcement personnel.
 - 1) **REVOKED CONSENT.** A landowner may revoke consent at any point after it is granted. If revoked, an investigator must respect the wish of that individual, leave the premises, and seek advice as described in paragraph 3(A) of this guidance document.
 - 2) **SEARCH WARRANTS.** Criminal or Administrative Search Warrants may be sought when investigators have been denied access to a location. Any investigator believing that a warrant is necessary to perform their inspection should seek advice as described in paragraph 3(A) of this guidance document.
 - B. **Location Visited.** The restrictions on where an investigation without a warrant or consent can lawfully occur depend in part on the location being inspected.
 - 1) **PERVASIVELY REGULATED ENTERPRISES.** Maine DEP is a regulatory agency charged with monitoring compliance with State environmental laws, including the clean-up of discharged pollutants. As such, many of the field activities performed by investigators occur at what are referred to as Pervasively Regulated Enterprise (PRE) locations, including those that are licensed by DEP. In addition to the principle of gaining prior consent, the general rule for conducting PRE visits is that investigators are, during regular business hours, free to access any outdoor area and anywhere one would expect the public also to be present. Keep in mind

¹ Section 347-C reads as follows: Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board.

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROPERTY ACCESS GUIDELINES
(JANUARY 2004)

that DEP law restricts investigator authority to enter buildings without a warrant or consent (see footnote 1).

- 2) **RESIDENCES.** Broader private property protection applies to locations where citizens live and the area surrounding a residence where one would expect the activities of daily living to occur, known as *curtilage*. Determining the extent of curtilage will include an evaluation of proximity of the area to the home, enclosures, nature of uses of the area, and steps taken to protect the area from observation.
 - 3) **OPEN FIELDS.** Outdoor locations (e.g., fields, woods) not falling within the curtilage of a residence may be inspected.
 - 4) **POSTED LOCATIONS.** Investigators should seek consent or a search warrant before proceeding past a "No Trespassing" sign posted within the curtilage of a residential property. Trespass postings in open field/forest areas outside the curtilage do not prevent proceeding with an investigation.
- C. **On-site Introductions.** Where a landowner or other individual is present, investigators should introduce themselves, show their identification, and indicate the reason for the visit and authority for conducting the inspection. As provided in subsection 3(A) of this guidance, investigators should seek permission to inspect the property and inquire and document from whom permission was granted and what relationship they have to the property owner.
- D. **Emergency Circumstances.** An exception to the requirement for gaining consent or obtaining a warrant prior to entering a protected area is where an imminent threat to public health or the environment exists. As a general rule, imminent threats are limited to situations where any delay in action will result in significant and irreversible impacts.
4. **EVIDENCE GATHERING.** Information gathered during an inspection must be documented in indelible ink or recorded on-site in a database indicating the name of the inspector responsible for the entry and the following information:
- A. Date of the inspection or visit and time of arrival and departure;
 - B. Location and description of property;
 - C. Names and affiliation of all parties present during the inspection;
 - D. Property owner/lessee, if known;
 - E. Annotations indicating measurements taken, distances and bearings or area covered during inspection, and any other relevant information received, observed or indicated; and
 - F. Record of any photographs taken, so that the photos can be properly indexed and filed after processing.

These guidelines do not have the force or effect of law and do not confer legal rights or impose legal duties. Any more stringent requirements of the agency's enabling statute or the U.S. Constitution's 4th Amendment must always be adhered to. If there is any uncertainty as to whether staff should enter a property, consultation should occur with appropriate supervisors and/or the Attorney General's Office or District Attorney's Office.

DEPARTMENT OF MARINE RESOURCES POLICY

Bureau of Sea Run Fisheries and Habitat

In order to conserve, protect and restore Maine's public resources bureau staff and other authorized agency representatives, agents and contractors shall need to access private property to conduct fisheries population assessments, stocking of anadromous fish, on-site inspections, maintenance of fishway at dams and to conduct habitat surveys.

When entering private land that is remote in nature and the property is not clearly posted with the owners name and contact information, and the ownership of said property is not known and no one is immediately available to ask for permission, bureau staff shall conduct their business in a professional manner and shall always respect the land and leave no trace of their activities.

Before entering private land that is clearly marked "No Trespassing" staff must ask and obtain permission for access. If the owner is not willing to give permission for a site visit or inspection staff shall seek advice from an appropriately trained supervisor or an AAG.

Staff should not access any building, dam or other enclosure without the permission of the owner or the owner's representative where the owner has a reasonable expectation of privacy. Staff may proceed up a driveway, walkway or otherwise to the door of the building to ask for permission. If the owner is not present or reasonably available, staff should leave the area and, before proceeding with a site visit or inspection should seek advice from and appropriately trained supervisor or an AAG.

When entering private property (land or premises), where permission has not yet been granted and/or the property is not clearly posted, and said property is in the immediate vicinity of a residence or other building that might be occupied, staff should first inquire at the residence or other building to see if anyone is present. If someone is present, staff should introduce him or herself, indicate the reason for the visit and the authority for conducting the site visit or inspection. Staff should also inquire and document the identity of the person from whom permission to the site visit or inspect is sought, and what relationship that person has to the property owner. In instances where no one is present, or where permission to access the land or premises to conduct a site visit or inspect is denied, staff should leave the area and seek advice of a supervisor, or AAG.

In all cases bureau staff and other authorized agency representatives, agents and contractors shall state that they are working for or with the Maine Department of Marine Resources and clearly articulate the business that they are conducting.

Bureau vehicles shall be clearly marked in an effort to show who has or is accessing private property.

Where exigent circumstances exist requiring immediate access to a property for the purposes of inspection and/or maintenance, and staff is not able to obtain permission for entry from the landowner, staff should seek guidance from an appropriately trained supervisor or an AAG.

These guidelines do not have the force or effect of law and do not confer legal rights or impose legal duties. Any more stringent requirements of the agency's enabling statute and/or the U.S. Constitution's 4th Amendment must always be adhered to. If there is any uncertainty as to whether staff should enter a property, consultation should occur with appropriate supervisors and/or the Attorney General's Office or District Attorney's Office.

Bureau of Resource Management - Division of Public Health

In order to conserve, protect and restore Maine's public resources staff and other authorized agency representatives, agents and contractors shall need to access private property to conduct shellfisheries population assessments, on-site inspections, water and shellfish sampling and to conduct habitat surveys and permit reviews.

When entering private land and the property is not clearly posted with the owners name and contact information, and the ownership of said property is not known and no one is immediately available to ask for permission, staff shall conduct their business in a professional manner and shall always respect the land and leave no trace of their activities.

Before entering private land that is clearly marked "No Trespassing" staff must ask and obtain permission for access. If the owner is not willing to give permission for a site visit or inspection staff shall seek advice from an appropriately trained supervisor or an AAG.

Staff should not access any building or other enclosure without the permission of the owner or the owner's representative where the owner has a reasonable expectation of privacy. Staff may proceed up a driveway, walkway or otherwise to the door of the building to ask for permission. If the owner is not present or reasonably available, staff should leave the area and, before proceeding with a site visit or inspection should seek advice from and appropriately trained supervisor or an AAG.

When entering private property (land or premises), where permission has not yet been granted and/or the property is not clearly posted, and said property is in the immediate vicinity of a residence or other building that might be occupied, staff should first inquire at the residence or other building to see if anyone is present. If someone is present, staff should introduce him or herself, indicate the reason for the visit and the authority for conducting the site visit or inspection. Staff should also inquire and document the identity of the person from whom permission to the site visit or inspect is sought, and what relationship that person has to the property owner. In instances where no one is present, or where permission to access the land or premises to conduct a site visit or inspect is denied, staff should leave the area and seek advice of a supervisor, or AAG.

In all cases division staff and other authorized agency representatives, agents and contractors shall state that they are working for or with the Maine Department of Marine Resources and clearly articulate the business that they are conducting.

Bureau vehicles shall be clearly marked in an effort to show who has or is accessing private property.

Where exigent circumstances exist requiring immediate access to a property for the purposes of inspection and/or maintenance, and staff is not able to obtain permission for entry from the landowner, staff should seek guidance from an appropriately trained supervisor or an AAG.

These guidelines do not have the force or effect of law and do not confer legal rights or impose legal duties. Any more stringent requirements of the agency's enabling statute and/or the U.S. Constitution's 4th Amendment must always be adhered to. If there is any uncertainty as to whether staff should enter a property, consultation should occur with appropriate supervisors and/or the Attorney General's Office or District Attorney's Office.

APPENDIX 1. RESOLVE 2009, CHAPTER 30

Resolve
124th Legislature
First Regular Session
Chapter 30
H.P. 399 - L.D. 561

Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands

Sec. 1 Policies. Resolved: That the Department of Inland Fisheries and Wildlife, the Department of Environmental Protection, the Department of Marine Resources, the Department of Agriculture, Food and Rural Resources and the Department of Conservation, referred to in this resolve as “the departments,” shall develop written policies regarding entering private woodland, farmland or coastal lands for nonemergency purposes to collect information. The policies must address such items as when prenotification or permission is appropriate; when no notification or permission is needed; what constitutes notification or permission; motorized and nonmotorized access; and when woodland or farmland owners or owners of coastal lands should be informed regarding potential uses of data or information collected. The departments may have different policies for accessing woodland, farmland or coastal lands for different purposes. This resolve does not interfere with the departments’ enforcement authority; and be it further

Sec. 2 Feedback from woodland owners. Resolved: That, in developing the policies under section 1, the departments shall solicit feedback from woodland and farmland owners and owners of coastal lands. The departments shall ensure that department employees are aware of and comply with the policies. The departments may alter these policies as necessary; and be it further

Sec. 3 No rulemaking. Resolved: That the policies required under this resolve do not constitute rules and the departments are not required to further undertake rulemaking for purposes of adopting these policies; and be it further

Sec. 4 Report on policies; legislation authorized. Resolved: That the departments shall report to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2010 on the policies developed under section 1. The report must include a copy of each department’s policies pertaining to accessing private woodlands, farmlands and coastal lands and a summary of input received from farmland and woodland owners and owners of coastal lands during the development of these policies. The report must also include a description of how information collected on private land is used by the departments, the types of information that are available to the public and how that information is provided.

The Joint Standing Committee on Agriculture, Conservation and Forestry may submit legislation to the Second Regular Session of the 124th Legislature pertaining to state employees’ access to private lands or the dissemination of information collected on private lands; and be it further

Sec. 5 Adoption. Resolved: That the policies required under this resolve must be adopted by January 1, 2010.

APPENDIX 2. SMALL WOODLAND OWNERS ASSOCIATION OF MAINE
COMMENTS ON DRAFT DEPARTMENT OF CONSERVATION POLICY

From: Tom Doak [mailto:tom@swoam.org]
Sent: Tuesday, December 22, 2009 3:57 PM
To: Mansius, Donald J.
Subject: RE: Revised access policy

Don,

I think the mailing to get permission is probably too broad.

There are situations where that may be appropriate (such as BMP monitoring) but I think you may have to identify under what circumstances the mailing approach can be used. I don't think it would be appropriate for all situations. I also think there should be a minimum time between when the mailing is sent and when landowners have to respond. I did have one landowner complain that the time was so short- I assume it was a BMP mailing. Perhaps you can leave reasonable but state it should be no less than something like 10 days.

My other comment has to do with V.E. I would like to see a third part which requires when asking permission that the landowner be told how the information collected will be made public. At least it should inform the landowner that the information will be available to the public and become part of public databases or maps. It could be different for different requests - such as with BMP monitoring, that only a summary will be published- not specific landowner info.

In discussions with IF&W it seems likely they will identify hot button issues when specific permission is required i.e. vernal pools. I suggest DOC consider the same approach. That might avoid confusion between landowners and state employees on the most contentious issues.

Tom Doak
Executive Director
Small Woodland Owners Association of Maine
Tom@swoam.org
(207) 626-0005

APPENDIX 3. MAINE FARM BUREAU COMMENTS ON DRAFT DEPARTMENT OF CONSERVATION POLICY



Maine Farm Bureau Association "The Voice Of Organized Agriculture"

December 2009

Maine Farm Bureau Policy Regarding Non-Emergency Access to Farmland, Private Woodland and Coastal Lands by Government Employees

General Policy Statement:

Maine Farm Bureau believes that government employees have no special rights of access to privately owned properties beyond those of ordinary citizens except in cases of emergencies, or unless specifically authorized by statute or court order. Access restrictions articulated by landowners should be respected by all government authorities unless specific exceptions are granted by current landowners. For the purposes of this policy, "government employee" means all publicly compensated employees, private contractors working on behalf of government agencies, and citizen volunteers participating in government projects.

Specific Maine Farm Bureau policies regarding non-emergency access to private lands include:

(1) When permission to enter private land should be sought:

* Written permission for entry should be sought whenever access to **posted** land is desired. Land posting should be respected even where some signs may be dilapidated or missing, so long the intent of the owner may be reasonably judged to prohibit trespass.

* Oral permission should be sought whenever access to **unposted** land is desired.

* Written permission for entry should be sought whenever access to land producing food crops is desired, **whether posted or not**.

* Written permission for entry should be sought before game animals or other wildlife is released on farmland or attendant woodland.

* Oral permission for entry should be sought for non-emergency access by motorized vehicle, except on private roads open to the public.

* All requests for entry should be accompanied by a specific statement defining the purpose of entry, and the anticipated uses of any data collected. Tasks accomplished once entry has been gained must be limited to those stated in the original request for entry.

* All requests for entry should define a beginning and ending date

Gabriel Dove, Suite 1, Augusta, Maine 04230, 207-622-4111

(2) When permission is denied:

* Landowners who wish to prohibit all non-emergency and non-statutory access to their land by government authorities should be provided the opportunity to advise Department Commissioners in writing of that desire listing access denied parcels by town, tax map and lot number. Commissioners should compile a master list of properties with restricted access and distribute it to all employees servicing those areas.

* Landowners may also deny access directly to government employees orally at any time, even if consent was granted previously. Such denials should be respected and employees so notified when on private lands should leave the premises immediately.

(3) When government employees wish to enter posted land:

* Government employees who wish to enter posted private land should seek written permission from current property owners or their agents. Affirmative consent should be required prior to entry; government agencies should **not** assume consent is granted based on a failure of a landowner to respond to a written request for entry. Agencies should respect and comply with a landowner's denial of access. If access is deemed critical, agencies should seek statutory approval or a court order prior to entry.

(4) When data is collected:

* Landowners requesting a summary of data collected on or from their property should be provided with a copy of such information within a reasonable time period.