

**STATE OF MAINE 132<sup>nd</sup> LEGISLATURE  
FIRST REGULAR SESSION**

**2025 REPORT OF  
THE MAINE ABANDONED AND DISCONTINUED ROADS COMMISSION  
TO  
THE JOINT STANDING COMMITTEE ON STATE AND LOCAL  
GOVERNMENT,  
THE JOINT STANDING COMMITTEE ON AGRICULTURE,  
CONSERVATION AND FORESTRY,  
AND  
THE JOINT STANDING COMMITTEE ON INLAND FISHERIES AND  
WILDLIFE**

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**February 1, 2025**

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## EXECUTIVE SUMMARY

Since May 2024, the twelve-member Maine Abandoned and Discontinued Roads Commission (the “Commission”) has met eight times as a full Commission and its several Subcommittees have met seven times to carry out the duties established: by PL 2021, chapter 743, “An Act to Establish the Maine Abandoned and Discontinued Roads Commission”; by PL 2023, chapter 387 (LD 461) “An Act Regarding Private Ways and Roads”; and by PL 2023, chapter 642 (LD 2264) “An Act to Clarify the Use of Public Equipment on Public Easements.”

Maine law regarding abandoned and discontinued roads is complex and raises both legal and policy issues, several of which the Maine Legislature has directed the Commission to consider.

Most recently, through enactment of PL 2023, chapter 642, the Maine Legislature has directed the Commission to:

consider, in addition to matters it is required to consider by statute, the following and shall include recommendations on these matters in the February 1, 2025, report required under Title 23, section 3036, subsection 11:

1. The scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners;
2. Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;
3. Options to create a road inventory of abandoned and discontinued roads in the State; and
4. Options to create a right-of-way template for property owners to use when a local unit of government considers discontinuing the road abutting a property owner's property.

Previously, the Maine Legislature enacted PL 2023, chapter 387, which states that the Commission “shall review the following terms in the Maine Revised Statutes: ‘private way’; ‘public way’; ‘private road’; and ‘public easement’” and “shall determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.” The Commission made several recommendations in its February 1, 2024, Report, one of which resulted in LD 2264, enacted as PL 2023, chapter 642; however, the Commission has yet to complete its work reviewing these terms.

The bullet points below summarize the Committee’s considerations and recommendations:

- **Public Use, Impacts and Reduction of Negative Impacts.** The scope of public use

allowed on a public easement over an abandoned or discontinued road is broad and includes landowner access; residential property (seasonal and year-round) owner/tenant/occupant access; forestry and agricultural property access; recreational use, including by motor vehicles, ATVs, snowmobiles, bicycles, and hikers; and recreational area access. The major negative impact of use of public easements by the general public, particularly by heavy vehicles, pickup trucks, SUVs, ATVs and logging trucks, and especially during spring thaw, mud season and after heavy rain events, is significant wear and tear on the public easement. This wear and tear can cause ruts to develop in roads that can lead to erosion, damaging the public easement, impeding motor vehicle access, and causing runoff to pollute nearby water bodies.

To address this negative impact, the Commission recommends amending the State law that authorizes municipalities to post public ways to certain types of vehicles or to vehicles exceeding a certain weight (29-A M.R.S. §2395) to clarify that they also may post public easements, no matter who maintains them. Under this recommendation, the municipal officers -- select board or council members -- may post public easements as well as town ways in order to temporarily prohibit or limit use by heavy vehicles in order to protect the roadway.

- **Limitation on Private Landowner Liability.** The Commission recognizes that where the owners, tenants and occupants of property abutting public easements require access to that property, they may maintain those public easements, and they often do maintain those public easements to the extent the municipality decides not to. The municipality has the right, but not the obligation, to maintain the public easement, and may decide to provide summer maintenance, winter maintenance, year-round maintenance, or no maintenance. In the absence of municipal maintenance, the abutting property owner, tenants or occupants may maintain the public easement for their access. They may provide that maintenance individually, or together as a road association—incorporated or unincorporated.

However, property owners, tenants or occupants maintaining or repairing a public easement individually or through an unincorporated road association may be personally liable for personal injury and property damage caused by or related to or arising out of their maintenance or repair. In this way, a person maintaining a public easement for his or her own residential access is potentially liable for personal injury or property damage suffered by neighboring owners or by a member of the public using the public easement for general public access or public recreational access. In a similar situation, where the Maine Legislature sought to encourage passive recreational use of private land, it enacted legislation to make landowners generally immune from liability to others for allowing free recreational access and uses of their property. See 14 M.R.S. §159-A. The Commission recommends a similar grant of immunity to property owners, tenants, and occupants who repair and maintain a public easement so long as they do not willfully or maliciously create, or fail to warn or guard against, a dangerous condition on the public easement.

- **Road Inventory Options.** Several options exist to create a road inventory of abandoned and discontinued roads in the State. What would be helpful is a comprehensive Statewide listing of the names, locations, length, and extent of abandonment or discontinuance of each of these roads. Such information from each municipality and county would build an extensive data resource on the subject, perhaps available as an online database, which should be invaluable to

property owners and buyers, attorneys, realtors and others researching property access. The Commission suggests several possibilities that the Legislature might pursue, depending upon State agency staffing and funding, and upon the extent to which this task is consistent with and related to the agency's mission:

- 1) The Registries of Deeds could become the custodian of whatever information municipalities and counties provide them regarding abandoned and discontinued roads.
- 2) MaineDOT could prospectively receive whatever information municipalities and counties provide regarding newly discontinued roads.
- 3) Some other State agency or institution, including but not limited to the Maine Office of Community Affairs, the Maine State Library, or the University of Maine System, could become the custodian of whatever information municipalities and counties provide them regarding abandoned and discontinued roads.

• **Right-of-way Template Options.** In the year ahead, the Commission plans to work with several interested groups to prepare a checklist of issues and questions to provide guidance to property owners when a road discontinuance or abandonment is being considered.

• **Minimum Maintenance Option for Public Easements.** A municipality or village corporation has the right, but not the obligation, to maintain a public easement.. This means that those who have year-round residences along a public easement must annually seek local legislative body approval of maintenance and repair on that public easement or portion of it needed to provide access. The Commission recommends the creation of an additional option for local government. The municipality's or village corporation's legislative body would vote whether to provide minimum maintenance of a public easement that provides access to year-round residents up to the driveway of the last year-round resident. Year-round residency would be proven by showing evidence of a current homestead exemption for that residence. "Minimum maintenance" would mean a level of maintenance intended to keep the public easement "reasonably passable" as determined by the municipality – intended to be a lower standard than the "safe and convenient for travelers with motor vehicles" standard that applies to town ways under 23 M.R.S. §3651, but sufficient to keep the public easement reasonably passable for residential access as determined by the municipality. The request for minimum maintenance option for a particular public easement or portion would be made by the municipal select board or council or village corporation officers on their own initiative or by residents by petition under 30-A M.R.S. §2522, and voted on by the municipal or village corporation legislative body. Once approved by town meeting, town or city council, or village corporation meeting, the minimum maintenance option would remain in effect indefinitely until repealed, so that all parties can rely on ongoing maintenance of a public easement without having to ask for legislative body approval each year. A town or city legislative body vote to apply the minimum maintenance standard to a public easement would not overturn previous discontinuance determinations or constitute acceptance as a town way as defined by 23 M.R.S. §3025.

## I. INTRODUCTION

The 130<sup>th</sup> Maine Legislature enacted PL 2021, chapter 743, “An Act to Establish the Maine Abandoned and Discontinued Roads Commission.” That law directed the formation of the Maine Abandoned and Discontinued Roads Commission (the “Commission”) as a standing body that would consider specific topics, prioritize additional issues and matters of importance to listed parties, and would submit a report to the Legislature by February 1, 2023, and annually thereafter.

**PL 2021, Chapter 743.** Chapter 743 directed the Commission to consider a wide range of abandoned and discontinued road issues:

- A. Consider the following:
  - (1) Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;
  - (2) Public easement retention over an abandoned or discontinued road, including the scope of permitted and actual public use;
  - (3) Statutory terminology related to abandoned or discontinued roads; and
  - (4) The statutory process for the abandonment or discontinuation of a road, including barriers to determining the legal status of a road;
- B. For matters relating to abandoned and discontinued roads other than those described by paragraph A, prioritize matters for consideration by the commission by determining which matters related to abandoned and discontinued roads have a significant negative impact, qualitatively or quantitatively, on:
  - (1) Owners of property that abuts an abandoned or discontinued road;
  - (2) Owners of property accessible only by traveling over an abandoned or discontinued road;
  - (3) Recreational users of an abandoned or discontinued road;
  - (4) Members of the public;
  - (5) Municipal, county or state governments; and
  - (6) The physical integrity of an abandoned or discontinued road and surrounding land;
- C. Develop recommendations on ways to address matters considered by the commission, including recommendations for statutory changes; and

D. Review legislation affecting abandoned or discontinued roads and provide information to joint standing committees of the Legislature upon request.

The Commission followed this charge and met several times in 2022 and 2023 to prepare and submit a report by February 1, 2023, recommending potential statutory changes. The Commission presented that report to the Committee on State and Local Government, and in Spring 2023, also provided the Committee with its perspectives on LD 461, “An Act Regarding Private Ways and Roads.”

**PL 2023, Chapter 387.** In 2023, the 131<sup>st</sup> Maine Legislature enacted PL 2023, chapter 387, “An Act Regarding Private Ways and Roads” (LD 461). This law directed the Commission to review the use of the following terms in the Maine Revised Statutes: “private way”; “public way”; “private road”; and “public easement,” and to “determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.” It authorized the Commission to meet more than 6 times in 2023 to complete the work described in this section, notwithstanding Title 23, section 3036, subsection 5, and directed the Commission to submit a report by January 4, 2024 to the Joint Standing Committee on State and Local Government. The Commission and its Subcommittees held fourteen meetings between March 2023 and January 2024, and it submitted a report on January 4, 2024 to the Joint Standing Committee on State and Local Government. One of the recommendations contained in that report was an amendment to the road association provisions in 23 M.R.S. §§3101-3106, part of which was enacted as PL 2023, chapter 642.

**PL 2023, Chapter 642.** Chapter 642 also directed the Commission to:

consider, in addition to matters it is required to consider by statute, the following and shall include recommendations on these matters in the February 1, 2025, report required under Title 23, section 3036, subsection 11:

1. The scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners;
2. Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;
3. Options to create a road inventory of abandoned and discontinued roads in the State; and
4. Options to create a right-of-way template for property owners to use when a local unit of government considers discontinuing the road abutting a property owner's property.

In furtherance of these four considerations, the Commission and its Subcommittees held

several meetings (listed and summarized below) and prepared draft legislation to implement its recommendations regarding: 1) the scope of public use of public easements and addressing the negative impacts from that public use; 2) limitation of private landowner liability for public easements; 3) options to prepare and maintain an inventory of abandoned and discontinued roads; and 4) options to create a right-of-way template for property owners to use when a municipality or county considers discontinuance of a road.

## II. COMMISSION PROCESS

### A. Commission Meetings

1. **First Meeting, May 13, 2024.** Discussed and reviewed the recently enacted PL 2023, Chapter 642 and the four topics that the Maine Legislature has asked the Commission to consider. The Commission also reviewed how its recommendations were received in the prior legislative session, and particularly, the uncertain impact that some less than unanimous Commission recommendations had on the Legislature. As a result, the Commission voted unanimously to only bring forward recommendations to the Legislature that the Commission's members unanimously support. Commission formed three subcommittees, with Group 1 to address "Public Use of Public Easements," Group 2 to address "Landowner Liability for Public Easements," and Group 3 to review the term "public easement" and related matters.

2. **Second Meeting, June 18, 2024.** Group 1 presented its findings regarding the types of use made of public easements and of the impacts, including negative impacts, of such use, and the Commission discussed ways to address the negative impacts of such use; Group 2 presented its findings on limitation of landowner liability for maintenance and repair of public easements.

3. **Third Meeting, August 8, 2024.** Commission heard from Aaron Talgo regarding his issues on his abandoned road because of logging activities on that way; discussed the Group 1 proposal to amend 29-A MRS 2395 to clarify that municipalities may post public easements, including the need to work with Maine Municipal Association (MMA) and Maine Department of Transportation's (MaineDOT) Local Roads Center to prepare sample policies and guidance and to train and educate road commissioners and law enforcement; discussed the Group 2 landowner liability proposal and suggested changes, and agreed to hear about minimum maintenance roads at the next meeting.

4. **Fourth Meeting, September 23, 2024.** Commission discussed the letter sent to Maine Real Estate & Development Association (MEREDA) regarding the MaineDOT MapViewer feature, and heard from Group 1 regarding the concept of minimum maintenance roads and from Group 3 regarding terms and progress on the issue of addressing use of the term "private ways" in the Title 23 Road Association statutes.

5. **Fifth Meeting, October 25, 2024.** Commission heard from the Terms Subcommittee on a change to the Title 23 Road Association statutes to eliminate use of the term "private ways", from the Public Use Subcommittee on a minimum maintenance level option for public easements, considered whether to recommend change to the current real estate disclosure forms regarding the nature of road access and its maintenance, and delegated responsibility to prepare a draft questionnaire regarding municipal maintenance and repair of public easements. Commission also

heard from Margaret Cardoza regarding her public easement issues and recommendations.

6. **Sixth Meeting, November 15, 2024.** The Commission met to review and revise the draft Report to the Legislature and proposed legislation. It also heard from Margaret Cardoza regarding public easement concerns and solutions.

7. **Seventh Meeting, December 10, 2024.** The Commission reviewed and revised the draft Report to the Legislature and proposed legislation, and conducted a public hearing.

8. **Eighth Meeting, January 14, 2025.** The Commission voted on several measures proposed to be included in the Report to the Joint Standing Committee on State and Local Government and approved the draft of that Report.

## B. Subcommittee Meetings

### 1. Group 1 Public Use Subcommittee Meetings

a. **First Meeting, June 4, 2024.** Agreed to prepare a spreadsheet to list the types of public use made of public easements over abandoned and discontinued roads, the reasons why these are needed, the impacts of that use, and possible methods to minimize or avoid negative impacts .

b. **Second Meeting, July 9, 2024.** Reviewed and revised the draft “Public Use of Public Easements over Abandoned and Discontinued Roads” spreadsheet; discussed existing State laws intended to protect public ways and town ways; and viewed a slide show of conditions and issues on these public easements.

c. **Third Meeting, July 25, 2024.** Prepared recommended legislation to clarify municipal authority to post public easements temporarily.

d. **Fourth Meeting, September 10, 2024.** Reviewed concept of minimum maintenance roads as used in other states and discussed options to employ similar concept in Maine.

e. **Fifth Meeting, October 3, 2024.** Discussed options of minimum maintenance roads, how a municipality or landowners could petition or create and keep minimum standard roads.

### 2. Group 2 Limitation on Landowner Liability Subcommittee Meetings

a. **First Meeting June 11, 2024.** Reviewed draft legislation considered last year to create 14 M.R.S. §159-E to limit liability of landowners for maintenance and repair of abutting public easement.

b. **Second Meeting, July 18, 2024.** Explored whether could use existing liability limitation law (14 M.R.S. §159-A) before deciding to recommend new statute.

### **3. Group 3 Terms Subcommittee Meetings**

- a. **First Meeting, September 17, 2024.** Focused on terms “private way” and “public easement.” Discussed statutory definitions of these terms and how confusion surrounding their use can be reduced.
- b. **Second Meeting, October 16, 2024.** Focused on how to change “private way” to “public easement”, constitutionality of Road associations on public easements. Subcommittee will continue to work on draft for Commission review.

### **III. DISCUSSION AND RECOMMENDATIONS**

#### **A. Matters raised by Chapter 642.**

1. *The scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners;*

Group 1 prepared the following “Public Use of Public Easements over Abandoned and Discontinued Roads” spreadsheet.

It demonstrates that the scope of public uses allowed on a public easement over abandoned and discontinued roads is broad, and includes landowner access; residential property (seasonal and year-round) owner/tenant/occupant access; forestry and agricultural property access and management; recreational use, including by motor vehicles, ATVs, snowmobiles, bicycles, and hikers; and recreational area access.

The spreadsheet also demonstrates that certain types and times of public use have a negative impact on public easements. The use of heavy vehicles in the course of conduct of any of these public uses of public easements can lead to wear and tear on the public easement, particularly when it occurs during spring thaw or after heavy rain events.

The spreadsheet additionally mentions problems with lack of law enforcement on public easements as a negative impact. The lack of law enforcement on public easements leads not only to use by vehicles that are damaging the public easement, but also criminal activity, vandalism, parties, drug and alcohol use, and dumping of solid waste, including bulky items (tires, appliances). Law enforcement officers have their own enforcement concerns as well, since it is not readily apparent whether a road that is not a town way is a private road or a public easement, and given recent changes in law, whether the public easement is one that prohibits use by ATVs, snowmobiles, and motorized wheelchairs.

Types of Use	Need for Access	Impact	Solutions/Minimizations
Residential Access	Public easement public access right allows access to home or vacation home access where there may not be deeded access since there had been a town way.	<p>Promotes back land access.</p> <p>Road wear and tear and damage by heavy vehicles.</p> <p>Conflicts on use -- snowmobiles/cars.</p> <p>People drive in the ruts and cause vehicle to bottom out-- destroys crown in road.</p> <p>Ruts channel water and lead to erosion of road and sedimentation</p> <p>Landowners responsible for road maintenance and repair if municipality does not do so, but have no control over who uses the road since public has right of access over public easement.</p> <p>Landowner liability issues for personal injury and property damage to extent must repair and maintain road or even own road subject to public easement.</p>	<p>Landowner liability limitation over use of road by public in all instances, and for repair and maintenance of road subject to public easement.</p> <p>Amend 23 MRS § 3026-A to make it easier to discontinue a public easement where abutters have agreed to private easements to permit access.</p> <p>10</p>
Commercial/Industrial (logging, quarry, wood mill) Access	Access for logging; Access for transporting wood, minerals, sand, gravel or stone; or industrial equipment or chemicals access; Access needed because there is no deeded access	<p>Heavy equipment can severely damage the road.</p> <p>Public easements not posted during mud season or other weather events.</p> <p>Landowner liability issues.</p> <p>Roads were not built to handle the loads. Wardens have difficulty enforcing the law</p>	<p>Bond for heavy trucks using public easements, Municipalities could post roads with public easements to heavy vehicle travel during certain times of year to protect public access ability over public easement</p>
Farm/Agriculture use Access	Access to back acres or different acres to grow different crops, because there is no deeded access.	Minimal impact on road unless using heavy equipment	<p>Bond for heavy trucks using public easements.</p> <p>Posting of public easements to heavy vehicles</p>

Recreational Access	<p>Walking, birding, hiking, horseback riding, cross country skiers, trail and mountain bikes – need public easement for access to resource or trail</p> <p>Motorized bikes, E-bikes</p> <hr/> <p>ATV</p>	<p>Minimal impact</p> <hr/> <p>Some impact on roads Residents complain of noise.</p> <p>ATV Clubs are respectful and often repair road damage caused by ATVs.</p>	<p>Landowner permission/better trail database. If town or state allows access then the town or state should provide funding to maintain the public easement trail/road.</p> <p>Amount of maintenance required and its cost depends on nature of use.</p> <hr/> <p>Landowner permission/better trail database. Reroute trail to reduce noise.</p> <hr/> <p>Landowner permission/better trail database. Not every discontinued or abandoned road or public easement should allow ATVs. Municipalities should use public funds to maintain and repair public easement if they are keeping the public easement as trail for purpose of ATV access. Prospectively limit all public easement use to motor vehicles or foot traffic as in current statutory abandonment statute (23 MRS § 3028-A). Help clarify status of roads so Wardens know if they can enforce the law on particular roads. Reroute trail to reduce noise. Need to clarify who “owner” of public easement is where owner permission is required for ATV use.</p>
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Recreational Access (Cont.)	<p>Snowmobiles</p> <hr/> <p>Truck mudding (4x4)</p> <hr/> <p>Hunters</p>	<p>Minimal damage but can be an issue where there is traffic and noise. Residents complain of noise.</p> <p>Routes on abandoned and discontinued roads can be too close to residences to protect their quiet enjoyment of property.</p> <p>Lack of enforcement.</p> <p>Wardens have difficulty enforcing the law. Conflicts on use snowmobile/cars.</p>	<p>Better trail database.</p> <p>Stop sign/speed limits on public easement roads. Snowmobile or ATV database or check with local clubs.</p> <p>If town or state allows access then the town or state should provide funding to maintain the public easement trail/road.</p> <p>Reroute trail to reduce noise.</p> <hr/> <p>Landowner permission.</p> <p>If town or state allows access then the town or state should provide funding to maintain the trail/road.</p> <p>Close/post road temporarily.</p>
Conservation Easements	<p>May or may not permit passive recreational activities.</p> <p>Forest management may be required or permitted.</p> <p>Motorized and/or non-motorized vehicles may be permitted</p>	<p>While passive recreation users may have little impact on public easements, forest management and motorized vehicle uses can have negative impact on road.</p>	<p>Post/close road temporarily to limit damage by heavy vehicles</p>

Other use (Criminal activities, Drugs, parties and Dumping		<p>Heavy damage can occur, solid waste dumping, drug traffic, parties, violence, vandalism, environmental pollution.</p> <p>Public and wardens have difficulty enforcing the law.</p> <p>Lack of marking where road leaves public easement or conservation land and enters private property.</p>	
Wandering people who don't know the condition of the road including 18 wheelers as their google maps lead them astray	Looking for access to another road, pass through, looking at road, lost.	Can cause heavy damage to the road depending on vehicle, time of year and if they get stuck.	Ask to have discontinued/abandoned roads removed from GPS mapping

Based upon the types of public use made of public easements over abandoned and discontinued roads, the reasons why these types of use are necessary, the impacts of these uses, and possible methods to minimize or avoid negative impacts, all as shown on that spreadsheet, Group 1 considered concepts for legislative actions to protect public easements from damage. Group 1 reviewed State law provisions that already authorize the municipal officers to close or limit use of public roads on a seasonal, temporary or permanent basis in certain situations:

- **Closing to Winter Maintenance.** 23 M.R.S. § 2953 authorizes the municipal officers, after notice and hearing and with the approval of the municipal legislative body, to close roads or portions of roads to winter maintenance during the months of November through April or any part of these months, for a period of up to ten years. This permits seasonal closures of **town ways** that the municipality is obligated to maintain “safe and convenient for passage by motor vehicles” (23 M.R.S. § 3651) and does **not** authorize seasonal closures of public easements.
- **Temporary Restrictions.** 29-A M.R.S. § 2395 authorizes the municipal officers to designate “public ways” over which they may impose restrictions similar to those imposed by MaineDOT (which may impose restrictions on gross weight, speed, operation and equipment that apply during periods of the year as it may determine). Municipal attorneys and officials interpret this statute as providing authority to impose temporary closing/weight limits/restrictions through regulations or rules adopted by the municipal officers (select board or council) or by ordinances enacted by the municipal legislative body (town meeting or council). However, vehicles carrying home heating fuel or organic animal bedding are exempt from permit requirements or regulations, as are vehicles carrying well-drilling equipment during a drought. Again, this temporary closing or restriction may occur at any time of year - not only during the spring thaw.

Group 1 notes that the term “public way” as used in § 2395 is defined in Title 29-A § 101(59) (for purposes of that Title) as: “Public way. “Public way” means a way, owned and maintained by the State, a county or a municipality, over which the general public has a right to pass.” This definition may or may not include a “public easement” -- a county or municipality has the right, but not the obligation, to maintain a public easement, and so a “public easement” may not be “a way, owned and maintained by the State, a county or a municipality.”

- **Traffic Ordinances.** 30-A M.R.S. § 3009 gives exclusive authority to the municipal officers to enact traffic ordinances to “regulate the operation of all vehicles in the public ways and on publicly owned property.” This authority is the basis for enactment of ordinances for year-round traffic control (such as “no-through trucks” or weight limits).

Commission members discussed placing limits on public easement use to preserve the condition of public easements. The use of motor vehicles on unpaved public easements (as most are) during certain times of the year, such as during spring thaw or after heavy rains, can cause ruts that become enlarged over time due to erosion, causing washouts and uneven, impassable roads. The damage can be caused by trucks, ATVs, automobiles, SUVs, and logging skidders. Limits on public easement use might consist of a temporary or seasonal prohibition on all vehicles except

those of the abutting owners and their guests and invitees (friends, relatives, home heating oil trucks, US Mail, UPS, FedEx), or in the alternative, might consist of temporary weight limits on motor vehicles. The temporary prohibitions or restrictions might be made to last for a longer duration than for town ways generally given the lack of pavement on most public easements.

Group 1 also was concerned about rights of enforcement. Under State law, there are several ways to seek damages and penalties for harm to public ways and public easements:

- The municipality may enforce a violation of its posting of a public way under Title 29-A M.R.S. Section 2395 (7), “A violation of this section is a traffic infraction punishable by a fine, which may not be suspended, of not less than \$250.”
- An abutting landowner can bring an action for damage (by whatever means) to a public easement under 23 MRS §3029-A that impedes that landowner’s access to the owned property by motor vehicle; however, the definition of “motor vehicle” referenced here excludes snowmobiles and ATVs:

### **23 M.R.S. §3029-A. Damage to public easement; cause of action**

**1. Cause of action.** An owner of property abutting a discontinued or abandoned road in which a public easement exists may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road in a manner that impedes reasonable access by the property owner to the property owner’s property by motor vehicle as defined in Title 29-A, section 101, subsection 42.

**2. Damages.** Damages may be sought pursuant to subsection 1 in an amount reasonably necessary to restore the road to its condition prior to the use by the person against whom the action is brought.

**3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing party, the plaintiff may be awarded reasonable attorney's fees and costs.

**4. Application.** This section does not apply to:

- A law enforcement officer who, in an emergency and within the scope of that law enforcement officer's employment, operates a motor vehicle on a public easement; or
- B. An emergency responder who, in an emergency and while performing the duties of an emergency responder, operates a motor vehicle on a public easement.

- The district attorney also can bring a criminal proceeding against a person for damaging a public easement under 17 M.R.S. §3853-D:

### **17 M.R.S. §3853-D. Operating a motor vehicle on land of another**

**1. Damage or destruction to farmland, forest land or public easement.** A person who, as a result of operating a motor vehicle on farmland, forest land or a public easement in fact, damages or destroys crops, forest products, personal property or roads on that farmland, forest land or public easement, commits a Class E crime.

**2. Definitions.** As used in this section, unless the context otherwise indicates, the

following terms have the following meanings.

A. "Farmland" means land used for the production of fruits, vegetables, grains, hay or herbs that consists of 5 or more contiguous acres. The term "farmland" does not include land used for the production of wood products

A-1. "Forest land" means land used for the production of forest products. "Forest products" means any woody stemmed plant as well as any products that have been harvested but not yet transported from the harvesting site, including logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, evergreen boughs and cones for seed production.

A-3. "Emergency responder" means a person providing firefighting, rescue or emergency medical services.

B. "Motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, including all-terrain vehicles as defined in Title 12, section 13001, but not including snowmobiles.

C. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2.

**3. Application.** This section does not apply to:

A. A landowner operating a motor vehicle on farmland or forest land owned by that landowner;

B. A person given permission by a landowner to operate a motor vehicle on farmland or forest land owned by that landowner;

C. An agent or employee of a landowner who operates a motor vehicle on farmland or forest land owned by that landowner in the scope of that agent's or employee's agency or employment;

D. A law enforcement officer who, in an emergency and in the scope of that law enforcement officer's employment, operates a motor vehicle on farmland or forest land owned by another or on a public easement; or

E. An emergency responder who, in an emergency and in performing the duties of the emergency responder, operates a motor vehicle on farmland or forest land owned by another or on a public easement.

A potential complication is that as a result of statutory amendments in 1995 and 2021, the scope of a public easement now depends upon how and when it was created.

If a public easement was created as a "private way" under State law prior to 1977, or to provide public access to land or water not otherwise connected to a public way (23 M.R.S. Section 3021(2)), or if the public easement is retained by discontinuance of a town way (23 M.R.S. Section 3026-A), or by statutory abandonment (23 M.R.S. Section 3028-A) before October 1, 2021, or by the creation of a recreational easement (23 M.R.S. Section 3021(2)), then the public has an unfettered right of access over that public easement. That access may be by foot, by motor vehicle, or by ATV, snowmobile, or motorized wheelchair and may be for any purpose.

If, however, a public easement is created for connection of cultivated land to a town way or highway (23 M.R.S. Section 3022) after October 1995, or by statutory abandonment (23 M.R.S. Section 3028-A) after October 1, 2021, the public easement is limited to "rights of access by foot or motor vehicle as defined" in 29-A M.R.S. Section 101(42), which excludes ATVs,

snowmobiles, and motorized wheelchairs.

Thus, under State law the term “public easement” may mean an easement for public access by any means, or it may mean an easement for public access by foot or motor vehicle, and not by ATVs, snowmobiles and motorized wheelchairs.

After discussion, Group 1 voted to recommend to the Commission that 29-A M.R.S. § 2395 be amended to clarify municipal authority to designate not only “public ways” but also “public easements” as being subject to temporary regulations in order to protect public easements from damage caused by heavy vehicles or by traffic during bad weather conditions (spring thaw, heavy rains). The draft amendment adds public easements as defined in 23 M.R.S. Sections 3021 and 3022 (so that it includes both types of public easements), whether or not maintained or repaired by the municipality, to the ways that it may protect by temporary posting. The Commission unanimously voted to recommend this amendment to the State and Local Government Committee. This proposed amendment to 29-A M.R.S. § 2395 is included in Appendix E, Proposed Legislation.

Please note that this does not solve all of the problems that the Commissioners identified with use of public easements. Commission members highlighted two other somewhat related negative impacts of public easements.

One is their use for criminal activity, vandalism, parties, drug and alcohol use, and dumping of solid waste, including bulky items (tires, appliances). Unfortunately, the very activities that will improve the ability of people who have year-round homes along public easements to be able to use those roads to access their homes (such as protecting the public easement from damage, limiting liability of landowners who maintain and repair their public easements for year-round resident access, and establishing an option for minimum maintenance levels) also may encourage members of the general public to use the public easement.

The other is enforcement. While many members of the public use public easements properly, the general lack of law enforcement on public easements encourages the criminal activity, vandalism, parties, drug and alcohol use, and dumping of solid waste described in the previous paragraph. Confusion by law enforcement officers over the legal status of any given road is a likely contributor to the problem. If the use complained of involves ATVs or snowmobiles, the officer must stop to ask whether the road is a town way (usually easy since most municipalities have a list of such roads), and if not, whether it is a private road, or is a public easement, and if it is a public easement where the public generally has a right of access, whether it is one that was created by statutory abandonment for connection of cultivated land to a town way or highway after October 1995 (23 M.R.S. Section and 3022), or by statutory abandonment after October 2021 (23 M.R.S. Section and 3028-A), in which case the public easement is limited to travel on foot or by motor vehicle, but not by ATV, snowmobile or motorized wheelchair.

The Commission will need to return to this remaining set of issues in future years.

2. *Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;*

The holder of an easement generally has the right to maintain and improve that easement so that it can be used for its intended purpose. What, however, is the liability of a landowner who maintains or repairs an abutting public easement used for that landowner's access? While there are no reported cases in Maine on the issue, that landowner likely would be liable for personal injury or property damage suffered by members of the public who are injured by the negligent maintenance and repair of the public easement acts by that landowner or that landowner's contractor.

The Commission first looked to 14 M.R.S. § 159-A to see whether this statute could protect abutters along public easements from liability for personal injury and property damage claims resulting from their maintenance and repair of public easements. This statute was enacted to encourage public access to, through and across private property by limiting landowner and easement holder liability for "premises," which includes private ways and roads. However, while this section limits the duty of care to keep premises safe for entry or use by others, it is for use of the premises "for recreational or harvesting activities" – not for use as vehicular access to residential property or as public access. Not everyone using a public easement is traveling over it for recreational or harvesting activities.

For this reason, Group 2 agreed that a broader statement of limited liability for those abutting a public easement is necessary to protect from claims by persons using a public easement for public access – not just using it for recreational or harvesting activities. Group 2 also agreed that the legislation should protect individual abutters and members of unincorporated road associations whose properties abut a public easement and who maintain and repair that public easement. Presumably, abutters would only maintain and repair a public easement in the absence of municipal maintenance and repair of that public easement, and so Group 2 debated whether the limitation on liability should be for repair and maintenance only in the absence of municipal provision of the same, or in all cases. In the end, Group 2 determined that the limitation on liability of landowner maintenance and repair of the abutting public easement used for access would be in all cases, and the Commission unanimously approved the attached draft of 14 M.R.S. §159-E in Appendix E, Proposed Legislation.<sup>1</sup>

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<sup>1</sup> While the Commission unanimously approved this limitation on landowner liability, Commissioner Manter observes that based upon her experience with Maine ROADWays, many municipalities do not maintain public easements, and that the public easements will not remain passable, if they ever were, without maintenance. She cites the Maine Supreme Judicial Court's decision in *Jordan v Town of Canton*, 265 A.2d 96, 99-100 (1970), which states that "a public easement of travel is meaningless if there is no longer any public responsibility for maintenance and repair," and notes that without maintenance or repair, "the abutter's easement of access to and over the road to the public road system will inevitably be destroyed." She objects to the current situation in which abutters to a public easement must spend their own money, time and labor to maintain that public easement in order for them to have access to their homes. However, since that is the current situation, she agrees that a limitation on landowner liability for the landowner's work on the public easements as proposed is better than no limitation.

*3. Options to create a road inventory of abandoned and discontinued roads in the State.*

Several options exist to create a road inventory of abandoned and discontinued roads in the State. Road discontinuance records currently may be in one of three places:

- For roads leading from town-to-town and discontinued before July 29, 1976, County Commissioners' records will contain the orders of discontinuance;
- For all other town ways, municipal records—town meeting warrants, town and city clerks' town meeting minutes and records of votes, and municipal annual reports—will contain the orders of discontinuance; and
- All discontinuances after September 12, 1959 are supposed to be (but were not always) memorialized by a deed or certificate recorded in the appropriate Registry of Deeds.

The question is which State, county, or local agency or institution should be tasked with receiving and reviewing these records and assembling or compiling the results in one or more physical locations and/or as an internet accessible data base? How much funding will be necessary for this work? What happens where the records are incomplete and/or the abandonment and discontinuance or its extent are disputed? The problem is that it is not always clear whether some or all of a road has been abandoned or discontinued, so that it is not as if a municipal or county or State employee or official can just look at a document and check a box – some level of judgment often is necessary, and sometimes, a resolution requires legal action and a court decision. However, in the majority of cases, a municipality or county could provide a person who has knowledge of road issues with their road discontinuance and abandonment data and orders to create an accessible Statewide road inventory. Local governments -- municipal and county -- could be encouraged to provide copies of their records and any inventories they may have created of roads considered abandoned or discontinued to the responsible office or agency, which then could assemble at least the uncontested road information into a database for the general public, realtors, and buyers of real estate to use.

Some of the possibilities to compile and house this information are:

- 1) The Registries of Deeds could become the custodian of whatever information municipalities and counties provide them regarding abandoned and discontinued roads.
- 2) MaineDOT could prospectively receive whatever information municipalities and counties provide it regarding newly discontinued roads.
- 3) Some other State agency or institution, including but not limited to the Maine Office of Community Affairs, the Maine State Library, or the University of Maine System, could become the custodian of whatever information municipalities and counties provide them regarding abandoned and discontinued roads.

**4. Options to create a right-of-way template for property owners to use when a local unit of government considers discontinuing the road abutting a property owner's property.**

The input of municipal and State officials, realtors, and property owners would be beneficial to creating a template that is useable and helpful. Therefore, in the year ahead, the Commission plans to work with MMA, MaineDOT, MEREDA and Maine ROADWays to prepare a checklist of issues and questions to provide guidance to property owners when a road discontinuance or abandonment is being considered. MMA and the Maine County Commissioners Association might make such templates available to their members, and MaineDOT might make such templates available to the public, including landowners and realtors. By helping landowners to become aware of the possibility of negotiating private access easements and agreements, such a template might be a first step to permit municipalities to discontinue public easements where they determine there is no real need to continue to provide public access.

**B. Terms.**

Having addressed the four considerations under Chapter 642, the Commission returned to its charge under PL 2023, chapter 387, which states that the Commission “shall review the following terms in the Maine Revised Statutes: ‘private way’; ‘public way’; ‘private road’; and ‘public easement’” and “shall determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.” During its remaining time this year, the Commission examined the term “private way” and discussed how to reduce confusion resulting from the use of this term; however, issues remain with suggested legislative changes, and the Commission will continue to address these issues and possible resolution in the year ahead. The Commission also considered how it might adapt the minimum maintenance road concept employed by some other states for use with Maine’s provision for local maintenance and repair of public easements by creating a local option to provide minimum maintenance on an ongoing, rather than annual, basis.

*1. Minimum Maintenance Option.*

Commissioner Manter presented her research on legislation from several states (New York, Texas, Alaska) that creates a class of roads which receive minimum maintenance. New York generally recognizes a class of “Low-Volume Roads,” which includes Minimum Maintenance Roads. The legislatures of Washington, Nebraska, Kansas, Iowa and Minnesota also have created a class of minimum maintenance roads. The underlying basis for such laws is that these remote roads otherwise would not or could not be maintained to the level of a city or town street, and are authorized to receive a lesser level of maintenance than town or city streets in order to permit access upon that road; municipal liability for that maintenance is reduced. Commissioner Manter also provided a research summary from Maine State and Local Government Committee Legislative Assistant Lynne Caswell comparing the Nebraska, Kansas, Iowa, and Minnesota minimum maintenance road legislation.

After discussion, the Commission preferred not to create a new class of road, but instead to create an option for local government. Under this option, the municipality’s or village

corporation's legislative body would vote whether to provide minimum maintenance of a public easement that provides access to year-round residents up to the driveway of the last year-round resident. Year-round residency would be proven by showing evidence of a current homestead exemption for that residence. Minimum maintenance would mean maintenance and repair intended to keep the public easement reasonably passable for residential access as determined by the municipality – intended to be a lower standard than the “safe and convenient for travelers with motor vehicles” standard that applies to town ways under 23 M.R.S. §3651 (“Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor.”) The request for minimum maintenance option for a particular public easement or portion would be made by the municipal select board or council or village corporation officers on their own initiative or by residents by petition, and voted on by the municipal or village corporation legislative body. Once approved by town meeting, town or city council, or village corporation meeting, the minimum maintenance option would remain in effect until repealed, so that all parties can rely on ongoing maintenance of a public easement without having to ask for legislative body approval each year. A town or city legislative body vote to apply the minimum maintenance standard to a public easement would not overturn previous discontinuance determinations or constitute acceptance as a town way as defined by 23 M.R.S. §3025. A proposed amendment to 23 M.R.S. §3105-A is included in Appendix E, Proposed Legislation.

#### **IV. CONCLUSION**

The Commission hopes this Report and its recommendations are helpful to the Legislature. As the Commission proceeds with its work, it hopes to offer additional suggestions for changes to Maine law to reduce or eliminate confusion in this area of the law among landowners, road users, members of the public, the real estate sector, and State, local and county government officers. The Commission recognizes this is an incremental process, and appreciates the opportunity to work with the Legislature to make progress on these issues each session.

# APPENDIX

## A



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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**Legislative Document**

**No. 1513**

H.P. 1121

House of Representatives, April 15, 2021

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**An Act To Require the Maintenance of a Discontinued Public Road  
That Provides the Sole Access to One or More Residences**

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Received by the Clerk of the House on April 13, 2021. Referred to the Committee on State and Local Government pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

**ROBERT B. HUNT**  
Clerk

Presented by Representative NEWMAN of Belgrade.  
Cosponsored by Representative: PICKETT of Dixfield.

1       **Be it enacted by the People of the State of Maine as follows:**

2       **Sec. 1. 23 MRSA §3651, first ¶**, as amended by PL 1977, c. 363, §5, is further  
3       amended to read:

4       Highways, town ways and streets legally established shall must be opened and kept in  
5       repair so as to be safe and convenient for travelers with motor vehicles. In default thereof,  
6       those liable may be indicted, convicted and a reasonable fine imposed therefor.  
7       Notwithstanding this paragraph, if a road or a discontinued town way pursuant to section  
8       3026-A in which a town holds a public easement is the only road or way that can be used  
9       to access one or more residences and the town issues permits for residential use of  
10       residences or collects property taxes on those residences, the town is not required to keep  
11       the road or way safe and convenient for travelers with motor vehicles but must provide  
12       sufficient maintenance to keep the road or way passable to access the residences on the  
13       road or way, as determined by the county commissioners.

14       **Sec. 2. 23 MRSA §3652** is amended to read:

15       **§3652. Notice of defect; hearing on petition**

16       When a town liable to maintain a way unreasonably neglects to keep it in repair as  
17       provided in section 3651, after one of the municipal officers has had 5 days' actual notice  
18       or knowledge of the defective condition, any 3 or more responsible persons, or one or more  
19       residents on the road or the discontinued town way pursuant to section 3026-A in which a  
20       town holds a public easement if that road or way is the only road or way that can be used  
21       to access one or more residences as provided in section 3651, may petition the county  
22       commissioners for the county, setting forth such facts, who, if satisfied that such petitioners  
23       are responsible for the costs of the proceedings, shall fix a time and place near such  
24       defective way for a hearing on such petition and cause such notice thereof to be given to  
25       the town and petitioners as they may prescribe. At the time appointed, the commissioners  
26       shall view the way alleged to be out of repair and hear the parties interested, and if they  
27       adjudge the way to be unsafe and inconvenient for travelers, motor vehicles, horses, teams  
28       and carriages, or in the case of a road or a discontinued town way pursuant to section  
29       3026-A in which a town holds a public easement if that road or way is the only road or way  
30       that can be used to access one or more residences as provided in section 3651 adjudge the  
31       road or way to be not passable, they shall prescribe what repairs shall be made, fix the time  
32       in which the town shall make them, give notice thereof to the municipal officers and award  
33       the costs of the proceedings against the town. If they adjudge the way to be safe and  
34       convenient, or in the case of a road or a discontinued town way pursuant to section 3026-A  
35       in which a town holds a public easement if that road or way is the only road or way that  
36       can be used to access one or more residences as provided in section 3651 adjudge the road  
37       or way to be not passable to access the resources on the road or way, they shall dismiss the  
38       petition and award the costs against the petitioners. If they find that the way was defective  
39       at the time of presentation of the petition, but has been repaired before the hearing, they  
40       may award the costs against the town, if in their judgment justice requires it.

41       **SUMMARY**

42       This bill requires that when a road or a discontinued town way pursuant to section  
43       3026-A in which a town holds a public easement is the only road or way that can be used  
44       to access one or more residences and the town issues permits for residential use of

1       residences or collects property taxes on those residences, the town is not required to keep  
2       the road or way safe and convenient for travelers with motor vehicles but must provide  
3       sufficient maintenance to keep the road or way passable to access the residences on the  
4       road or way, as determined by the county commissioners.

3 **STATE AND LOCAL GOVERNMENT**

4 Reproduced and distributed under the direction of the Clerk of the House.

5 **STATE OF MAINE**  
6 **HOUSE OF REPRESENTATIVES**  
7 **130TH LEGISLATURE**  
8 **SECOND REGULAR SESSION**9 COMMITTEE AMENDMENT " " to H.P. 1121, L.D. 1513, "An Act To Require  
10 the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or  
11 More Residences"

12 Amend the bill by striking out the title and substituting the following:

13 **'An Act To Establish the Maine Abandoned and Discontinued Roads Commission'**14 Amend the bill by striking out everything after the enacting clause and inserting the  
15 following:16 **'Sec. 1. 5 MRSA §12004-I, sub-§83-A is enacted to read:**17 **83-A.**18 Transportation: Maine Abandoned and Discontinued Expenses Only **23 MRSA**  
19 Roads Roads Commission **§3036**20 **Sec. 2. 23 MRSA §3036 is enacted to read:**21 **§3036. Maine Abandoned and Discontinued Roads Commission**22 The Maine Abandoned and Discontinued Roads Commission, referred to in this section  
23 as "the commission," is established by Title 5, section 12004-I, subsection 83-A and  
24 operates in accordance with this section.25 **1. Members. The commission consists of the following 12 members:**26 A. One member who is an employee of the Department of Inland Fisheries and  
27 Wildlife, designated by the Commissioner of Inland Fisheries and Wildlife;28 B. One member who is an employee of the Department of Agriculture, Conservation  
29 and Forestry, designated by the Commissioner of Agriculture, Conservation and  
30 Forestry;31 C. One member who is an employee of the Department of Transportation, designated  
32 by the Commissioner of Transportation;

1           D. One member who is an employee of the Office of the Attorney General, designated  
2           by the Attorney General;

3           E. Four members appointed by the President of the Senate, who, in making the  
4           appointments, shall take into consideration any recommendation made by the  
5           association or organization from whose membership the appointment is made, as  
6           follows:

- 7           (1) One member of a statewide association representing municipalities;
- 8           (2) One member of a statewide association representing woodland property  
9           owners;
- 10           (3) One member of a statewide association of attorneys who has expertise in real  
11           estate law; and
- 12           (4) One member of a land trust organization; and

13           F. Four members appointed by the Speaker of the House, who, in making the  
14           appointments, shall take into consideration any recommendation made by the  
15           association or organization from whose membership the appointment is made, as  
16           follows:

- 17           (1) One member of a statewide association representing county governments;
- 18           (2) One member of a statewide organization representing all-terrain vehicle users  
19           or snowmobile users;
- 20           (3) One member of a statewide association representing residents of the State  
21           living on or owning property that abuts an abandoned or discontinued road or that  
22           is accessible only by traveling over an abandoned or discontinued road; or, if no  
23           such association exists, a resident of the State living on property that abuts an  
24           abandoned or discontinued road or that is accessible only by traveling over an  
25           abandoned or discontinued road; and
- 26           (4) One member of the general public who is a resident of the State not directly  
27           affected by matters related to abandoned or discontinued roads.

28           **2. Duties.** The commission shall:

29           A. Consider the following:

- 30           (1) Property owner liability, including personal injury, property damage and  
31           environmental damage liability resulting from public use of an abandoned or  
32           discontinued road;
- 33           (2) Public easement retention over an abandoned or discontinued road, including  
34           the scope of permitted and actual public use;
- 35           (3) Statutory terminology related to abandoned or discontinued roads; and
- 36           (4) The statutory process for the abandonment or discontinuation of a road,  
37           including barriers to determining the legal status of a road;

38           B. For matters relating to abandoned and discontinued roads other than those described  
39           by paragraph A, prioritize matters for consideration by the commission by determining  
40           which matters related to abandoned and discontinued roads have a significant negative  
41           impact, qualitatively or quantitatively, on:

- (1) Owners of property that abuts an abandoned or discontinued road;
- (2) Owners of property accessible only by traveling over an abandoned or discontinued road;
- (3) Recreational users of an abandoned or discontinued road;
- (4) Members of the public;
- (5) Municipal, county or state governments; and
- (6) The physical integrity of an abandoned or discontinued road and surrounding land;

C. Develop recommendations on ways to address matters considered by the commission, including recommendations for statutory changes; and

D. Review legislation affecting abandoned or discontinued roads and provide information to joint standing committees of the Legislature upon request.

**3. Chair.** The members of the commission shall elect from among the membership a chair, who serves a 3-year term. The chair continues to hold the office until a successor is elected and may serve multiple terms. The chair calls and presides over meetings of the commission. In the absence of the chair, the member designated by the Commissioner of Inland Fisheries and Wildlife or the member designated by the Commissioner of Agriculture, Conservation and Forestry may preside over meetings.

**4. Term of office.** Members of the commission serve 3-year terms. A member may serve after the expiration of that member's term until a successor has been appointed. A member may serve multiple terms.

**5. Meetings.** The commission shall meet at least 3 times, but may meet no more than 6 times, each year.

**6. Subcommittees.** The commission may establish subcommittees to meet to conduct the work of the commission. Subcommittees may invite persons who are not members of the commission to participate in a nonvoting capacity.

**7. Public comment.** The commission shall accept public comment during its meetings.

**8. Staff support.** The Office of the Attorney General shall provide staff support to the commission.

**9. Bylaws.** The commission may, by a majority vote of the members, adopt or amend bylaws as necessary or appropriate to carry out the purposes or exercise the powers of the commission. Prior to adoption or amendment of bylaws, the commission shall ask the member designated by the Attorney General to review the bylaws and provide comments to the commission.

**10. Fund established.** The Road Commission Fund is established as a nonlapsing fund within the Office of the Attorney General to support the work of the commission. The fund consists of any funds received from any public or private source.

**11. Report.** By February 1, 2023, and annually thereafter, the commission shall submit a report of its activities and any recommended statutory changes to the joint standing committee of the Legislature having jurisdiction over state and local government matters, the joint standing committee of the Legislature having jurisdiction over agriculture,

## COMMITTEE AMENDMENT

1 conservation and forestry matters and the joint standing committee of the Legislature  
2 having jurisdiction over inland fisheries and wildlife matters. If the report includes  
3 recommended statutory changes, the committee with jurisdiction over the subject of that  
4 statute may report out a bill related to the recommendation.

5 **Sec. 3. Initial meeting.** The initial meeting of the Maine Abandoned and  
6 Discontinued Roads Commission, established pursuant to the Maine Revised Statutes, Title  
7 23, section 3036, must be called within 60 days of the effective date of this Act by the  
8 member designated by the Attorney General.

9 **Sec. 4. Initial terms.** Notwithstanding the Maine Revised Statutes, Title 23, section  
10 3036, subsection 4, of the members initially appointed to the Maine Abandoned and  
11 Discontinued Roads Commission, the following members must be appointed to an initial  
12 term of 2 years:

- 13 1. The member designated by the Commissioner of Transportation;
- 14 2. The member designated by the Attorney General;
- 15 3. The member from a statewide association representing county governments;
- 16 4. The member from a statewide association of attorneys;
- 17 5. The member from a statewide organization representing all-terrain vehicle users or  
18 snowmobile users; and
- 19 6. The member who is a member of the general public.

20 **Sec. 5. Appropriations and allocations.** The following appropriations and  
21 allocations are made.

22 **ATTORNEY GENERAL, DEPARTMENT OF THE  
23 Administration - Attorney General 0310**

24 Initiative: Provides funding for one Research Assistant Paralegal position and related All  
25 Other costs in the Office of the Attorney General, natural resources division to provide staff  
26 support to the Maine Abandoned and Discontinued Roads Commission and to assist the  
27 commission in the conduct of its duties.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$59,188
All Other	\$0	\$3,919
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$63,107</b>

34 **Road Commission Fund N950**

35 Initiative: Provides a base allocation for the newly established Road Commission Fund  
36 program to support the work of the Maine Abandoned and Discontinued Roads  
37 Commission in the event that funds are received from public or private sources.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
Unallocated	\$0	\$500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$500</b>



STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-TWO

H.P. 1121 - L.D. 1513

**An Act To Establish the Maine Abandoned and Discontinued Roads  
Commission**

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 5 MRSA §12004-I, sub-§83-A** is enacted to read:

**83-A.**

Transportation: Maine Abandoned and Discontinued Roads Commission Expenses Only 23 MRSA §3036

**Sec. 2. 23 MRSA §3036** is enacted to read:

**§3036. Maine Abandoned and Discontinued Roads Commission**

The Maine Abandoned and Discontinued Roads Commission, referred to in this section as "the commission," is established by Title 5, section 12004-I, subsection 83-A and operates in accordance with this section.

**1. Members.** The commission consists of the following 12 members:

A. One member who is an employee of the Department of Inland Fisheries and Wildlife, designated by the Commissioner of Inland Fisheries and Wildlife;

B. One member who is an employee of the Department of Agriculture, Conservation and Forestry, designated by the Commissioner of Agriculture, Conservation and Forestry;

C. One member who is an employee of the Department of Transportation, designated by the Commissioner of Transportation;

D. One member who is an employee of the Office of the Attorney General, designated by the Attorney General;

E. Four members appointed by the President of the Senate, who, in making the appointments, shall take into consideration any recommendation made by the association or organization from whose membership the appointment is made, as follows:

(1) One member of a statewide association representing municipalities;

(2) One member of a statewide association representing woodland property owners;

(3) One member of a statewide association of attorneys who has expertise in real estate law; and

(4) One member of a land trust organization; and

F. Four members appointed by the Speaker of the House, who, in making the appointments, shall take into consideration any recommendation made by the association or organization from whose membership the appointment is made, as follows:

(1) One member of a statewide association representing county governments;

(2) One member of a statewide organization representing all-terrain vehicle users or snowmobile users;

(3) One member of a statewide association representing residents of the State living on or owning property that abuts an abandoned or discontinued road or that is accessible only by traveling over an abandoned or discontinued road; or, if no such association exists, a resident of the State living on property that abuts an abandoned or discontinued road or that is accessible only by traveling over an abandoned or discontinued road; and

(4) One member of the general public who is a resident of the State not directly affected by matters related to abandoned or discontinued roads.

**2. Duties.** The commission shall:

A. Consider the following:

(1) Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;

(2) Public easement retention over an abandoned or discontinued road, including the scope of permitted and actual public use;

(3) Statutory terminology related to abandoned or discontinued roads; and

(4) The statutory process for the abandonment or discontinuation of a road, including barriers to determining the legal status of a road;

B. For matters relating to abandoned and discontinued roads other than those described by paragraph A, prioritize matters for consideration by the commission by determining which matters related to abandoned and discontinued roads have a significant negative impact, qualitatively or quantitatively, on:

(1) Owners of property that abuts an abandoned or discontinued road;

(2) Owners of property accessible only by traveling over an abandoned or discontinued road;

(3) Recreational users of an abandoned or discontinued road;

(4) Members of the public;

(5) Municipal, county or state governments; and

(6) The physical integrity of an abandoned or discontinued road and surrounding land;

C. Develop recommendations on ways to address matters considered by the commission, including recommendations for statutory changes; and

D. Review legislation affecting abandoned or discontinued roads and provide information to joint standing committees of the Legislature upon request.

**3. Chair.** The members of the commission shall elect from among the membership a chair, who serves a 3-year term. The chair continues to hold the office until a successor is elected and may serve multiple terms. The chair calls and presides over meetings of the commission. In the absence of the chair, the member designated by the Commissioner of Inland Fisheries and Wildlife or the member designated by the Commissioner of Agriculture, Conservation and Forestry may preside over meetings.

**4. Term of office.** Members of the commission serve 3-year terms. A member may serve after the expiration of that member's term until a successor has been appointed. A member may serve multiple terms.

**5. Meetings.** The commission shall meet at least 3 times, but may meet no more than 6 times, each year.

**6. Subcommittees.** The commission may establish subcommittees to meet to conduct the work of the commission. Subcommittees may invite persons who are not members of the commission to participate in a nonvoting capacity.

**7. Public comment.** The commission shall accept public comment during its meetings.

**8. Staff support.** The Office of the Attorney General shall provide staff support to the commission.

**9. Bylaws.** The commission may, by a majority vote of the members, adopt or amend bylaws as necessary or appropriate to carry out the purposes or exercise the powers of the commission. Prior to adoption or amendment of bylaws, the commission shall ask the member designated by the Attorney General to review the bylaws and provide comments to the commission.

**10. Fund established.** The Road Commission Fund is established as a nonlapsing fund within the Office of the Attorney General to support the work of the commission. The fund consists of any funds received from any public or private source.

**11. Report.** By February 1, 2023, and annually thereafter, the commission shall submit a report of its activities and any recommended statutory changes to the joint standing committee of the Legislature having jurisdiction over state and local government matters, the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters and the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters. If the report includes recommended statutory changes, the committee with jurisdiction over the subject of that statute may report out a bill related to the recommendation.

**Sec. 3. Initial meeting.** The initial meeting of the Maine Abandoned and Discontinued Roads Commission, established pursuant to the Maine Revised Statutes, Title 23, section 3036, must be called within 60 days of the effective date of this Act by the member designated by the Attorney General.

**Sec. 4. Initial terms.** Notwithstanding the Maine Revised Statutes, Title 23, section 3036, subsection 4, of the members initially appointed to the Maine Abandoned and Discontinued Roads Commission, the following members must be appointed to an initial term of 2 years:

1. The member designated by the Commissioner of Transportation;
2. The member designated by the Attorney General;
3. The member from a statewide association representing county governments;
4. The member from a statewide association of attorneys;
5. The member from a statewide organization representing all-terrain vehicle users or snowmobile users; and
6. The member who is a member of the general public.

**Sec. 5. Appropriations and allocations.** The following appropriations and allocations are made.

**ATTORNEY GENERAL, DEPARTMENT OF THE  
Administration - Attorney General 0310**

Initiative: Provides funding for one Research Assistant Paralegal position and related All Other costs in the Office of the Attorney General, natural resources division to provide staff support to the Maine Abandoned and Discontinued Roads Commission and to assist the commission in the conduct of its duties.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1,000
Personal Services	\$0	\$59,188
All Other	\$0	\$3,919
GENERAL FUND TOTAL	\$0	\$63,107

**Road Commission Fund N950**

Initiative: Provides a base allocation for the newly established Road Commission Fund program to support the work of the Maine Abandoned and Discontinued Roads Commission in the event that funds are received from public or private sources.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
Unallocated	\$0	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$500

<b>ATTORNEY GENERAL, DEPARTMENT OF THE DEPARTMENT TOTALS</b>	<b>2021-22</b>	<b>2022-23</b>
<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$63,107</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$500</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$63,607</b>

# APPENDIX

## B



# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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**Legislative Document**

**No. 461**

S.P. 215

In Senate, February 6, 2023

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### **An Act Regarding Private Roads**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink that reads "DAREK M. GRANT".

**DAREK M. GRANT**  
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.  
Cosponsored by Representative HEPLER of Woolwich and  
Senator: DAUGHTRY of Cumberland, Representative: SACHS of Freeport.

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 23 MRSA §1903, sub-§10-A**, as repealed and replaced by PL 1981, c. 318, §1, is amended to read:

**10-A. Private way.** "Private way" means a private road, driveway or public easement as defined in section 3021, subsection 2.

**Sec. 2. 23 MRSA §1903, sub-§10-D** is enacted to read:

**10-D. Private road.** "Private road" means a privately owned and maintained road over which the owner may restrict passage.

**Sec. 3. 23 MRSA §1914, sub-§10**, as amended by PL 2013, c. 529, §9, is further amended to read:

**10. Approach signs.** Any business or facility whose principal building or structure, or a point of interest, which is located on a private way or private road more than 1,000 feet from the nearest public way, or is not visible to traffic from the nearest public way, private way or private road, may erect no more than 2 approach signs with a total surface area not to exceed 100 square feet per sign. These signs are to be located outside the public right-of-way limits within 300 feet of the junction of the public ways and private ways or private roads.

**Sec. 4. 23 MRSA c. 305, sub-c. 2, as amended, is further amended by amending the subchapter headnote to read:**

## SUBCHAPTER 2

## PRIVATE WAYS ROADS

**Sec. 5. 23 MRSA §3104**, as amended by PL 2017, c. 306, §1, is further amended to read:

## §3104. Penalties and process

Money recovered under sections 3102 and 3103 is for the use of the owners. In any notice of claim or process for the money's recovery, a description of the owners as owners of parcels of land benefited by the private road, private way or bridge by name, clearly describing each owner's parcel of land by the book and page number of the owner's deed as recorded in the county's registry of deeds and the private road, private way or bridge, is sufficient. If the private road, private way or bridge is shown on a plan recorded in the county's registry of deeds, the plan's recording reference is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest. Any money owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners of the subject parcels, jointly or severally, and also burdens the parcel and runs with the land upon the transfer of any owner's interest. After June 30, 2018, any money owed pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs with the land upon the transfer of any owner's interest unless a notice of claim is recorded in the county's registry of deeds prior to the transfer. ~~A notice of claim filed in the registry of deeds expires 18 months from the date of recording unless extended prior to the expiration by recording of a notice of extension of the notice of claim. A recorded notice~~

1 of claim may be extended for additional 18 month periods until the claim is paid. The  
2 commissioner or board may cause to be recorded in the county's registry of deeds a notice  
3 of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days  
4 delinquent and may add to the amount owed the recording costs for filing the notice of  
5 claim. The recording of such notice does not constitute slander of title. Before recording  
6 such notice or service of process of a complaint for collection in a civil action, the  
7 commissioner or board shall give the owner against whom such action is to be taken written  
8 notice, in the same manner as written notices of meetings are provided for in section 3101,  
9 of the intended action if the debt is not paid within 20 days of the date of the written notice.  
10 This written notice to cure must be sent at least 30 days before the recording of the notice  
11 of claim or the service of process of the complaint for collection in a civil action.

12 **Sec. 6. 23 MRSA §3107** is enacted to read:

13 **§3107. Standards**

14 A municipality shall establish minimum standards for private road construction in the  
15 municipality. The standards must include a requirement for inspection of the road base by  
16 the municipality prior to construction.

17 **Sec. 7. 29-A MRSA §101, sub-§58**, as enacted by PL 1993, c. 683, Pt. A, §2 and  
18 affected Pt. B, §5, is repealed.

19 **Sec. 8. 29-A MRSA §101, sub-§58-A** is enacted to read:

20 **58-A. Private road.** "Private road" means a privately owned and maintained road  
21 over which the owner may restrict passage.

22 **Sec. 9. 29-A MRSA §2063, sub-§14**, as amended by PL 2021, c. 86, §1, is further  
23 amended by amending the first blocked paragraph to read:

24 This subsection may not be construed to limit the authority of the owner of a private way  
25 road or the owner of private property to restrict or allow the operation of electric bicycles  
26 on the owner's private way road or private property.

27 **Sec. 10. 29-A MRSA §2356, sub-§6**, as enacted by PL 1993, c. 683, Pt. A, §2 and  
28 affected by Pt. B, §5, is amended to read:

29 **6. Private ways roads exempted.** This section does not apply to operating on private  
30 ways roads.

31 **Sec. 11. 29-A MRSA §2382, sub-§7**, as enacted by PL 1993, c. 683, Pt. A, §2 and  
32 affected by Pt. B, §5, is amended to read:

33 **7. Construction permits.** A permit for a stated period of time may be issued for loads  
34 and equipment employed on public way construction projects, United States Government  
35 projects or construction of private ways roads, when within construction areas established  
36 by the Department of Transportation. The permit:

37 A. Must be procured from the municipal officers for a construction area within that  
38 municipality;

39 B. May require the contractor to be responsible for damage to ways used in the  
40 construction areas and may provide for:

5 The suitability of repairs or the amount of damage is to be determined by the  
6 Department of Transportation on state-maintained ways and bridges, otherwise by the  
7 municipal officers;

8           C. May be granted by the Department of Transportation or by the state engineer in  
9           charge of the construction contract; and  
10          D. For construction areas, carries no fee and does not come within the scope of this  
11          section.

**Sec. 12. Municipalities to develop or update list of town ways, private ways and private roads.** Each municipality shall develop or update publicly available inventories relating to all known town ways, private ways and private roads within its borders and share such inventories with the Department of Transportation, Bureau of Maintenance and Operations by November 1, 2023. Boards of county commissioners, landowners, road associations, surveyors and other interested parties may share relevant information related to town ways, private ways and private roads with municipalities and the Department of Transportation, Bureau of Maintenance and Operations. By January 1, 2024, the Department of Transportation shall provide to the Joint Standing Committee on State and Local Government an update on the status of road inventories developed by municipalities under this section.

23       **Sec. 13. Guidance.** By November 1, 2024, the Department of Transportation shall  
24        create a model ordinance based on the provisions in the Woolwich Subdivision Ordinance  
25        related to private road standards to guide municipalities in complying with the Maine  
26        Revised Statutes, Title 23, section 3107.

27       **Sec. 14. Private road construction standards.** Municipalities shall establish  
28        standards for private road construction by November 1, 2025.

## SUMMARY

30 This bill does the following.

- 31        1. It changes the definition of "private way" in the Maine Revised Statutes, Title 23 to  
32        have the same meaning as "public easement" and defines "private road." Relevant  
33        provisions of Title 23 are amended for consistency with the new definition of "private  
34        road."
- 35        2. It repeals the definition of "private way" in Title 29-A and defines "private road."  
36        Relevant provisions of Title 29-A are amended for consistency with the new definition of  
37        "private road."
- 38        3. It directs the Department of Transportation to create a model ordinance to guide  
39        municipalities on minimum standards for private road construction by November 1, 2024  
40        and directs municipalities to develop minimum standards for private road construction by  
41        November 1, 2025.

1           4. It removes the 18-month expiration and 18-month extension option for recorded  
2 notice of claims under Title 23, section 3104.

3           5. It requires municipalities to develop or update a one-time inventory of all known  
4 town ways, private ways and private roads within each municipality and requires the  
5 Department of Transportation, by January 1, 2024, to update the Joint Standing Committee  
6 on State and Local Government on the status of those inventories by those municipalities.

1

L.D. 461

2

Date: (Filing No. S- )

3

## STATE AND LOCAL GOVERNMENT

4

Reproduced and distributed under the direction of the Secretary of the Senate.

5

### STATE OF MAINE

6

### SENATE

7

### 131ST LEGISLATURE

8

### FIRST SPECIAL SESSION

9 COMMITTEE AMENDMENT " " to S.P. 215, L.D. 461, "An Act Regarding  
10 Private Roads"

11 Amend the bill by striking out the title and substituting the following:

**'An Act Regarding Private Ways and Private Roads'**

13 Amend the bill by striking out everything after the enacting clause and inserting the  
14 following:

15 **'Sec. 1. 23 MRSA §3101, sub-§1, ¶B,** as amended by PL 2013, c. 198, §1, is further  
16 amended to read:

17 B. "Repairs and maintenance" does not include paving, except in locations where  
18 pavement does not exist if approved by an affirmative vote of at least 3/4 of the owners  
19 of all the parcels benefited by the private road, private way or bridge at a meeting called  
20 in accordance with subsection 2 or in locations where limited paving is demonstrated  
21 to be a cost-effective approach for fixing an erosion problem or to repair and maintain  
22 pavement existing as of July 1, 2007 for at least 8 years. "Maintenance" includes, but  
23 is not limited to, snowplowing, snow removal, sanding and ice control; grading and  
24 adding gravel and surface material; installing reclaimed asphalt or grinding existing  
25 pavement for reuse; installing, cleaning and replacing culverts; creating and  
26 maintaining ditches, drains and other storm water management infrastructure; creating  
27 and maintaining sight distances on curves and at intersections; and cutting brush, trees  
28 and vegetation in the right-of-way.

29 **Sec. 2. 23 MRSA §3103,** as amended by PL 2013, c. 198, §9, is repealed and the  
30 following enacted in its place:

**§3103. Contracts for repair; reserve accounts**

32 The owners, at a meeting held under section 3101, may by a majority vote of the owners  
33 present and voting in person or by written proxy or absentee ballot authorize:

2       **1. Contract for repair.** A contract for repairs or maintenance to the private road,  
3       private way or bridge by the year or for a lesser time and may raise money for that purpose  
3       pursuant to section 3101, subsection 5; and

4       **2. Reserve account.** A reserve account to be established to hold funds solely to be  
5       used for repairs and maintenance.

6       **Sec. 3. 23 MRSA §3104**, as amended by PL 2017, c. 306, §1, is further amended to  
7       read:

8       **§3104. Penalties and process**

9       Money recovered under sections 3102 and 3103 is for the use of the owners. In any  
10      notice of claim or process for the money's recovery, a description of the owners as owners  
11      of parcels of land benefited by the private road, private way or bridge by name, clearly  
12      describing each owner's parcel of land by the book and page number of the owner's deed  
13      as recorded in the county's registry of deeds and the private road, private way or bridge, is  
14      sufficient. If the private road, private way or bridge is shown on a plan recorded in the  
15      county's registry of deeds, the plan's recording reference is sufficient. Such process is not  
16      abated by the death of any owner or by the transfer of any owner's interest. Any money  
17      owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners  
18      of the subject parcels, jointly or severally, and also burdens the parcel and runs with the  
19      land upon the transfer of any owner's interest. After June 30, 2018, any money owed  
20      pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs  
21      with the land upon the transfer of any owner's interest unless a notice of claim is recorded  
22      in the county's registry of deeds prior to the transfer. A notice of claim filed in the registry  
23      of deeds expires 18-months 6 years from the date of recording unless extended prior to the  
24      expiration by recording of a notice of extension of the notice of claim. A recorded notice  
25      of claim may be extended for additional 18-month 6-year periods until the claim is paid.  
26      The commissioner or board may cause to be recorded in the county's registry of deeds a  
27      notice of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than  
28      90 days delinquent and may add to the amount owed the recording costs for filing the notice  
29      of claim. The recording of such notice does not constitute slander of title. Before recording  
30      such notice or service of process of a complaint for collection in a civil action, the  
31      commissioner or board shall give the owner against whom such action is to be taken written  
32      notice, in the same manner as written notices of meetings are provided for in section 3101,  
33      of the intended action if the debt is not paid within 20 days of the date of the written notice.  
34      This written notice to cure must be sent at least 30 days before the recording of the notice  
35      of claim or the service of process of the complaint for collection in a civil action.

36       **Sec. 4. Report.** The Maine Abandoned and Discontinued Roads Commission,  
37      established in the Maine Revised Statutes, Title 23, section 3036, shall review the use of  
38      the following terms in the Maine Revised Statutes: "private way"; "public way"; "private  
39      road"; and "public easement." The commission shall determine whether changes to current  
40      law would improve understanding and use of these terms throughout the Maine Revised  
41      Statutes. By January 5, 2024, the commission shall submit a report to the Joint Standing  
42      Committee on State and Local Government with the results of this study along with  
43      recommended legislation. The committee may report out legislation relating to the report  
44      to the Second Regular Session of the 131st Legislature. Notwithstanding Title 23, section

1 3036, subsection 5, the commission may meet more than 6 times in 2023 to complete the  
2 work described in this section.'

3 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
4 number to read consecutively.

5 **SUMMARY**

6 This amendment replaces the bill. It instructs the Maine Abandoned and Discontinued  
7 Roads Commission, established in the Maine Revised Statutes, Title 23, section 3036, to  
8 review the use of the following terms in the Maine Revised Statutes: "private way"; "public  
9 way"; "private road"; and "public easement," determine whether changes to current law  
10 would improve understanding and use of these terms throughout the Maine Revised  
11 Statutes and include its conclusions and recommendations in a report to the Joint Standing  
12 Committee on State and Local Government submitted by January 5, 2024. The commission  
13 is authorized to meet more than 6 times in 2023 to complete this work.

14 The amendment expands the definition of "repairs and maintenance" as it applies to  
15 road associations established and operating in accordance with Title 23, chapter 305 to  
16 include paving in locations where pavement does not exist if the paving is approved by an  
17 affirmative vote of at least 3/4 of the owners of all the parcels benefited by the private road,  
18 private way or bridge at a meeting called in accordance with Title 23, section 3101,  
19 subsection 2. It adds installing reclaimed asphalt or grinding existing asphalt pavement for  
20 reuse within the definition of "repairs and maintenance." It allows road associations to  
21 establish a reserve account to hold funds for repairs and maintenance, and it changes the  
22 expiration date of a notice of claim recorded with the registry of deeds from 18 months to  
23 6 years.

24 **FISCAL NOTE REQUIRED**

25 **(See attached)**

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-THREE

S.P. 215 - L.D. 461

**An Act Regarding Private Ways and Private Roads**

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 23 MRSA §3101, sub-§1, ¶B**, as amended by PL 2013, c. 198, §1, is further amended to read:

B. "Repairs and maintenance" does not include paving, except in locations where pavement does not exist if approved by an affirmative vote of at least 3/4 of the owners of all the parcels benefited by the private road, private way or bridge at a meeting called in accordance with subsection 2 or in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem or to repair and maintain pavement existing as of July 1, 2007 for at least 8 years. "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing reclaimed asphalt or grinding existing pavement for reuse; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.

**Sec. 2. 23 MRSA §3103**, as amended by PL 2013, c. 198, §9, is repealed and the following enacted in its place:

**§3103. Contracts for repair; reserve accounts**

The owners, at a meeting held under section 3101, may by a majority vote of the owners present and voting in person or by written proxy or absentee ballot authorize:

**1. Contract for repair.** A contract for repairs or maintenance to the private road, private way or bridge by the year or for a lesser time and may raise money for that purpose pursuant to section 3101, subsection 5; and

**2. Reserve account.** A reserve account to be established to hold funds solely to be used for repairs and maintenance.

**Sec. 3. 23 MRSA §3104**, as amended by PL 2017, c. 306, §1, is further amended to read:

#### **§3104. Penalties and process**

Money recovered under sections 3102 and 3103 is for the use of the owners. In any notice of claim or process for the money's recovery, a description of the owners as owners of parcels of land benefited by the private road, private way or bridge by name, clearly describing each owner's parcel of land by the book and page number of the owner's deed as recorded in the county's registry of deeds and the private road, private way or bridge, is sufficient. If the private road, private way or bridge is shown on a plan recorded in the county's registry of deeds, the plan's recording reference is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest. Any money owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners of the subject parcels, jointly or severally, and also burdens the parcel and runs with the land upon the transfer of any owner's interest. After June 30, 2018, any money owed pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs with the land upon the transfer of any owner's interest unless a notice of claim is recorded in the county's registry of deeds prior to the transfer. A notice of claim filed in the registry of deeds expires ~~18 months~~ 6 years from the date of recording unless extended prior to the expiration by recording of a notice of extension of the notice of claim. A recorded notice of claim may be extended for additional ~~18-month~~ 6-year periods until the claim is paid. The commissioner or board may cause to be recorded in the county's registry of deeds a notice of claim for money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent and may add to the amount owed the recording costs for filing the notice of claim. The recording of such notice does not constitute slander of title. Before recording such notice or service of process of a complaint for collection in a civil action, the commissioner or board shall give the owner against whom such action is to be taken written notice, in the same manner as written notices of meetings are provided for in section 3101, of the intended action if the debt is not paid within 20 days of the date of the written notice. This written notice to cure must be sent at least 30 days before the recording of the notice of claim or the service of process of the complaint for collection in a civil action.

**Sec. 4. Report.** The Maine Abandoned and Discontinued Roads Commission, established in the Maine Revised Statutes, Title 23, section 3036, shall review the use of the following terms in the Maine Revised Statutes: "private way"; "public way"; "private road"; and "public easement." The commission shall determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes. By January 5, 2024, the commission shall submit a report to the Joint Standing Committee on State and Local Government with the results of this study along with recommended legislation. The committee may report out legislation relating to the report to the Second Regular Session of the 131st Legislature. Notwithstanding Title 23, section 3036, subsection 5, the commission may meet more than 6 times in 2023 to complete the work described in this section.

# APPENDIX

C



# 131st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2024

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Legislative Document

No. 2264

S.P. 982

In Senate, March 12, 2024

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### An Act to Further Clarify the Meaning of "Private Road" and "Public Easement" in Certain Provisions of Maine Law

---

Reported by Senator NANGLE of Cumberland for the Joint Standing Committee on State and Local Government pursuant to Public Law 2023, chapter 387, section 4.

Reference to the Committee on State and Local Government suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink that reads "DAREK M. GRANT".

DAREK M. GRANT  
Secretary of the Senate

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 23 MRSA c. 305, sub-c. 2, headnote** is amended to read:

## **SUBCHAPTER 2**

## **PRIVATE WAYS ROADS AND PUBLIC EASEMENTS**

**Sec. 2. 23 MRSA §3101**, as amended by PL 2023, c. 387, §1, is further amended to read:

### §3101. Call of meetings; maintenance; repairs

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Private way" means a public easement. "Public easement" has the same meaning as defined in section 3021, subsection 2.

A-1. "Private road" means a privately owned way over which there is no public right of access.

B. "Repairs and maintenance" does not include paving, except in locations where pavement does not exist if approved by an affirmative vote of at least 3/4 of the owners of all the parcels benefited by the private road, ~~private way public easement not repaired or maintained year round by a municipality~~ or bridge at a meeting called in accordance with subsection 2 or in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem or to repair and maintain pavement existing for at least 8 years. "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing reclaimed asphalt or grinding existing pavement for reuse; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.

**2. Call of meeting.** When 4 or more parcels of land are benefited by a private road, ~~private way~~ public easement not repaired or maintained by a municipality or bridge as an easement or by fee ownership of the private road, ~~private way~~ public easement or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting. The notary may issue a warrant or similar written notice setting forth the time, place and purpose of the meeting. Copies of the warrant or similar written notice must be mailed by means of the United States Postal Service to the owners of all the parcels benefited by the private road, ~~private way~~ public easement or bridge at the addresses set forth in the municipal tax records at least 30 days before the date of the meeting. The notice must inform the owners of the planned meeting's agenda and specify all items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be called in the same manner or by a commissioner or board appointed at a previous meeting pursuant to subsection 5.

1                   **3. E-mail.** E-mail may be used as an alternative to United States mail for sending  
2 notices and other materials under this section with the agreement of the receiving party as  
3 long as the communication includes the current address and telephone number of the sender  
4 for purposes of verification.

5                   **4. Voting.** Each parcel of land benefited by a private road, ~~private way public~~ easement not repaired or maintained by a municipality or bridge represents one vote under  
6 this section; except that, if the bylaws of the association authorize more than one vote, then  
7 each parcel may represent no more than 2 votes under this subsection. The call to a meeting  
8 may state that an owner may elect in writing to appoint another owner to vote in the owner's  
9 stead. Owners voting by absentee ballot must be polled on all voting items that were not  
10 included in the agenda and the final tally must be reported to the owners.

11                   **4-A. Road associations.** A road association under this subchapter through its  
12 commissioner or board may address present and future repair and maintenance of a private  
13 road, ~~private way public~~ easement not repaired or maintained by a municipality or bridge  
14 as authorized by the owners at meetings called and conducted pursuant to this section until  
15 the association is dissolved by a majority vote of its members.

16                   **5. Commissioner or board; assessment for repair, maintenance and other costs.**  
17 The owners of parcels of land benefited by a private road, ~~private way public~~ easement not  
18 repaired or maintained by a municipality or bridge at a meeting called pursuant to  
19 subsection 2 may choose a commissioner or board, to be sworn. By a majority vote of the  
20 owners present and voting in person or by written proxy or absentee ballot, the owners may  
21 determine what repairs and maintenance are necessary and the materials to be furnished or  
22 the amount of money to be paid by each owner for repairs and maintenance and may determine  
23 the amount of money to be paid by each owner for other costs, including, but not limited  
24 to, the cost of liability insurance for the officers, directors and owners and costs of  
25 administration. The determination of each owner's share of the total cost must be fair and  
26 equitable and based upon a formula provided for in the road association's bylaws or adopted  
27 by the owners at a meeting called and conducted pursuant to this section. The  
28 commissioner or board shall report the outcome of all votes to all the owners by United  
29 States mail within 30 days. Special assessments for emergency repairs and maintenance  
30 may be made at a duly held meeting called for that purpose. Emergency repairs and  
31 maintenance are those actions necessary to maintain or restore the functionality of the  
32 private road, ~~private way public~~ easement or bridge.

33                   **5-A. Easements.** A road association under this subchapter may negotiate an easement  
34 for the installation of a ditch, drain, culvert or other storm water management infrastructure  
35 to benefit the private road, ~~private way public~~ easement not repaired or maintained by a  
36 municipality or bridge. The easement must specify when a ditch, drain, culvert or other  
37 storm water management infrastructure must be maintained and include reasonable  
38 performance standards to guide the timing and extent of its upkeep and repair. The  
39 easement must also be recorded at the registry of deeds in the county in which the property  
40 subject to the easement is located. A ditch, drain, culvert or other storm water management  
41 infrastructure subject to an easement under this subsection must be under the control of and  
42 maintained by the road association.

43                   **6. Commercial or forest management purposes.** This section does not apply to a  
44 private road, ~~private way public~~ easement or bridge constructed or primarily used for  
45 commercial or forest management purposes.

1           **7. Immunity from suit.** A commissioner, board or owner of a parcel of land who  
2 undertakes activities of a road association under this subchapter is immune from civil  
3 liability in all actions by owners or lessees of other lots for the following activities:

4           A. The determination of repairs and maintenance to be undertaken;  
5           B. The determination of materials to be furnished or amount of money to be paid by  
6 each owner for repairs and maintenance;  
7           C. The collection of the money from each owner; and  
8           D. The awarding of a contract authorized under section 3103.

9           **8. Environmental violations.** Notwithstanding subsection 7, a commissioner, board  
10 or owner of a parcel of land is not immune from an enforcement action for a violation of  
11 law under the jurisdiction of the Department of Environmental Protection or a municipality.

12           **9. Insurance.** A road association under this subchapter may purchase liability  
13 insurance to ~~defend and~~ indemnify the road association's officers, directors and owner  
14 members for any ~~and all~~ claims of liability or violation of law concerning the private road,  
15 ~~private way public easement not repaired or maintained by a municipality or bridge~~ and  
16 may include the costs of such insurance in the determination of each owner's share of the  
17 total cost under subsection 5.

18           **Sec. 3. 23 MRSA §3102**, as amended by PL 2013, c. 198, §8, is further amended to  
19 read:

20           **§3102. Commissioner's or board's duties; neglect of owners to pay**

21           The commissioner or board chosen under section 3101, with respect to the private road,  
22 ~~private way public easement not repaired or maintained by a municipality or bridge~~, has  
23 the powers of a road commissioner. If any owner, on requirement of the commissioner or  
24 board, neglects to furnish that owner's proportion of labor, materials or money, the same  
25 may be furnished by the other owners and recovered of the owner neglecting to pay in a  
26 civil action, together with costs of suit and reasonable attorney's fees. Such civil action  
27 may be brought in the name of and by the road association created pursuant to this  
28 subchapter and the decision to bring that civil action may be made by the commissioner or  
29 board or as otherwise provided for in the road association's bylaws. The commissioner's  
30 or board's apportioning of the cost of repairs to the road undertaken pursuant to the  
31 provisions of section 3101 may not exceed 1% of an individual owner's municipal property  
32 valuation in any calendar year.

33           **Sec. 4. 23 MRSA §3103, sub-§1**, as enacted by PL 2023, c. 387, §2, is amended to  
34 read:

35           **1. Contract for repair.** A contract for repairs or maintenance to the private road,  
36 ~~private way public easement not repaired or maintained by a municipality or bridge~~ by the  
37 year or for a lesser time and may raise money for that purpose pursuant to section 3101,  
38 subsection 5; and

39           **Sec. 5. 23 MRSA §3104**, as amended by PL 2023, c. 387, §3, is further amended to  
40 read:

41           **§3104. Penalties and process**

1 Money recovered under sections 3102 and 3103 is for the use of the owners. In any  
2 notice of claim or process for the money's recovery, a description of the owners as owners  
3 of parcels of land benefited by the private road, private way public easement not repaired  
4 or maintained by a municipality or bridge by name, clearly describing each owner's parcel  
5 of land by the book and page number of the owner's deed as recorded in the county's registry  
6 of deeds and the private road, private way public easement or bridge, is sufficient. If the  
7 private road, private way public easement or bridge is shown on a plan recorded in the  
8 county's registry of deeds, the plan's recording reference is sufficient. Such process is not  
9 abated by the death of any owner or by the transfer of any owner's interest. Any money  
10 owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners  
11 of the subject parcels, jointly or severally, and also burdens the parcel and runs with the  
12 land upon the transfer of any owner's interest. After June 30, 2018, any money owed  
13 pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs  
14 with the land upon the transfer of any owner's interest unless a notice of claim is recorded  
15 in the county's registry of deeds prior to the transfer. A notice of claim filed in the registry  
16 of deeds expires 6 years from the date of recording unless extended prior to the expiration  
17 by recording of a notice of extension of the notice of claim. A recorded notice of claim  
18 may be extended for additional 6-year periods until the claim is paid. The commissioner  
19 or board may cause to be recorded in the county's registry of deeds a notice of claim for  
20 money owed pursuant to section 3101, 3102 or 3103 that is more than 90 days delinquent  
21 and may add to the amount owed the recording costs for filing the notice of claim. The  
22 recording of such notice does not constitute slander of title. Before recording such notice  
23 or service of process of a complaint for collection in a civil action, the commissioner or  
24 board shall give the owner against whom such action is to be taken written notice, in the  
25 same manner as written notices of meetings are provided for in section 3101, of the  
26 intended action if the debt is not paid within 20 days of the date of the written notice. This  
27 written notice to cure must be sent at least 30 days before the recording of the notice of  
28 claim or the service of process of the complaint for collection in a civil action.

29 **Sec. 6. 23 MRSA §3105-A**, as enacted by PL 2009, c. 501, §2, is amended to read:  
30 **§3105-A. Use of town equipment**

31 The inhabitants legislative body of any town or village corporation at a legal town or  
32 village corporation meeting may authorize the municipal officers of the town or assessors  
33 of the village corporation to use its highway equipment on private ways public easements  
34 within such town or village corporation to plow, maintain and repair those public easements  
35 to the extent directed by the legislative body and whenever such municipal officers or  
36 assessors consider it advisable in the best interest of the town or village corporation for fire  
37 and police protection.

38 **Sec. 7. 23 MRSA §3106, sub-§1**, as amended by PL 2023, c. 65, §1, is further  
39 amended to read:

40 **1. Protection or restoration of great ponds through repairs to private roads, ways**  
41 **public easements or bridges.** For the purpose of protecting or restoring a great pond, as  
42 defined in Title 38, section 480-B, subsection 5, a municipality may appropriate funds to  
43 repair a private road, way public easement or bridge to prevent storm water runoff pollution  
44 from reaching a great pond if:

1                   A. The private road, ~~way~~ public easement or bridge is within the watershed of the great  
2                   pond;  
3                   B. The great pond:  
4                    (1) Is listed on the Department of Environmental Protection's list of bodies of  
5                    water most at risk pursuant to Title 38, section 420-D, subsection 3;  
6                    (2) Has been listed as impaired in an integrated water quality monitoring and  
7                    assessment report submitted by the Department of Environmental Protection to the  
8                    United States Environmental Protection Agency pursuant to the federal Clean  
9                    Water Act, 33 United States Code, Section 1315(b) at least once since 2002; or  
10                  (3) Is identified as having threats to water quality in a completed watershed survey  
11                  that uses a protocol accepted by the Department of Environmental Protection;  
12                  C. The Department of Environmental Protection or the municipality determines that  
13                  the private road, ~~way~~ public easement or bridge is contributing to the degradation of  
14                  the water quality of the great pond based upon an evaluation of the road, ~~way~~ public  
15                  easement or bridge using a protocol accepted by the department;  
16                  D. The repair complies with best management practices required by the Department  
17                  of Environmental Protection; and  
18                  E. The private road, ~~way~~ public easement or bridge is maintained by a road association  
19                  organized under this subchapter or Title 13-B.

20               **Sec. 8. 23 MRSA §3106, sub-§1-A**, as enacted by PL 2023, c. 65, §1, is amended  
21               to read:

22               **1-A. Protection or restoration of protected natural resources through repairs to**  
23               **certain private roads, ~~ways~~ public easements, bridges or storm water management**  
24               **systems.** For the purpose of protecting or restoring a protected natural resource, a  
25               municipality or a regional community and economic development organization may  
26               appropriate funds to repair a private road, ~~way~~ public easement, bridge or storm water  
27               management system to prevent storm water runoff pollution from reaching a protected  
28               natural resource if:

29               A. The private road, ~~way~~ public easement, bridge or storm water management system  
30               is within the watershed of the protected natural resource or is located within or  
31               immediately adjacent to the protected natural resource;  
32               B. With respect to a protected natural resource that is a great pond only, the great pond  
33               satisfies the criteria listed in subsection 1, paragraph B;  
34               C. The Department of Environmental Protection, the municipality or the regional  
35               community and economic development organization determines that the private road,  
36               ~~way~~ public easement, bridge or storm water management system is contributing to the  
37               degradation of water quality within or immediately adjacent to the protected natural  
38               resource based upon an evaluation of the road, ~~way~~ public easement, bridge or storm  
39               water management system using a protocol accepted by the department;  
40               D. The repair complies with best management practices required by the Department  
41               of Environmental Protection; and

1                   E. The private road, ~~way~~ public easement, bridge or storm water management system  
2                   is located wholly or partially within or immediately adjacent to a military installation  
3                   closed pursuant to the federal Defense Base Realignment and Closure Act of 1990.

4                   **Sec. 9. 29-A MRSA §2322, sub-§9**, as enacted by PL 1999, c. 331, §1, is repealed.

5                   **Sec. 10. 29-A MRSA §2323, sub-§1**, as amended by PL 2009, c. 484, §11, is  
6                   further amended to read:

7                   **1. Use of helmet.** A person under 16 years of age who is an operator or a passenger  
8                   on a bicycle or an operator of roller skis on a public ~~roadway~~ way or a public bikeway shall  
9                   wear a helmet of good fit, positioned properly and fastened securely upon the head by  
10                  helmet straps.

## 11                   **SUMMARY**

12                  This bill is reported out by the Joint Standing Committee on State and Local  
13                  Government pursuant to Public Law 2023, chapter 387, section 4 for the sole purpose of  
14                  having a bill printed that can be referred back to the committee for public hearing and  
15                  subsequent processing in the normal course of committee work. The bill is based on the  
16                  legislation proposed by the Maine Abandoned and Discontinued Roads Commission in its  
17                  report dated January 5, 2024. The bill changes the term "private way" to "public easement"  
18                  and defines "private road" in the laws governing repairs and maintenance of public  
19                  easements and private roads.

3

**STATE AND LOCAL GOVERNMENT**

4

Reproduced and distributed under the direction of the Secretary of the Senate.

5

**STATE OF MAINE**

6

**SENATE**

7

**131ST LEGISLATURE**

8

**SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT " " to S.P. 982, L.D. 2264, "An Act to Further  
10 Clarify the Meaning of "Private Road" and "Public Easement" in Certain Provisions of  
11 Maine Law"

12 Amend the bill by striking out the title and substituting the following:

**'An Act to Clarify the Use of Public Equipment on Public Easements'**

14 Amend the bill by striking out everything after the enacting clause and inserting the  
15 following:

16 **'Sec. 1. 23 MRSA §3036, sub-§5**, as enacted by PL 2021, c. 743, §2, is amended  
17 to read:

18 **5. Meetings.** The commission shall meet at least 3 times, but may meet no more than  
19 6 12 times, each year.

20 **Sec. 2. 23 MRSA §3105-A, first ¶**, as enacted by PL 2009, c. 501, §2, is amended  
21 to read:

22 The inhabitants legislative body of any town or village corporation at a legal town or  
23 village corporation meeting may authorize the municipal officers of the town or assessors  
24 of the village corporation to use its the town's or village corporation's highway equipment  
25 on private ways within such town or village corporation to plow, maintain or repair those  
26 private ways to the extent directed by the legislative body and whenever such municipal  
27 officers or assessors consider it advisable in the best interest of the town or village  
28 corporation for fire and police protection.

29 **Sec. 3. Commission focus.** The Maine Abandoned and Discontinued Roads  
30 Commission, established in the Maine Revised Statutes, Title 5, section 12004-I,  
31 subsection 83-A, shall consider, in addition to matters it is required to consider by statute,  
32 the following and shall include recommendations on these matters in the February 1, 2025  
33 report required under Title 23, section 3036, subsection 11:

34 1. The scope of public use allowed on a public easement over an abandoned or  
35 discontinued road, the need or justification for each type of use, the impact of the public

2 use on abutting property owners and ways to reduce the negative impacts on abutting  
3 property owners;

4 2. Property owner liability, including personal injury, property damage and  
5 environmental damage liability resulting from public use of an abandoned or discontinued  
6 road;

7 3. Options to create a road inventory of abandoned and discontinued roads in the State;  
8 and

9 4. Options to create a right-of-way template for property owners to use when a local  
10 unit of government considers discontinuing the road abutting a property owner's property.'

11 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
12 number to read consecutively.

## 13 **SUMMARY**

14 This amendment replaces the bill and changes the title. It clarifies that a legislative  
15 body of a town or village corporation may authorize the use of the town's or village  
16 corporation's highway equipment to plow, maintain or repair private ways, otherwise  
17 known as public easements. It allows the Maine Abandoned and Discontinued Roads  
18 Commission to meet up to 12 times per year and directs the commission to consider the  
19 scope of property owner liability and public use of public easements, property owner  
20 liability on public easements, the benefits and costs of a road inventory and creating a right-  
of-way template for property owners of land along an abandoned or discontinued road.

## 21 **FISCAL NOTE REQUIRED**

22 **(See attached)**

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FOUR

S.P. 982 - L.D. 2264

**An Act to Clarify the Use of Public Equipment on Public Easements**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 23 MRSA §3036, sub-§5**, as enacted by PL 2021, c. 743, §2, is amended to read:

**5. Meetings.** The commission shall meet at least 3 times, but may meet no more than 6 12 times, each year.

**Sec. 2. 23 MRSA §3105-A, first ¶**, as enacted by PL 2009, c. 501, §2, is amended to read:

The inhabitants legislative body of any town or village corporation at a legal town or village corporation meeting may authorize the municipal officers of the town or assessors of the village corporation to use its the town's or village corporation's highway equipment on private ways within such town or village corporation to plow, maintain or repair those private ways to the extent directed by the legislative body and whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection.

**Sec. 3. Commission focus.** The Maine Abandoned and Discontinued Roads Commission, established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 83-A, shall consider, in addition to matters it is required to consider by statute, the following and shall include recommendations on these matters in the February 1, 2025 report required under Title 23, section 3036, subsection 11:

1. The scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners;

2. Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;

3. Options to create a road inventory of abandoned and discontinued roads in the State; and

4. Options to create a right-of-way template for property owners to use when a local unit of government considers discontinuing the road abutting a property owner's property.

# APPENDIX

D

**Maine Abandoned and Discontinued Roads  
Commission Membership**

<b>Name</b>	<b>Representing</b>
1. Corporal Kris McCabe	Member who is an employee of Maine Department of Inland Fisheries & Wildlife (MDIF&W).
2. Joe Higgins <sup>1</sup>	Member who is an employee of Maine Department of Agriculture, Conservation and Forestry (DCAF).
3. Peter Coughlan	Member who is an employee of Maine Department of Transportation(MDOT).
4. Vivian Mikhail, Deputy AG	Member who is an employee of the Office of the Attorney General.
5. Rebecca Graham, Maine Municipalities Association	Member of a statewide association representing municipalities.
6. Tom Doak <sup>2</sup>	Member of a statewide association representing woodland property owners.
7. James Katsiaficas, Esq., Perkins Thompson	Member of a statewide association of attorneys who had expertise in real estate law.
8. Steve Young, President Upper St. John River Organization	Member of a land trust organization.
9. Ryan Pelletier, County Admin. Maine County Commissioners Association	Member of statewide association representing county governments.
10. John Monk, VP Maine Snowmobile Association	Member of a statewide association representing all-terrain vehicle users or snowmobile users.
11. Roberta Manter, Maine Roadways	One member of a statewide association representing residents of the state living on or owning property that abuts an abandoned or discontinued road or that is accessible only by traveling over an abandoned or discontinued road; or if no such association exists, a resident of the State living on the property that abuts an abandoned or discontinued road or that is accessible only by traveling over an abandoned or discontinued road.

<sup>1</sup> Joe Higgins was appointed in August of 2024 when Brian Bronson Retired.

<sup>2</sup> Tom Doak was appointed in December of 2024 when Karla Black resigned her seat.

12. Hon. Catherine Nadeau

One member of the general public who is a resident of the state not directly affected by matters related to abandoned or discontinued roads.

# APPENDIX

## E

**“AN ACT to Clarify Municipal Authority to Protect Public Easements”**

**Title 29-A M.R.S. §2395 (4), as last amended by PL 2017, c. 25, §1, is further amended as follows:**

**§2395. Ways requiring special protection**

**4. Designation by counties and municipalities.** County commissioners and municipal officers may designate public ways and public easements, as defined in Title 23, sections 3021 and 3022, and regardless of whether the municipality maintains or repairs the public easement, other than those in subsection 3 and impose restrictions within their respective jurisdictions similar to those made by the Department of Transportation under subsection 3. Any vehicle delivering home heating fuel or organic animal bedding material and operating in accordance with a permit issued by the Department of Transportation pursuant to this section may travel over any county or town way or public easement without a specific municipal or county permit. A municipality may impose additional restrictions for a vehicle delivering home heating fuel or organic animal bedding material to operate on public ways and public easements within that municipality but may not require a permit to operate according to those restrictions.

Summary

This new law clarifies the existing municipal authority to temporarily limit or close public ways to travel to protect those public ways by specifically stating the authority to temporarily limit or close use of public easements, regardless of who (if any one) maintains the public easement. Whether or not the public easement that remains after town way statutory abandonment or discontinuance or that is laid out for public access is repaired and maintained by the municipality or by abutting landowners, occupants or tenants, or by a road association, the public easement is open to public access. However, public use of the public easement at certain times of the year by heavy or large motor vehicles or all-terrain vehicles can damage those public easements and harm access by the public and by abutting landowners. Therefore, this amendment authorizes municipalities to prohibit or limit use of public easements temporarily in the same manner as it may for public ways in order to protect public easements from damage.

**“AN ACT to Limit Liability of Landowners whose Property Abuts Public Easements”**

**Title 14, Section 159-E is enacted to read as follows:**

**§159-E. Limited liability for repairs and maintenance of a public easement**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- a. "Public easement" is defined in title 23, sections 3021 and 3022.
- b. "Repairs and Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing reclaimed asphalt or grinding existing pavement for reuse; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.
2. **Limited liability.** An owner, lessee, or occupant of property abutting a public easement or portion thereof, including but not limited to road associations formed under Title 23, Sections 3101 – 3104 and their members, or an agent of the same, is not liable for personal injury, property damage or death caused a) by that owner, lessee, occupant, or agent's conduct of repairs and maintenance on that public easement in order for that that owner, lessee, or occupant to access their property over the public easement from a public way, or b) by public access use of that public easement .
3. **Limitations.** This section does not limit any liability that may otherwise exist for a willful or malicious creation of, or failure to guard or warn against, a dangerous condition on the public easement reasonably known to the owner, lessee, or occupant of property abutting a public easement.
4. **No duty created.** Nothing in this section creates a duty of care or ground of liability for injury to a person or property to keep the public easement safe for public access use to persons entering the public easement for that purpose.
5. **Landowner liability for environmental damage by others.**

- a. As provided by title 12, section 685-C, subsection 11 and title 38, section 347-A subsection 7, an owner, lessee, or occupant of property abutting a public easement, including but not limited to road associations formed under Title 23, Sections 3101 – 3104 and their members, or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement in accordance with this section is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the Land Use Planning Commission and by the Maine Department of Environmental Protection and the Board of Environmental Protection, respectively, if that person provides substantial credible

evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, or occupant of property of such property.

- b. Notwithstanding title 12, section 685-C, subsection 11 and title 38, section 347-A subsection 7, an owner, lessee, or occupant of property abutting a public easement, including but not limited to road associations formed under Title 23, Sections 3101 – 3104 and their members, . or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement in accordance with this section who provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, or occupant of such property is not responsible for remediating or abating the environmental damage or for the costs of such remediation or abatement.

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorney's fees, to an owner, lessee, or occupant of property abutting a public easement, including but not limited to road associations formed under Title 23, Sections 3101 – 3104 and their members, or an agent of the same, performing repairs and maintenance activities on that public easement or suffering the public access use of that public easement who is found not to be liable for injury to a person or property pursuant to this section.

#### Summary

This bill is intended to limit landowner liability for repair and maintenance of a public easement.

The holder of an easement generally has the right to maintain and improve that easement so that it can be used for its intended purpose. However, while there are no reported cases in Maine on the issue, a landowner who maintains or repairs an abutting public easement used for that landowner's access could be liable for personal injury or property damage suffered by members of the public using the public easement who are injured by negligent maintenance and repair of the public easement by that landowner or that landowner's contractor.

For this reason, this bill offers a broader statement of limited liability for those abutting a public easement to protect them from claims by persons using a public easement for public access. This legislation protects individual abutters (whether owners, lessees or occupants of property abutting a public easement), road associations formed under Title 23, Sections 3101 – 3104 and their members whose properties abut a public easement, and their agents, who maintain and repair that public easement.

**“AN ACT to Create a Minimum Maintenance Option for Public Easements”**

**Title 23, Section 3105-A, as last amended by PL 2023, c. 642, is further amended by the addition of a second paragraph to read as follows:**

Further, the municipal officers and the officers of a village corporation on their own initiative, or the owner(s), tenants, or occupants of property used by them as their primary year-round residence as evidenced by their property having a current homestead exemption under Title 36, Chapter 105, Subchapter 4-B and located along one or more public easements, by petition under Title 30-A, Section 2521, may request the municipal legislative body to vote to provide a minimum level of year-round maintenance and repair for a public easement which serves as access to one or more year-round residences, up to the driveway of the last year-round residence, which minimum level of year-round maintenance shall be less than the standard for maintenance of town ways under Title 23, Section 3651, and may include annual grading, repair, maintenance, plowing, and replacement of drains and culverts as required to keep the road reasonably passable for residential access as determined by the municipality; such year-round maintenance shall continue until such time as the municipal legislative body votes to discontinue such year-round maintenance. At each intersection of such public easement with a public way or private road, the municipality or county shall install and maintain a sign reasonably visible to drivers at the entrance to the public easement, reading “Minimum Maintenance Road – Travel at Your Own Risk.” Such signs shall conform to the requirements in the latest edition of the national Manual on Uniform Traffic Control Devices (MUTCD). Specifically, these warning signs shall be a minimum 24” by 24” diamond shape with black letters being at least three inches high on a yellow retroreflective background, replicating a standard W-8 warning sign.

A municipality providing the minimum level of maintenance on a public easement hereunder shall be immune from liability for such maintenance under the Maine Tort Claims Act and the Highway Defect Act.

**Summary**

This bill offers municipalities and village corporations, through vote by their legislative bodies, the option to determine that they will be responsible to maintain and repair public easements or portions of them to a minimum level of maintenance indefinitely rather than voting each year whether to maintain and repair those public easements and to what level. Such roads will be known and signed as “Minimum Maintenance Roads,” and the municipality or village corporation shall maintain such roads to a lesser standard than applies to town ways under Title 23, Section 3651 (“Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles”), which may include annual grading, repair, maintenance, plowing, and replacement of drains and culverts as required to keep the road reasonably passable for residential access as determined by the municipality. A town or city legislative body vote to apply the minimum maintenance standard

to a public easement would not overturn previous discontinuance determinations or constitute acceptance as a town way as defined by 23 M.R.S. §3025.

# APPENDIX

## F

## ABANDONED AND DISCONTINUED MEETING MINUTES

**May 13, 2024**

**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, Brian Bronson, Peter Coughlan, , Catherine Nadeau, Karla Black, Ryan Pelletier, and Rebecca Graham.

**Absent:** John Monk, Kris MacCabe, Vivian Mikhail, Steven Young.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

The Commission unanimously accepted the minutes of the January 3, 2024, meeting, based on a roll call vote.

Jim opened the meeting discussing:

- 1) The Commission's progress.
- 2) The process the Commission went through to make recommendations in the last year.
- 3) What the Commission's recommendations were and what was ultimately put into PL 2023, Chapter 642.
- 4) The new tasks set before the Commission from the legislature:

The bill allows us to meet up to 12 times a years but at least three times a year and gave the following directions:

- 1) The scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners.
- 2) Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road.
- 3) Options to create a road inventory of abandoned and discontinued roads in the State; and
- 4) Options to create a right-of-way template for property owners to use when a local unit of government considers discontinuing the road abutting a property owner's property.

Jim raised the issue after the fact the Commission did not have full support for the proposed bill that there is a need for the Commission to be able to build a consensus and to support that consensus before the Legislature.

Roberta responded that it was great that the Commission got Chapter 642 through reinforcing that towns have the right to maintain, or plow abandoned or discontinued roads that are Public Easements. She further stated the Commission is well balanced and that the Commission still needs to continue working on our previous charges also.

Brian stated that some Commissioners need more time to review with their Departments as there can be confusion when going back and forth between the Commission and Department.

Ryan felt that the SLG committee went into the weeds and got caught in the weeds. Ryan was concerned that it might not be possible to get the SLG Committee from the weeds. He felt the SLG committee did not understand what we were trying to accomplish.

Peter asked whether the Commission should have had credibility for all the hard work that the Commission did in figuring out what made sense, what is typical?

Rebecca responded that Commissioners caused confusion testifying against the recommendations the Commission made. She further stated that the Commission didn't do a good job explaining that most of the recommendations are law already and that our recommendations would help clarify the law not change it.

Karla states she is committed to working with the Commission and wants the Commission to succeed. She sees potential in the Commission reaching consensus. She was heartened that the Commission was so close on Task 2 Landowner Liability.

Roberta stated that it will take time and that we should get the court to weigh in on the issues. Roberta feels that now that Chapter 642 is law, towns will know what they can do, and it will hopefully improve help for those on Public Easements.

Catherine stated that the legislative Committee takes the Commission seriously and to expect small victories. That the SLG Committee is supposed to look at both sides. Catherine stated based on her experience that it is a slow process, and we need to keep going forward. The knowledge that is shared with the Committee will be passed on to new members.

Roberta stated that she is committed to the Commission and that she voted against certain things because of the group she represents. She agrees that it will take time to get things done.

Jim stated that he doesn't have an issue with people disagreeing but when presenting the Commissions' findings/recommendations to the legislative committee, there shouldn't be people arguing the finer points in front of the committee. The Commission was created so that we would figure it out for the SLG Committee.

Jim, then, proposed that the Commission not put forth anything that the Commissioners are not unanimously in favor of. After a brief discussion, there was unanimous agreement with this proposal among the Commissioners.

Brian suggested giving time to present recommendations to those who need approval.

After a brief discussion, the Commissioners came to the agreement that all draft and legislative language be done by November 1<sup>st</sup>.

Peter then asked what happened to the proposal the Commission put forth.

Jim stated we tried to get private way changed in only one section and that got removed from the bill.

Jim shifted the conversation and noted that the Commission still has the old terms to continue working on and now the new Chapter 642.

Peter asked how the Commission would move forward.

Brian asked Peter if the road inventory he compiled would work for the options to create a road inventory of abandoned and discontinued roads in the State.

There was a discussion by Peter, Brian, Jim, Rebecca, and Roberta about the information available on the legal status of roads in Maine, how to gather the information and what type of recommendation to make to the SLG Committee.

After a brainstorming session there was a consensus of the Commissioners to make three suggestions to SLG Committee on ideas on making roads status available to public: 1) either the State complies and creates a database, 2) the county does the database at the Registry of deeds or 3) each town creates and maintains their database of what is the legal status of the roads in their jurisdiction.

Peter asked about how to tackle the other tasks assigned to the group.

Jim then went through the new tasks 1 and 2. He felt task 4 Creating a template would not be an issue.

Jim agreed with Karla that on task 2 (Landowner Liability) the Commission had put a lot of time and is close to a resolution.

Roberta proposed her ideas for the new task 2 on Liability for private landowners on Public Easements.

Rebecca raised the point that there are statutory provisions to fix environmental issues already in the law to deal with liability for private landowners.

Jim, Rebecca, and Roberta then discussed the issues of liability further and how this is an important issue, as there were constitutional questions raised by Roberta and Environmental liability issues raised by Karla.

Roberta stated that the Maine Supreme court should weigh in and they should be asked to do so for clarity sake.

Jim stated that the Supreme Court is not going to decide on this one way or another. That is reserved for solemn occasions or active cases.

Jim raised the idea to have subcommittees for task 1 (Public Use of Public Easements) and task 2 (Landowners Liability on Public Easements).

Commissioners on Subcommittee 1: Roberta, Ryan, Jim, Karla, Catherine

Jim will reach out to Brian and John and see if one of them can join as they are familiar with the trail systems.

Commissioners on Subcommittee 2: Roberta, Karla, Jim, Catherine

Jim stated that at the next Commission meeting the Commission will prepare a plan to tackle the previous tasks and discuss the next steps.

Roberta to send out information on the history of roadways to Heather for Heather to forward the links to the Commissioners.

Ryan asked if we should look at the road primer from MMA and have it shared.

Rebecca stated she can share the road inventory template so the commission can see but nothing else.

Heather asked if it made sense to now have meetings scheduled monthly since we have been allotted 12 meetings of the year. Heather to email and see what part of the month, days of the week and morning or afternoons work.

Heather to set up doodle poll on dates the first few weeks in June and end of June for Commission meeting.

Commission meeting ended at approximately 2:20 p.m.

## ABANDONED AND DISCONTINUED MEETING MINUTES

**June 18, 2024**

**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, Brian Bronson, Peter Coughlan, Steven Young, Karla Black, John Monk, Kris MacCabe and Rebecca Graham.

**Absent:** Vivian Mikhail, Ryan Pelletier, and Catherine Nadeau.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

The Commission unanimously accepted the minutes of the January 3, 2024, meeting, based on a roll call vote.

Jim opened the meeting by asking who would like to present the findings of the Subcommittees.

Roberta then presented the findings from the Public Use subcommittee:

- 1) That the Public does not carefully use or respect the Public Easements and cause damage.
- 2) The damage causes ruts in the roads that leads to washed-out roads.
- 3) The landowners who live on Public Easements do not have unlimited money to spend on fixing the damage which affect their access to their homes on a public easement.
- 4) Damage caused by ATVs, hunters, and trucks can be severe and can ruin a road.
- 5) If the purpose of a Public Easement is to provide access to the public a private citizen who lives on the road should not have to shoulder the responsibility entirely.

Steve and Roberta discussed that abandoned and discontinued roads are not built to any road standard.

Steve stated that if these roads were properly fixed it wouldn't be an issue but since they aren't the roads should be closed at certain times.

Jim agreed and stated that municipalities have standards for roads that they maintain but for abandoned and discontinued roads, the municipality no longer has the obligation to take care of them because they weren't needed. Jim thinks it would be hard to get municipalities to bring those roads up to standard just because people now are buying property and want to live on them.

Kris stated how forestry has the power to tell paper companies and logging to fix improper roads and to correct the issue. There are standards for private roads in existence that aren't as stringent as municipal roads.

Brian spoke about how the law does not allow ATVs on the trails at certain times of the year. Brian feels roads and trails should be closed to pickups and jeeps during certain times of the year also. Brian stated that ATV maintenance has become less expensive because of closures.

Steve liked Roberta's idea from the last meeting, that there should be a tax on heavy duty trucks, especially jacked up trucks.

Brian raised that New Hampshire has a sticker for those who use their vehicles off road. The payment goes into enforcement and damage.

Jim asked if we knew how New Hampshire is breaking down the costs and thought even with a sticker program the funds might not help abandoned and discontinued roads.

Brian stated a sticker program would give a list of those vehicles that are off roading which would help law enforcement and give a chance to educate those who are off roading on damage prevention.

Brian shared based on his experience that dirt roads have more damage from hunters in their trucks and that he found that when they closed the ATV trails it prevented 95% of the damage.

Kris thinks that the people who are causing the damage aren't going to be the ones who buy a permit to go off-roading.

Kris is also concerned about taxes on trucks and where the line would be as there are tricked out trucks, but they are only driving in Portland.

Roberta said it would have to be specific regulations.

There was a discussion of ideas proposed by Steve, Jim, Brian and Kris. The ideas discussed included a tax, written permission to be on the land, excise tax or super excise tax for big trucks, banning trucks on certain roads during mud season, a law where roads are closed to public traffic during certain times of the year, and a \$500 fine for trucks who are on closed roads.

Kris was asked why there are not seasonal gates on abandoned and discontinued roads?

Brian added that private roads are closing to recreational activity because of reckless behavior and that mud season is year to year decision on when to open and close.

Jim stated in response to Kris's question that Towns or municipal officials can adopt a regulations or ordinance and post the roads for seasonal/temporary closings. Since the abandoned and discontinued roads are public easements a municipality should be able to so, though the law simply says "public ways." However, winter closing is not the same thing as posting the roads.

Steve stated that Abandoned and Discontinued roads should be closed roads.

Rebecca asserted that towns can close for Public easements, but towns get a lot of push back for these closings.

Jim stated we are talking about protecting the Public Easement road, not closing it entirely.

Peter talked about the current laws on the books.

There was a brief discussion on whether the current laws apply to Abandoned and Discontinued roads.

Roberta reiterated that people who live on Abandoned and Discontinued roads not only pay to fix and maintain the road so that they may access their property but also are paying and fixing the road for the Public. Law enforcement is called to help when there is damage done to abandoned and discontinued roads, but the police won't and can't do anything.

Kris said on Public Easements such as Abandoned and Discontinued roads vehicles are allowed to drive on the easements.

John thinks that it would make sense to keep people who do not live on the roads out during certain times of the year to protect the roads.

Jim went over the chart that was created by the Public Use Subcommittee.

Jim, Roberta, Kris, Brian, Peter, Rebecca, John and Steve had a discussion on roads, conservation easements, seasonal closing and weight limits restrictions, exception for residents or landowners, when to post and how postings are done and who would post.

Peter proposed to change the language in Section 159-A.

Jim proposed adding Public Easement into the temporary closing statute.

Discussion on whether towns would post for public easement.

Brian felt that it would help with enforcement if there was a law to keep people out unless they live on the road. He described the postings that the state posts.

Jim explained the rights and responsibilities of the town and people who live on Abandoned and Discontinued roads and the public right to use them.

John asked are we trying to make a law to help those landowners on these roads or trying to keep people out?

Jim replied that because it is a Public Easement the public has a right to use the road.

Brian asked if towns could close public easements.

Jim said municipalities go through this each year. Towns have the right to regulate the roads to protect the roads. There are exceptions such as fuel trucks for residents etc.

There was a discussion on whether towns have the authority to do this already by 30 A 3009 by Peter, Jim, and Brian.

Jim will update the chart and focus on the impacts and how to reduce impacts on the abandoned and discontinued roads.

Rebecca, Brian and Jim talked about closing the road for mud season and an exception for property owners.

Brian, Roberta, Steve, Kris, and Karla discussed who the closing would impact, who would support a closure, who should be allowed on the road and who can be kept out.

Roberta presented her next slide show which went over the damage and issues of public safety on Abandoned and Discontinued roads for recreational use. She explained how this damage not only prevented landowners from reaching their property but also emergency vehicles.

Discussion by Brian and Roberta on discontinued roads and building bridges. Brian advocates that if the public and state, county and local get together then things can be built. There needs to be a process for mediation.

Brief Ten-minute break

Jim moved on to the findings from subcommittee on Limited Liability.

Jim described that those landowners who live on abandoned and discontinued roads are liable for any damage that hurts those traveling on that road. Jim referenced the recreation exemption in Maine State law. The idea would be to use that example.

Jim asked the Commission to look at the draft Limited Liability proposal, and walked the Commission through the proposed language.

Kris asked if it included the language "agent of"?

There was a discussion on contractors or agents and what that means.

Jim said the contractor or agent should have insurance.

Jim explained the idea is that if someone is going to charge to do work on the road then they would not be covered. For those who are using it to maintain only their road, reimbursement of their cost of repairs, materials, equipment would be okay -- it would need to be no profit.

There was a discussion on the language and how to make it clearer.

Karla stated that the Woodlot owners have concerns that the language proposed is too broad. Karla thinks it would be better to look at the limited liability law that already exists and have it include Abandoned and Discontinued Roads.

Jim said the problem is that the limited liability statue in effect is for recreational use of private property and the landowner is inviting them on to the land. Abandoned and Discontinued Roads people have the right to use it without an invitation and the risks are different.

Discussion by Brian, Jim, Karla and Rebecca on the current liability law and liability.

Rebecca went through the difference between town and landowner liability.

Roberta raised the issue of signs for Class E crime signs on those roads which state if damage is done they are responsible for the damage.

Discussion Brian, Roberta and Karla on how to make sure the landowner is not liable for environmental damage but then who would fix it and pay for the damage.

Karla proposed for acts of God the landowner should be responsible and if a person who causes damage, the town.

Rebecca said that MMA would not support it.

Brian stated that maybe the change needs to just state the landowner is not liable and that is where it needs to end. No other determination on who pays if they cannot find the person responsible.

Kris asked if anyone was aware of any landowner being sued for environmental damage for someone else doing the damage?

Brian stated he has only seen issues on how a road or trail is built but they always go after the clubs or contractor, not the landowner.

Jim said we are trying to protect landowners who are fixing the Public Easement road, not from claims by people walking the road, and are not trying to protect landowners from those using the road as recreation.

Brian asked that if we are just trying to protect landowners, will it impact the town with what is drafted now?

Rebecca answered no. This is not closing the road, there is another standard for closed roads where municipalities are more liable but that is not the case here.

Jim reiterated when you close a road for winter maintenance that road is a town road. The town is responsible for the road and damage, and they do not want people messing around with the road. The town has 24 hours to fix issues on a town way, or it's liable, and so the town doesn't want to be liable for a private person's work on the town way.

Jim brought the discussion back to Abandoned and Discontinued Roads.

Brian advocates for not touching 159 A as the AG office, his group and Kris would say no.

Jim stated he will work on the 159-A draft and the current draft and see what happens and what everyone likes.

Jim proposed a Commission meeting in August and subcommittees meetings in three weeks.

Heather will send out a doodle poll on dates for all the meetings.

Jim said we will provide some options in writing out the proposed legislation, but everyone seems to be on board with limiting access to those who do not own property on the Abandoned and Discontinued Roads.

Discussion from Roberta, Kris, Jim and Brian on some of the items in the chart.

Everyone will look through the chart and send changes or recommendations and concerns to Jim.

The meeting ended at approximately 3:53 p.m.

## ABANDONED AND DISCONTINUED MEETING MINUTES

**August 8, 2024**

**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, Peter Coughlan, Steven Young, Karla Black, John Monk, Kris MacCabe, Rebecca Graham, Vivian Mikhail, and Ryan Pelletier.

**Absent:** Catherine Nadeau and Joe Higgins.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

The Commission unanimously accepted the minutes of the July 18, 2024 meeting, based on a roll call vote.

Jim opened the meeting by asking the Commission to allow Aaron Talgo to give his public comment before the Commission reviewed the subcommittee reports.

Motion so made by John Monk, seconded by Roberta Manter. Motion unanimously carried.

Mr. Aaron Talgo informed the Commission of the situation he is facing on his abandoned road due to logging activities. Jim thanked him for his testimony. (Please see attached public comment).

Jim then turned the Commissioners' attention to the items on the agenda.

Jim started with the work history of the Public Use Subcommittee and the thinking behind the recommendations on proposed legislation. As such, the subcommittee's recommendation is to allow municipalities to be allowed to post for Public Easements.

Jim asked for subcommittee members' input.

Roberta stated that the pictures shown by Mr. Talgo prove that mud season can happen anytime, and the posting should be flexible.

Jim responded that under the draft legislation any posting decision would be left up to the town.

Rebecca and Jim discussed limitation, exceptions, and solutions a municipality could use under the statute.

Jim stated the Commission would work with MMA and Maine Local Road Center (MDOT) to come up with sample policies and guidance for municipalities to adopt.

Peter stated that his impression is that this is a good thing and that by inserting Public Easement into the statute it wouldn't cause the MDOT to have to reprint posting signs. However, does that mean municipalities would enforce the law on these roads? Overall, he thinks there is a lot of positives to this change.

Jim replied, it would be a first step, but we need to educate the road commissioners, police and town on their options and authority.

Peter said MMA will need to update for the towns. Municipalities can tweak the regulations however they want including limiting the road to only certain vehicles.

Roberta gave an example of her road and issues of enforcement that she has personally faced.

Jim replied they aren't really any good ways to police these types of roads.

There was a brief discussion among Steve, Jim, and Kris of ideas on how to catch those who are damaging public easements, what the process and pitfalls for a landowner to recover in the courts and current statute for the civil process.

Roberta stated posting the Class E Crimes signs on Public Easements might also help.

Jim responded that you could talk to town officials and ask them if they will put a sign.

Peter asked if the meetings led to this recommendation from the subcommittee.

Steven said he was impressed with the work.

Steven made a motion for the Commission to vote to approve this proposed legislation and send it to State and Local Government Committee , Peter seconded.

Rebecca asked Karla if loggers would have an issue/conflict because it always seems to be the loggers who have issues with postings.

Karla said there is potential but reputable loggers would not be logging in those conditions and therefore should have no objection.

Brief discussion from Peter Rebecca, Steve and Karla that municipalities already had the authority to post, but if it is restated people might have an issue.

Rebecca said the most important thing is that the Commissioners are all together.

Roll call vote for motion to forward proposed legislation changes to section 2395 ( specifying that municipalities can post for Public Easements). Carried unanimously.

Jim then turned to the Limited Liability Subcommittee findings. He explained the issues the Subcommittee looked at, current laws and the proposed legislation to add in section 159 E for limited liability for landowners on Public Easements.

Jim first reviewed the definitions of the type of road it would apply to and the definition of what would constitute repairs and maintenance.

Karla thought that public meeting should be removed from the section.

Roberta thought paving should be removed from the section.

Jim suggested editing the section to say “repairs and maintenance includes but is not limited to snow plowing, snow removal, sanding, ice control, grading, adding gravel and surface materials, installing reclaimed asphalt or grinding existing pavement for reuse, installing, cleaning and replacing culverts”.

Roberta stated sometimes though when you are too specific things are missed. The guidebook for Maine legislation said an overall definition is better.

Jim suggested then using “included but is not limited to”, that way there are no limits and if there are any obvious ones, let’s include them.

Jim went more in depth about who and what actions/nonactions the limited liability would cover.

Roberta and Steven raised the issue that liability should include bad weather and things beyond a reasonable person’s control such as huge boulders in the road.

Steven and Roberta discussed how abandoned and discontinued roads are not built to any road standard.

Jim then summarized how the limited liability for landowners draft addressed environmental damage caused by others.

- 1) The Landowner would not be liable no matter what.
- 2) If a person who causes harm to a public easement is found guilty of causing damage the court “shall” award damages to the landowner instead of “may”.

After reviewing the proposed legislation, it was decided that Jim will redraft the legislation with some of the changes suggested and share with the Commissioners before the next meeting.

Jim then asked the Commissioners what else would the commission like to tackle.

Roberta suggested that the Commission explore minimum maintenance roads because more people are buying property on the abandoned and discontinued roads with public easements. Landowners will fix the road, and the Public will use and abuse the road. In her experience, Towns will not want to spend money on Public Easements to bring them up to code. She reiterated that it was not fair that a private landowner shoulder the burden of repairing the road. Furthermore, towns benefit by being able to tax the landowner more money if the property is being developed as a residence, yet the landowner may see no benefit of paying the higher taxes that the town will be able to use for its own purpose. However, a lesser standard of road would allow towns to help those landowners who choose to develop the land, and everyone would benefit. It is not fair that a road can get so run down because it is a public easement that it becomes dangerous and the landowner must fix it.

Jim asked would the change allow towns to decide and create a new classification of road?

Ryan asked, are you suggesting the town would have some responsibility to fix or maintain the road? Ryan is in favor of that idea.

Rebecca and Jim discussed the current process to accept a road , how often and expense.

Rebecca pointed out that if, however, people know the status of the road and they are willing to buy the property, it is on them. In addition, Town/Municipalities already have the authority to fix public easement if they so choose.

Roberta wants to see a poll from towns about how many easements they have, and how many they maintain, to what extent ,and how they decide if they will maintain, and which town would reaccept a road and what are the requirements for that.

Jim stated that New York has tried. The argument to create minimum maintenance roads is when a municipality retains a public easement by discontinuing a road to save money maybe it should be made to do some maintenance. In addition, a public easement is something that benefits everybody because otherwise the landowners and Public wouldn't have any access. However, the idea of a minimum maintenance road would create an opportunity for a level of Maintenance greater than nothing without getting to the requirements of safety, paving and subbase.

Jim asked for a motion to send to the Public Use subcommittee.

Rebecca made a motion to send to the public use subcommittee, but asked the subcommittee to look at NY and see how they are being funded.

Roberta, Rebecca and Jim discussed using tax money, whether it would be fair, where the revenue is going to come from and issues of what types of relief municipalities should give and disclosure of the types of roads.

Jim expressed his understanding that the disclosure law is not working effectively and that maybe the language needs to change. Does the Commission want to work on that?.

Roberta said that it is partially working because now she gets calls before the land is bought. She thinks there is a huge improvement. However, people don't understand what is a public easement and their responsibility. She discussed the history and whys of Title 23 Section 3121 was passed. However, the law is being applied incorrectly to abandoned and discontinued roads. Roberta thought we should get some insight from Title insurance companies.

Jim said this is beyond our charter.

Roberta stated though it is being applied to abandoned and discontinued roads.

Jim asked if the commission wants to work on the disclosure law.

Peter, Jim, John, Roberta, and Ryan had a brief discussion. The commission decided to send a letter to the Maine Real Estate Association.

Jim and Heather will work on a draft for the next meeting.

Peter raised concerns about minimum maintenance and what it means.

Jim stated Group 1 will look at minimum maintenance.

Jim asked if we should look at the confusing terms in the law.

Peter stated that the terms are important and clearing those up would greatly help.

Roberta brought her concerns on definitions.

Peter, Jim, Roberta, Karla, Rebecca will be on the terms subcommittee.

Heather to send out doodle polls for the next commission meeting for the end of September/beginning of October and for the middle of September for sub commission meetings.

Motion to adjourn made by Peter and seconded by Roberta. Unanimous.

The meeting ended at approximately 2:45 p.m.

## ABANDONED AND DISCONTINUED ROADS COMMISSION MEETING MINUTES

September 23, 2024  
HYBRID MEETING

**In attendance:** Jim Katsiaficas, John Monk, Roberta Manter, Catherine Nadeau, Karla Black, Peter Coughlan, Kris McCabe, and Steven Young.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

The Commission unanimously accepted the minutes of the August 8, 2024, meeting, based on a roll call vote.

Jim opened the meeting by discussing the letter sent to the MEREDA on how to use the MAPVIEWER tool to see MDOT listing of Public ways.

Jim raised the issue of whether the current Real Estate forms disclosure statement should be amended to have it comply with MDOT regulations.

Roberta, Jim and Peter discussed the information on the current form and what if any changes should be made to the current form. Commission members decided to examine this issue at the next meeting.

Jim asked for a motion to amend the agenda to be able to review group 2 limited liability draft legislation.

Roberta made the motion; Steve seconded motion; motion carried unanimously.

Jim went through the history of work the commission has done on limited liability and proposed legislation. Jim explained that the best way forward was to continue using the Section 159, but make a separate section under 159, so 159 E. Jim explained that in the draft legislation he has removed the language around paving, and that this section will make a landowner on an abandoned and discontinued road and public easement not liable for the public being hurt or environmental damage. In addition, the municipality will be able to post on the public easements to protect the roads. It is hoped that it will lessen the burden on landowners and prevent them being held responsible for someone else damaging a road that they maintain.

There was a brief discussion with Kris about Title 17. Ultimately it was decided that the landowner would not be protected under this section, but the perpetrator could be held liable under the current law.

Karla asked if the wording “not repaired and maintained by municipality” could be removed.

Jim removed that language.

Peter asked if a town is maintaining a public easement does the defect law apply?

Jim replied no, because that says Town Way, which wouldn't apply to the town's maintenance of a public easement, so the town doesn't need any kind of protection. This applies to where the landowner is an abutter in possession of the property and is the one fixing the road.

There was a brief discussion between Roberta, Jim and Peter about how it would apply to towns with abandoned and discontinued roads that have become public easements and either provide some maintenance or seasonal maintenance

Jim suggested that in limitation section 3A and B of 159 E add in the language "does not apply where a municipality or county provides year maintenance and repair for a public easement," thereby allowing the statute to apply in these situations.

Jim asked the commission if there was a motion to accept this language and present it to the legislature. Roberta so moved and Kathy seconded. The roll call vote was unanimous.

Jim moved on to Group 3 Subcommittees' work on minimum maintenance roads.

Jim requested Roberta give an overview of what the subcommittee has been researching.

Roberta discussed the history of public roads and a brief description of public road standards. She explained that the subcommittee looked at other state statutes, but nothing fit the purpose of a lower standard of road.

Jim then asked whether the commission wants to create another category of road. Jim thought for one or more people living on a road, a town could have the option of a minimum maintenance Road or remote standard of road. The town's Legislative body would look at this and decide if it would be an option for a particular former abandoned and discontinued road that is now a Public Easement.

Roberta brought up that on this type of road a Municipality should be required to post about the road and that it is a minimum maintenance, and the public enters at own risk.

Steve raised the issue of people moving into or unto Public Easements in the summer, but they aren't plowed in the winter, wouldn't that burden the towns by requiring them to plow?

Jim responded that the public will always have the right to go down the roads, but they doesn't mean that the town's going to maintain it. However, under this category if the town is going to issue building permits on those roads, people can ask the town to maintain it to certain levels and have a reasonable expectation that until there is a town meeting that reverses their decision, then maintenance stays in effect. It would be an option, so it's not a mandate on the towns. It will be up to the town if they want to provide maintenance and at what level.

It was decided that Jim will look at remote roads in other jurisdictions to see what the language is around these types of roads.

Jim transitioned the discussion to Term Group Three. He discussed what the terms group has worked on in the past year and the current solutions they are researching to clean up language for Public/Private Way/Public Easement. He hopes by the next full Commission meeting to have language for the Commission to review.

Jim then laid out the timetable and set goals for this commission to put together a report and recommend draft legislation.

Jim will also ask the Legislature for funding as we are not a funded commission at this time. We submitted a budget with the Attorney Generals' office but were turned down by Department of Administrative and Financial Services. Jim stated that at the very least those who are on the Commission should be reimbursed for time and mileage.

Meeting adjourned at 1:45 pm by unanimous agreement.

## ABANDONED AND DISCONTINUED ROADS COMMISSION MEETING MINUTES

**October 25, 2024**

### HYBRID MEETING

**In Attendance:** Jim Katsiaficas, John Monk, Roberta Manter, Karla Black, Peter Coughlan, Vivian Mikhail, Steven Young.

The meeting was called to order by Jim Katsiaficas at approximately 10:05 am.

The commission after a correction pointed out by Peter Coughlan, unanimously accepted the amended minutes of September 23, 2024, meeting, based on a roll call vote.

Jim opened the meeting by asking if there were any updates.

Heather mentioned that she had received five calls this month from interested parties who have issues living on abandoned or discontinued roads.

Karla notified the Commission that this will be her last meeting. She has resigned her position with Maine Woodland Owners and is moving on to another position. She is unsure who will be appointed in her place to the Commission but will make sure Heather is cc'd.

The Commission thanks Karla Black for her valuable input and time that she invested in the Commission. Karla provided thoughtful suggestions on solutions and issues that the Commission was trying to solve. She will be missed.

Jim reminded the Commission that the report to the legislature is due February 1, 2025, and that he is currently working on a draft. He hopes to have a draft ready for review by the next meeting.

Jim then asked if everyone received his email of the draft proposal for minimum maintenance roads and language to remove private ways where needed.

He stated that the best way forward is incremental changes recommended to the legislature and that with the new legislators, we need to do more outreach, advocacy and information training for the new legislators.

Jim moved on to the next item on the agenda and briefly explained that the Terms subcommittee has discussed changing language in section 3105-A from Private way to public easement.

Jim then gave an overview of the Public Use Subcommittee's work on minimum maintenance roads and draft proposal. The draft includes a basic minimum level of care with annual grading and plowing after a foot of snow when it occurs in a 24-hour period. It would allow towns to do more but no less. The minimum maintenance road would be posted by the town as such, and the town or municipality would be immune from liability for maintenance on the road.

Roberta raised her concern that this is still only an option that the towns/municipalities are not mandated to help people on these roads.

Jim replied that the town has the option and if they agree to maintain it, the road will be maintained until the town votes to terminate maintenance of the road.

Roberta thinks there should be more of a guarantee. She would like MMA to send out a survey to towns to see which towns are maintaining public easements and how much.

Rebecca stated that MMA can maybe send something out after the election, but it would have to be tight, thoughtful questions.

Rebecca added that she would recommend that the draft provisions on minimum maintenance roads include that only homeowners could only request help from the town if they have a homestead exception that way the resources are used for actual Mainers and not those who are not residents. Also, that for these type of roads maybe there should be a road fund established by the legislature.

Peter added that the draft should include an option for voters to decide whether a road is designated as a minimum maintenance road in the town.

Peter and Rebecca had a brief discussion on the law of public ways and how it applies to summer or winter roads by the town. Ultimately, Rebecca pointed out that seasonal roads are important because, especially in northern Maine, that are too many miles and not enough staff to maintain roads. It is a bigger issue in Northern Maine.

Roberta raised the idea that perhaps seasonal roads should also be included in the real estate disclosure form to eliminate the issue of people moving on to these roads that are not maintained year-round.

Jim and Roberta then had a discussion of disclosure law, public easements and winter road closures.

Peter brought the focus back to minimum maintenance roads and made the following language suggestion on Jim's draft. That throughout the draft where it state municipal officers it should also include "or a village Corporation"

Peter then asked how would someone petition to have the public easement be considered for a minimum maintenance status?

There was a discussion between Jim, Roberta, Rebecca and Peter on the best way forward. It was resolved by them agreeing that it should be a standard petition.

Peter asked what does year-round maintenance or passable mean in the definition.

Jim, Rebecca and Roberta held a discussion on what does passable road mean. After a robust discussion, it was resolved by changing the language to "may include grading repair and replacement as required to keep the road reasonably passable." They felt it would give the municipalities an option. It would be for the municipalities to decide when and how much to maintain the public easement. They also decided to remove the snow removal language.

As for signage, Roberta and Peter will give Jim the language they have for proper signage which would warn when a road is a public easement and people would enter at their own risk.

Jim will work on the suggested changes and get the revised draft out for the commission to review before our next meeting in November.

Jim then brought forward the idea of proposing an ombudsman for abandoned and discontinued roads.

The Commissioners discussed the idea and whether an ombudsman could point individuals and municipalities toward the necessary information that would be helpful to them or help resolve the issue.

Jim suggested perhaps it be hosted in the MDOT.

Peter doubted that MDOT under the Local Road Center would allow an Ombudsman program to go forward under the MDOT.

There was suggestion for OAG office to host as they have mediation programs.

Vivian stated however it would not work as those are for consumer protection. The OAG doesn't represent individual Mainers.

There was a brief discussion by the Commission of what happens when Peter and Roberta retire as there will be a dearth of knowledge with no one to fill the void or guide those who need assistance.

Rebecca suggested perhaps an ombudsman program under the executive branch office of Community Affairs whose purpose is to be a Community Advocate within state government pulling together those disparate pieces that interact with Municipal governments including grants and access to resiliency funds that might be necessary to maintain some of these spaces and even planning land use.

The idea was tabled.

Jim then asked if the Commission wanted to discuss the current issues surrounding the Real Estate Disclosure law and form.

Roberta suggested that road closures due to winter maintenance should be added to the form, and she discussed the history of the Real Estate disclosure law.

After a brief discussion around the law and letter sent to MEREDA. Heather will follow up with MEREDA and see if they were able to share it with their members.

Karla brought forward the she felt the Commission should carefully review the focus of LD 2264 and be prepared to answer the questions and need for proposals suggested by the legislature. She stated the Commission has yet to discuss a right of way template.

Jim reassured Karla that the draft he is working on has pulled in all those requirements from that LD, so they'll be front and center.

Roberta then raised the issue of the constitutionality of Public Easements being maintained by private funds.

Jim disagreed and felt that the law had been settled. The court has ruled the municipalities do not have to maintain public easements based on the New Sharon case.

Jim requested Heather to update the Commission on our budget request.

Heather responded that a budget was submitted with the OAG budget but was denied by DAFS. The reason given was that the Commission has never been funded and is only funded with \$500/yr in a special fund. Heather pointed out that last year the Commission had put forward to the legislature to fund the Commission out of the general fund, so expenses could be paid. It was decided that the Commission should continue to try to get the legislature to switch our funding to the general fund category so we can be funded.

Jim would like the Commission to be funded. The Commissioners put in the time to attend the meetings and drive to said meetings should be reimbursed for mileage and time at the very least.

There was a suggestion by Rebecca that all submissions to the Commission be in memo form and state who is the drafter of the documents. It will make it easier for public records.

The Commission then heard from Margaret Cardoza from Windham. (Please see attached)

Jim will work on the narrative and draft legislation, Heather to set up a doodle poll for a meeting in November where the Commission will go over the narrative and draft legislation or proposals to the legislature.

The meeting ended at 12:00 pm after unanimous agreement.

## ABANDONED AND DISCONTINUED ROADS COMMISSION MEETING MINUTES

November 15, 2024

### REMOTE MEETING

**In Attendance:** Jim Katsiaficas, Roberta Manter, Peter Coughlan, Vivian Mikhail, Steven Young, Rebecca Graham, and Catherine Nadeau.

While waiting for a quorum the following items were discussed as housekeeping issues.

- 1) There was a brief discussion between Roberta and Jim on a questionnaire for towns on Public Easements.
- 2) Jim asked if any had any comments or mistakes on the draft report to fix. Roberta had issues with some of what was written, she will send her thoughts to Jim.
- 3) Peter stated on page 4 of the executive summary road categories instead of MDOT taking charge of all roads definitions, Peter thinks the 911 office would be a better fit as they keep track of all the roads.
- 4) Jim will change the language to offer options of MaineDOT or Emergency Services Bureau or the Community Service office.

Jim, Peter, Roberta and Steven talked about the issues surrounding the listing of abandoned and discontinued roads and lack of funds for towns to be able to track or take inventory.

The meeting was called to order by Jim Katsiaficas when a quorum was reached at approximately 1:20 pm.

The commission unanimously accepted the amended minutes of October 25, 2024, meeting, based on a roll call vote.

Jim reminded the Commission that he is working on a draft of questions to send to towns to see the extent of issues with abandoned and discontinued roads. Jim thanked Roberta for her assistance. He hopes to have a draft ready for review by the next meeting.

Jim then reminded the commission of the report due on February 5, 2025 and opened discussion of changes to the executive summary. Jim asked Roberta to share her screen with her recommended changes.

Roberta has an issue on the draft of how the Limitation on Private Landowner Liability summary is currently worded. She takes issue with the wording "May maintain the easement if the public does not." Roberta feels that an easement will not continue to provide access if no one maintains it and that it creates at least two constitutional issues. 1) The abutters are likely to be forced into involuntary servitude of the public access without due process or just compensation. 2) the abutters would be forced not only to pay their property taxes to support town road maintenance but also to expand their additional personal funds to retain their and the general Public's right for use of the public road creating a double taxation situation for the abutters.

Jim responded that the benefit of the public easement is that it allows people who live on the public easement to have access to their property who otherwise would have no access.

Roberta stated that her concern is that the public destroys the public easement, and private homeowners are paying to fix the road

Jim how do you fix it?

Roberta feels towns should be maintaining or providing tax relief in an amount to alleviate maintaining the road or allowing homeowners to discontinue the public easement and keep a private easement.

Jim said it would go against the current law. He explained common law abandonment and discontinuance without a public easement means that landowners would have no private rights to their property and would be land locked. So, the public easement has some utility but there is also a burden. The Commission can't solve that except to have more teeth on policing the easement to protect from damage.

Jim stated right now with the proposed Limited Liability statute we are trying to make sure the people maintaining the road are protected and allow some policing to protect the integrity of the road. If we make all Public Easements into a minimum maintenance roads category with mandatory maintenance and we bring it before the Legislature, then there would be a fiscal note and the Legislature will kill it entirely. That is why we are talking about an option for the town to provide some maintenance. It would allow towns to do more but no less.

Roberta raised her concern that this is still only an option, that the towns/municipalities are not mandated to help people on these roads. Towns are getting a free ride.

Jim replied that the town has the option and if they agree to maintain it, the road will be maintained until the town votes to terminate maintenance of the road.

Steve raised the concern that some people where he is in northern Maine bought in the willy wags way off from a main road. Even though towns try to be accommodating, a town or municipality should not be responsible for plowing when a homeowner wants to live off grid. The homeowner should have known at the time of purchase what would be needed. There should always be a discussion with the town or public works before purchasing a home.

Roberta brought up her own experience and that their road was discontinued in 1945, but the court did not rule that way.

Steve pointed out though that the recommended changes will better clarify the status of the road and hopefully prevent people from suffering or being promised something that doesn't exist as in Roberta's case.

Roberta agreed that the changes to the Real Estate disclosure has helped tremendously but there are issues included in Section 3121 which states when two or more residents share a road one person can ask for reimbursement of the maintenance cost but that wasn't supposed to be applied to public easements.

Cathy feels that the best way forward to get the legislature to pass a bill that requires maintenance of these public easements would be to frame it as the safety issue it is, especially for 911. Cathy pointed out this coming year is the first year of the legislature and the best chance to get anything through with a fiscal note. Towns do not want people to die because they can't get to them in an emergency.

Roberta gave examples of what her and her neighbors have faced on her road with their health issues and fires and why it is an issue.

Jim asked what if the wording is changed to "require where a public easement is retained as a result of discontinuance or abandonment by statute then the public easement must be maintained to be at least sufficient to permit emergency vehicle access up to the driveway of the furthest year-round resident on that road." Jim stated that would mean at the time (not retroactively) of discontinuance or at the time of abandonment that you would be measuring what would be maintained to that emergency access standard. If somebody builds a quarter mile down the road that wouldn't be covered by this statute but at least take a snapshot as of the time of discontinuance or abandonment and you've got the current furthest house on the road would be maintained to a level sufficient to permit emergency access.

Jim asked if that sounded okay to Cathy.

Cathy replied that I would add to that that either the town take care of it for emergency vehicles or allow the landowner to maintain it without liability.

Jim stated, however, it would be an issue though to leave it to homeowners.

Roberta stated it wouldn't help her though because it wouldn't apply to her road.

Steve asked couldn't it be retroactive.

Jim felt that the Legislature could enact a retroactive law, but it would be very expensive and even in the first session fiscal note because most roads that could be are already discontinued but we're not going to see so many more discontinued in the future. So prospectively it works better than retroactively.

Roberta's concern is that towns have stopped discontinuing roads and now still have the loophole of abandonment, so they wait 30 years and have no maintenance, then the road is abandoned.

Jim brought them back to Cathy's idea for 911 or emergency services access and minimum maintenance roads. Jim thought it should be up to the town to maintain emergency services standards rather than an individual.

Steve felt that the towns would prefer to do their own maintenance to their own standard.

Brief discussion by Roberta, Catherine, and Jim on town maintenance and on the idea that roads where people are living cannot be discontinued or abandoned.

Jim asked if that would be something the Commission would like to pursue.

Cathy said that people who are living on the roads are paying taxes and expect a degree of safety and therefore those who pay taxes should have some degree of safety. Cathy feels that if someone

has gotten a permit to build and pay taxes, they have an expectation of safety for the road. Cathy thinks that type of bill will pass the legislature because people care about safety.

Jim restated the proposal by Roberta and Cathy that a town could no longer abandon or discontinue a road that people live on without retaining a public easement unless the road is maintained to allow emergency services.

Jim worries however, that the towns will just discontinue the roads and not reserve a public easement, which in turn will cause people to not have any access.

Roberta replied if it is a residential property where people are paying taxes they should be providing access for EMS services. Let the town turn down people who want to build on these roads if they cannot provide maintenance. Some people will complain but at least then the towns won't allow people to build where they won't provide any maintenance and private landowners are not paying for the public to use their roads.

Cathy believes this will open a dialog between the town and landowner. It will allow the landowner and town to discuss how to proceed.

Roberta thinks people should get something for paying taxes. Roberta doesn't think it takes much but something should be offered.

Jim clarified that they are suggesting a proposal that would-be for mandatory municipal maintenance of a public easement for emergency vehicle access whenever that public easement may have been established, even if established 50 years ago, where it meets the following criteria: 1) the town has issued building permits and 2) the town has assessed taxes on year-round residential dwellings on that road. He added that we would want to prevent municipalities from being able to extinguish that public easement once it has issued those permits because then the landowners would no longer have that public easement right of access anymore.

Roberta thinks section 3026 A would allow the landowners to work with the town to make the road private as an alternative to the roads being public easements. She laid out the issues with the current statute and how that should also be repaired. Her hope is to get some of these public easements converted into private roads.

Jim asked if there is unanimous approval of the Commission to go forward with this?

Peter said no. He understands the desire to place emergency vehicle access standards on public easements. However, even though people live on those roads, the roads have not been maintained in some cases for over 50 years, and it would cost a fortune to make the road passable.

Additionally, he is concerned that if there is an option of either the town or landowner to make the road passable for 911, people will fight over whose responsibility it is to do so, and nothing will be done on the road.

Jim asked if people want to form a private road association to pay to allow fire trucks to come down the road, as it is expensive to widen a road.

Cathy says most towns have a smaller pumper truck for firefighters that work just fine on those roads. Cathy also pointed out that the landowners on her dirt road helped to clear themselves

because their cars needed to go down the road to get out to work or groceries. If people are living on the roads they are usually passable.

Roberta suggested asking fire departments on what type of roads they need to be able to make the road passable.

Peter said they will say it needs to be wide enough to get the truck down the road and not get stuck. He said there are no small trucks where he lives.

Cathy raised whether the state contracts with a tree service that clears the trees on the side of the road or whether is that CMP doing this work.

Peter said yes that is CMP. He doesn't believe that MMA will agree to this type of a law.

Jim said If we propose this, we will hear from police and fire chiefs, and they likely will say the level of repair and maintenance necessary for emergency vehicle use of public easements will be more than what people are doing on their public easements right now. So where does this leave us? The concern is this could be cost prohibitive for landowners who live on these roads or for municipalities.

Jim reiterated that the initial proposal the Commission worked on was for limited liability on these roads where the town is not doing the work to protect the landowners on the road from liability. There are two paths the Commission can take. We can either put forward our current proposal on limited liability to help those currently being affected, or start looking at more of the options raised by Cathy, where we might not have unanimous agreement on the Commission and therefore might not be able to forward these proposals to the Legislature.

Roberta thinks the Commission should keep going forward with these ideas but if we can't make the recommendations this year, do what we can for now.

Peter feels that it is still very important to allow the people to decide if they want to spend funds on a public easement.

Jim raised that would work with the minimum maintenance road option for the town and then landowners could then go to the town to ask for funds.

Roberta asked if it would be possible to tie it to taxes. If they don't provide services the taxes are reduced. She feels if the towns are not incentivized to aid they will not do so.

Jim said in most cases it will have to be financial, and it will be from someone.

Peter asked if the recommendation would be that towns could not abandon or discontinue a road, but it would only apply to year-round residents instead of summer residents?

Jim replied yes.

General discussion by the Commissioners on fire roads and that they usually aren't much more than a dirt track and issues that have been raised by firefighters and EMS. The conclusion was that there should be a plan if there is a fire or emergency by the town on who is responding and how would they get to the person.

Cathy will check with the fire commission on what their expectations of a road would be.

Peter stated he had a discussion with one town about public easements and the town stated it will help when a road gets really bad. He will talk to the town fire chiefs he knows and see what is expected.

Jim brought the commissioners back to abandoned and discontinued roads and whether there should be a prospective prohibition on discontinuing town ways or statutorily abandoning town ways if there were year-round residents on those roads.

There was a discussion between Jim, Roberta, and Peter on the best way forward with whether or not to prevent discontinuance.

Peter argued that the best way forward is that the Commission should include the question to towns in the questionnaire on abandoned and discontinued roads, review the responses and then come to a conclusion.

There was a general agreement to see what would constitute an emergency passable road and to check with MMA and LUPC and their members as that might be the best way forward.

Jim clarified that he would draft language for an amendment to Section 3026 A and 3028 A for the Commission to review on the idea of not allowing a discontinuance or statutory abandonment if someone lives on the road unless there's an agreement to retain a private easement and a structure for maintaining the road.

There was a discussion between Roberta and Jim about prescriptive use and abandoned roads.

The Commission then heard Public Comments from Margaret Cardoza from Windham. (Please see attached transcript)

Jim will work on the narrative and draft legislation and try to incorporate the feedback from Roberta and Peter. He hopes to send out the final revisions as soon as possible.

The meeting ended at approximately 3:00 pm after unanimous agreement.

## Abandoned and Discontinued Road Commission Meeting Minutes

December 10, 2024

### REMOTE MEETING

In: Jim Katsiaficas, Roberta Manter, Steven Young, John Monk, Ryan Pelletier, Vivian Mikhail, Tom Doak, Peter Coughlan, Rebecca Graham.

The November 15, 2024, meeting minutes were unanimously approved by a roll call vote.

Jim opened the meeting welcoming Tom Doak from Woodland Lot Owners as the new Commissioner replacing Karla Black.

Jim moved on to the topic of sending a questionnaire to municipalities to gain information on abandoned and discontinued roads that are public easements. Jim thanked Rebecca for sending a previous survey from the municipalities for the subcommittee to review.

Rebecca, Jim, Tom and Roberta discussed the language of the questions, who it would be sent to and whether having an accompanying memo and what the memo should say that would encourage municipalities to participate and give them guidance if they were unsure. Jim, Rebecca, Roberta, and Pete agreed to continue developing the questionnaire and cover memo.

Jim then reviewed what the Commission has voted to forward to the State and Local Government Committee as suggestions to make changes to the law: 1) allowing public easements to be closed when the conditions are bad, and 2) Limited Liability where private landowners are maintaining the public easement.

Jim then moved on to the suggested draft legislation to change terminology of “private ways” to “public easements” on the road association statutes. Jim went over how and why public ways should change to public easements in the road association statutes.

Tom has concerns for this universal change and he worries that it would affect something else. He asked if it had been examined enough. He also is concerned that people who live on a public easement where there is road association would be forced to join and maintain a public easement.

Jim stated that it could be a consequence. Jim said if there were four or more owners on a public easement, yes people would need to pay the road association. (But this currently is the law). However, the alternative is that individuals still must pay to maintain the road without sharing the burden of the cost of road maintenance.

Tom asked if the town that has kept the public easement should be a partner in the road association when people are being forced into a road association on a public easement.

Jim replied that the concern is that the town doesn’t own the road, they only can maintain and defend access, but they don’t own any land and currently would not have to join.

Tom stated that since the town can enforce how the road is used it is a troubling issue for a landowner that they may or not benefit from .

There was a discussion by Jim, Tom, John, Roberta, Rebecca, and Ryan about the solutions and issues around public easements. They discussed whether the towns should not hold public easements, the impact on those landowners who need a public easement to access their land, the unfairness of paying for the public to use the road when private funds are being used, whether the legislature should tweak section 3026 Discontinuances to make it easier for a shared private easement, whether there should be a lesser standard of road for those towns that can't afford to maintain an easement to the standard of town way, and allowing people to opt out of a road association if they have means to access the property without using the road makes sense.

Tom felt that a solution for the public easement issue would be identifying those public easements that were retained to prevent land locking and allow them to convert to private easements. However, if the town or public wanted to keep the easement because it allowed the public access to water or land then the town should be contributing to maintenance too. He felt that Roberta's idea to amend section 3026 a to allow for easier conversion of a discontinuance was a good idea.

Jim replied that the issue is more people are cutting off access when they buy land and the towns do not know the legal status of a road. A lot of these issues then are litigated by the courts and take years.

Jim stated maybe the best way forward is to ask towns to look at their public easements and whether they can go back to being private roads or maybe we need to change the road association statute to state that a public easement road association cannot be formed.

Roberta stated that they probably get push back from those who use these roads for recreational use. However, she feels that access should be in the hands of landowners, not the towns.

John stated that snowmobile and ATV clubs are not strongly represented on some levels but are frustrated with finding avenues being closed by landowners.

Rebecca raised the issue of public easements receiving funds due to catastrophic effect and if changed to a private easement there would be no funds for those roads.

Tom, Roberta, Jim, Steve and Ryan had a robust discussion on public easements, how to and what would happen if ended public easements and possible solutions.

There was clarification that currently in some Maine counties, public easements are receiving grants from towns that received federal disaster funds and that you can't convey a public's right to a private group. A private group is not allowed to control and extinguish the public's rights. You must first extinguish the public rights. This could also lead to landlocking if someone decides not to play fair.

Vote was taken to see if the Commission would support moving forward with a recommendation to the Legislature on changing private way to public easement for the purpose of the road association statutes. Steven made a motion. Motion was seconded by John.

Vote Taken

Commissioner	Vote	Tally
Peter Coughlan	Yes	

Tom Doak	No	
Rebecca Graham	Yes	
Joe Higgins	Absent	
James Katsiaficas	Yes	
Kris MacCabe	Absent	
Roberta Manter	Abstained	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Absent	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	7
	<b>No</b>	1
	<b>Abstention</b>	1

As per the Commissions earlier decision and vote on items that would be forwarded to the Legislature for examination as this was not unanimous this will be tabled until next year.

Jim will work with Tom and Roberta and see if they are able to resolve their concerns.

Jim moved on to the task of providing the legislature with options for creating a road inventory of abandoned and discontinued roads. He gave a brief overview of Peter Coughlan's efforts on the Mapviewer tool and that everyone can use the database to determine if a road is publicly maintained.

Jim then asked the Commissioners where would be the best place for an Abandoned and Discontinued Roads database.

Roberta felt that MDOT should host as they have Mapviewer tools and the county records of discontinued roads, but it would be just an index, and individuals would still have to contact the towns.

Tom felt the Registry of Deeds would be a great place because it should be someplace where it is recorded. It should not fall to the landowner to figure out or have a determination on the legal status of a road. The towns should know the road status.

Rebecca stated though not all roads were town roads and landowners should know the status of their road. She raised the concern that the roads that haven't had a legal determination could be an issue. She felt the Legislature should pay for communities to do this as it will require a lot of time but at least the towns can send what they have. There already is a centralized location for town roads at MDOT.

Jim stated that is not always the case, there could be a public easement that is being maintained now but might not be after someone bought the property. A landowner wouldn't necessarily know

that information as there is no way to know. So where should that information be stored so it is easily accessible?

Rebecca raised the issue that Towns could be sued if the information is not correct.

Jim disagreed and replied that many towns should have already completed their road inventory, and they haven't been sued over the inventories because inventories only contain those things that don't create problems just information.

Jim turned to Peter and Meghan Russo from MDOT for their opinion on where to store an Abandoned and Discontinued Road Database.

Peter said MDOT gives towns the money for the roads they maintain, they don't get into the legal status of roads. They only know what the towns maintain. The MDOT's property office has a lot of discontinued old county way records but not town discontinuance records. The current process requires a town to follow the process for discontinuance and send a copy to the registry at the county and to the maintenance and operations office in MDOT. Peter gets maybe one copy a year. Peter stated the property office is happy to receive any discontinued roads notice. But MDOT is not going to prepare and house an entire index or database on past discontinued town roads.

Meghan (Director of Government Affairs) agreed. She has a few concerns about the option of creating a road inventory within MDOT of abandoned and discontinued roads. MDOT is against their agency creating a website and tracking down the information on abandoned and discontinued roads. If MDOT is required to do this the department would come out against this and testify why they will not do this. Meghan is happy to work with Commission on language or find a solution.

Tom asked how much work would it be for MDOT to include information from the towns and have Mapviewer show a color to let people know that the legal status of the road is in question. The problem being that no database exists, and people must go to the individual town or towns and research the records, which is time consuming.

Peter said already on Mapviewer the roads that are grey indicate are not publicly maintained roads and gives a starting place. MDOT could start from here forward, which would not be a big deal, but to input the last 20 years of town discontinuances is not something MDOT is set up to handle and it is not in their mission.

Jim said the problem is that the bulk of discontinuances happened years ago. He asked Peter if it wasn't housed with MDOT where would it go? Jim asked Ryan if the counties could house the list.

Ryan felt that except for Cumberland County, the registry of deeds position is elected and can't be directed to implement an abandoned and discontinued road database. The County commissioners records are typically either vaulted away or in attics. They could dig through their records, but he was not sure what office would work best.

Peter asked if someone came into the county office and asked about the road is that filed or indexed?

Ryan replied that in the case of old county records in offices it is not asked often. Usually, it is a surveyor. The Registries of Deeds have some that are recorded. The biggest issue is that not every

County uses the same software and therefore can't be searched. So, then it is an in-person search, and you need to have a general idea of what you are looking for beyond the 1960s.

Steve raised that there is a lot of work to be done to find and document these roads as the records aren't easily available. There needs to be money to be able to make this possible. He wondered what kind of data is already collected that could be used.

Jim suggested a ten-minute break.

When the meeting resumed there was a brief discussion on the MDOT's compilation of County Roads that have been discontinued.

The discussion moved to ideas of how to structure or where to place a database. Jim suggested the new Maine Office of Community Affairs, Steve thought partnership with the University of Maine for research and storage, and Roberta suggested the collection go to the Maine State Library after compilation.

Peter stated that the Commission came up with a lot of ideas, but none are clear solutions yet. MDOT might consider going forward with putting in the discontinued road on Mapviewer but nothing else. Peter spoke to the E911 office, and it is not set up to keep track of roads.

Roberta asked if she sent 20 roads from Fayette could they put it on map viewer.

Peter said he will talk to the database group and see what we can do.

Jim said that for now the Commission will state in the report that the Commission is continuing to explore options that will work. Ultimately the Registry of Deeds might be the place.

Jim asked to postpone items of 8 and 9 on the agenda to the January meeting.

Jim then opened the meeting to Public Comment. Heather read two letters into the record. The Commission received and read the previous four letters. These letters are attached to the 2024 report under "public comments."

Then we heard from

1)Jennifer Whitemore, Sumner Maine

2)Elizabeth Splain, Windham, Maine

3)Gretchen

4)Jonathan Billings, Portland, Maine

4) Roberta Manter, Fayette, Maine

5) David Manter, Fayette., Maine

Jim adjourned the meeting. Heather to put together a doodle poll for January meeting.

## Abandoned and Discontinued Road Commission Meeting Minutes

January 14, 2025

In: Jim Katsiaficas, Roberta Manter, Steven Young, John Monk, Ryan Pelletier, Vivian Mikhail, Tom Doak, Peter Coughlan, Joe Higgins, Kris MacCabe, Catherine Nadeau.

Absent: Rebecca Graham.

The December 10, 2024, meeting minutes were unanimously approved by a roll call vote.

Jim opened the meeting discussing the draft questionnaire to be sent to municipalities to gain information on their abandoned and discontinued roads inventory that are public easements.

Ryan raised the issue of the Unorganized counties and how we would gain that information.

After a brief discussion between Ryan, Peter and Jim they will work on the questions to tailor it more to those counties, Ryan will send the questionnaire to those counties that contain unorganized territories.

Steve, Jim, John, Joe, Roberta, and Tom discussed the order of the questions, the time of look back to 15 years, the percentage of people who had replied to MMA 2016 questionnaire, who will be asked to fill out the form, and wording on the questionnaire.

Vote was taken on whether to accept the questionnaire and the cover memo with the following changes: 1) on question number 4 change from are old and abandoned and discontinued roads a matter of concern for your municipality to are you aware of concerns landowners or town officials regarding abandoned discontinued roads in your municipality. 2) That Peter and Ryan will work on questionnaire memo for the counties.

Name	Vote	Total
Peter Coughlan	Yes	
Tom Doak	Yes	
Rebecca Graham	Absent	
Joe Higgins	Yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	Yes	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>TOTAL:</b>	
	<b>Yes:</b>	11
	<b>No:</b>	0
	<b>Abstain:</b>	0

**Motion Unanimously carried. The Commission will send the Memo and questionnaire with the recommended changes to Maine towns, municipalities, and unorganized counties with corrective language and input from Peter and Ryan.**

Jim then presented the following draft legislation the Commission had already voted to forward to the Legislature: 1) An Act to Clarify Municipal Authority to Protect Public Easements by allowing public easements to be closed by

a Municipal Authority when the conditions are bad, and 2) An Act to Limit Liability of Landowners whose Property Abuts Public Easement.

Jim then moved on and requested a motion to add to the agenda 1)inventories of abandoned and discontinued roads, 2)right of way template and 3)the suggested draft legislation to change terminology of “private ways” to “public easements” on the road association statutes. The motion was made by Roberta Manter and seconded by Cathy Nadeau. The Commission after a roll-call vote, voted **unanimously** to add these items to the agenda.

Jim then organized the agenda for the meeting as 1)inventories of abandoned and discontinued roads, 2)right of way template and 3)the suggested draft legislation to change terminology of “private ways” to “public easements” on the road association statutes. 4) Minimum Maintenance Roads, 5) Mandatory Minimum Maintenance Roads and 6) Public Comments.

Jim moved to the first item on the agenda, a road inventory for Abandoned and Discontinued roads. He listed the five options that the Commission had created: 1)the Registries of Deeds. 2) Maine DOT for only new discontinuances on mapviewer 3) The newly established Maine Office of Community Affairs 4) the Maine State Library 5) the University of Maine System .

Peter stated that MDOT can not help with the mapviewer issue and he will check with his people to see if they language is okay for number 2.

Tom was concerned that five options might be too many for the Legislature. Tom felt the first and second would be the best options as it is already the law that Municipalities must report to these entities.

Steve felt the University should stay because someone is going to have to do the research as there is no database or current list.

After a brief discussion with Tom, Cathy, Ryan and Roberta about what the available information is and where it is currently stored if at all, the Commission whittled down the options to three.

John made a motion to send to the Legislature the following three options for a road inventory 1) the Registry of Deeds, 2) MDOT (if they can) 3) some other agency including, but not limited to, the Maine Office of Community Affairs, the Maine State Library or the University of Maine system.

Commissioner	Vote	Tally
Peter Coughlan	Yes	
Tom Doak	yes	
Rebecca Graham	Absent	
Joe Higgins	Yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	Yes	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	<b>11</b>
	<b>No</b>	<b>0</b>

	Abstention	0
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**Motion Unanimously carried. The Commission will include the three option in their Annual Report to the legislature.**

Jim moved to the second item on the agenda, the Right of Way template option for those landowners to use when a local unit of government considers discontinuing the road. Jim proposed a motion that in the next year the Commission will research and lay out a technical guide map for affected landowners. Roberta made the motion and Cathy seconded the motion.

Commissioner	Vote	Tally
Peter Coughlan	Yes	
Tom Doak	yes	
Rebecca Graham	absent	
Joe Higgins	yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	yes	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	<b>11</b>
	<b>No</b>	<b>0</b>
	<b>Abstention</b>	<b>0</b>

**The Commission voted unanimously to work on formulating a comprehensive guide map for landowners over the coming year.**

Jim then moved on to the third item on the agenda the issue of changing the term “private way” to “public easement” in the real estate statute.

Jim opened the discussion by stating that some members had concerns about the unintended consequences of changing the terms. Jim stated that the antiquated term of “private way” is causing confusion, and it would help tremendously to change the terms to “public easement”. He conceded that there could be unintended consequences, but Jim doesn’t think that this change will have a negative impact.

Tom stated that he realizes the law as it stands now means that those who live on public easements can be forced into road association even if they don’t want to be. However, the language is not clear, and he has concerns that more people will force private landowners into paying for public use. Therefore, he would like to not only change the terms but change the definition for those living on a public easement, to only be able to voluntarily form a road association.

Jim replied Roberta has the same argument that she feels it is unconstitutional. However, people who live on public easements and who maintain a road with this statute can join to help pay for their road maintenance and ease the burden.

Tom replied that he wouldn’t have such an issue if those who lived on the Public Easement could control access to the road, but they can’t under the law.

Ryan asked though if his concern was still that he would have to join a Road Association even if someone had access from another point for their property.

Tom and Ryan discussed this further. It was clarified that Tom felt that only on public easements should Landowners not be forced to join a road association, or if so required then the town should be forced to join the road association.

Tom, Ryan, Roberta, Cathy and Jim discussed how those who live on a public easements feel it is unfair of those homeowners who pay taxes to in addition pay for the public use of an easement, that towns need to offer some support and impacts to those landowners.

Tom reiterated that he would be fine with clarifying the terms if, either it became voluntary to join a road association on public easements or the town is forced to join.

Steve asked if the name change would change the rules as they currently stand.

Jim replied no, but that Tom is concerned that those who live on public easements once that language is clarified will cause people to form road associations on public easements and force people to pay for maintenance of public easements.

Cathy stated the law should be written that towns provide in kind services i.e., gravel, grooming the road, plowing etc.

Jim replied that MMA and the towns would oppose that measure.

There was a robust discussion that included: what MMA's and towns' position would be, the idea that the towns should be given a choice to keep the public easement if they are going to maintain it and if not then it needs to be changed to a private road with private easements for landowner to be able to access their property, that public easements are important as people need to have access to their homes, that public easements are used by ATV clubs and snowmobile clubs who also help with maintaining these ways (including the state to keep these trails open), and that Towns should not be required to maintain roads if people build in the willywags..

Jim proposed a vote on amending the Road Association statute term "Private Way" to "Public Easement". The motion was made by Jim and seconded by Ryan.

Commissioner	Vote	Tally
Peter Coughlan	Abstained	
Tom Doak	No	
Rebecca Graham	Absent	
Joe Higgins	No	
James Katsiaficas	Yes	
Kris MacCabe	No	
Roberta Manter	No	
Vivian Mikhail	Abstained	
John Monk	Yes	
Catherine Nadeau	No	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	<b>4</b>
	<b>No</b>	<b>5</b>

	Abstention	2
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**Motion does not carry. As per the Commissions earlier decision an unanimous vote on substantial items, will not be forwarded to the Legislature. As this vote was not unanimous, the Commission will continue to work through these issues through the next year.**

The Commission took a 10-minute break.

Jim resumed the meeting by giving a brief overview of the last two items on the agenda, the differences between the proposed Minimum Maintenance Roads and Mandatory Minimum Roads draft legislation.

The Minimum Maintenance Road draft legislation would allow towns to choose to assist those who live on a public easements that have been formed by a formal discontinuance or abandonment by a vote with legislative body and to specify the level of maintenance for that road.

Mandatory Minimum Maintenance would force towns to maintain public easements that have been formed by formal discontinuance or abandonment to provide some level of maintenance of the road.

Jim had concerns about Mandatory Minimum Roads as Rebecca Graham was not able to attend this meeting but did send in her comments that MMA and municipalities would be vehemently opposed to anything mandatory.

There was a discussion between Jim, Peter, Roberta, Cathy, Steve and Tom about standards, year-round maintenance and what should be included, whether it should be an option for the town, whether the standard should be for EMS Vehicles especially considering fire risks and that a town should get to decide what level of maintenance they will provide.

After the discussion a motion was made to vote to include Minimum Maintenance Roads draft legislation in the Annual Report to the legislature.

Jim moved that the draft legislation will provide municipalities an option that the legislative body of the town can choose to perform minimum maintenance on a public easement and added to the current draft the following amendment language “ that a town would have the standard be reasonably passable for residential access as determined by the municipality”. Tom Doak seconded the motion.

Commissioner	Vote	Tally
Peter Coughlan	Yes	
Tom Doak	Yes	
Rebecca Graham	Absent	
Joe Higgins	Yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	Yes	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	Yes	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	<b>11</b>
	<b>No</b>	<b>0</b>
	<b>Abstention</b>	<b>0</b>

**Motion passed unanimously and therefore the draft legislation with amendment will be forwarded to the Legislature.**

The Commission then briefly discussed the issues and solutions with the Draft Legislation of Mandatory Minimum Maintenance Roads.

As Rebecca Graham could not make the meeting and her comments were against Mandatory Minimum Maintenance legislation, Jim made a motion to table Mandatory Minimum Maintenance Roads until Rebecca is able to be present with the Commission working on a possible draft this year, seconded by Joe.

Commissioner	Vote	Tally
Peter Coughlan	Yes	
Tom Doak	Yes	
Rebecca Graham	absent	
Joe Higgins	Yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	No	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	No	
Steve Young	Yes	
	<b>VOTES:</b>	
	<b>Yes</b>	<b>9</b>
	<b>No</b>	<b>2</b>
	<b>Abstention</b>	<b>0</b>

As this was a vote on whether to table legislation, it is considered a procedural vote, the Motion carries 9 in favor and 2 Nos. The Mandatory Minimum Maintenance Roads will not be in the report and will be discussed in the following year.

There was a brief discussion with the Commissioners on the timeline for the due date (February 1) for the report. As the Commission does not have time to meet again to view the agreed upon changes, Jim made the Motion to allow Commissioners to review the agreed upon changes and final report via email. It was seconded by Cathy.

Commissioner	Vote	Tally
Peter Coughlan	Yes	
Tom Doak	Yes	
Rebecca Graham	absent	
Joe Higgins	Yes	
James Katsiaficas	Yes	
Kris MacCabe	Yes	
Roberta Manter	Yes	
Vivian Mikhail	Yes	
John Monk	Yes	
Catherine Nadeau	Yes	
Ryan Pelletier	Yes	
Steve Young	Yes	

	<b>VOTES:</b>	
	<b>Yes</b>	<b>11</b>
	<b>No</b>	<b>0</b>
	<b>Abstention</b>	<b>0</b>

**Motion carried unanimously. Jim will send out the final draft of the annual report with draft legislation for review by commissioners via email for approval.**

Jim stated that he would get the draft out to everyone by January 22 and if everyone could let him know by the 28<sup>th</sup> of January so the final product to Heather by January 30<sup>th</sup> for printing and submission to the legislature on Monday February 3, 2025.

Jim then opened the meeting for Public Comment. The Commission heard Public Comments from:

- 1)Janice Velli, Wellington, ME
- 2)Raymond Bersch, Windham, ME
- 3)Sandra, Waterboro Maine
- 4)Chris Kuzma, Springville, Maine

Jim adjourned the meeting at Approximately 12:45 pm.

# APPENDIX

## G

## ABANDONED AND DISCONTINUED MEETING MINUTES

### Subcommittee Group 1 Public Use of Public Easements

**June 4, 2024**  
**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, Catherine Nadeau, and Karla Black,

**Absent:**

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

Jim opened the meeting discussing the best way to break down the scope of public use allowed on a public easement over an abandoned or discontinued road, the need or justification for each type of use, the impact of the public use on abutting property owners and ways to reduce the negative impacts on abutting property owners.

The subcommittee discussed the following types of public access for those who don't have deeded access on abandoned or discontinued roads.

- 1) Residential
- 2) Industrial use, Woodlot access, Quarries.
- 3) Recreational, Hikers, cross country skiers, ATV, Snowmobiles, Mountain bikes, Motorized bikes, ebike, horseback riding. Hikers, wandering public
- 4) Criminals, drug related transactions, drunk drivers, dumping trash illegally.

Jim and Roberta discussed history and issues surrounding the types of public access on abandoned and discontinued roads.

Catherine stated that private road or private way doesn't have the same definition or requirements.

Jim said that is true when talking about an ordinance and depends on the town.

Jim moved on to talking about the impacts that access has caused on abandoned and discontinued roads.

Jim, Roberta, Catherine and Karla discussed the impacts and issues caused by access on Public Easements for residential use, Industrial use, Recreation use wear and tear, destruction on roads and illegal activity.

The Subcommittee moved on to discuss how to solve the issues.

Jim, Roberta, Karla and Catherine discussed ideas such as bonds for heavy equipment on Public easements, documentation of the trails and how to find information on the recreation trails, making sure law enforcement knows what roads they can enforce the law on and liability protection for landowners.

Karla stated that it seems that Legislature is moving towards making public easement only available to motor vehicles or foot traffic. The rest of access should be granted to ATV or snowmobiles by the landowners on the affected road. She suggested it be made retroactively.

Jim thought it could be an unconstitutional taking so how about prospectively. However, Jim thought we might run into resistance from snowmobiles and ATV access.

Karla thought if it is left up to the landowner on the Public easement it wouldn't be an issue because it would bring in the clubs and might help the road conditions.

Roberta raised the idea that Public easements should include Motor Vehicle access for landowners only and everyone else would have foot access only. (Delivery trucks would have the right as they are invited by the owner to make deliveries).

Jim to work with Heather to have a draft chart on Public access types, Issues, and solutions.

Roberta will put together a slide show to show the impact of various uses on the roads.

Commission meeting ended at approximately 2:20 p.m.

## **Abandoned and Discontinued Roads**

### **Public Use Subcommittee**

**July 9, 2024**  
**Remote Meeting**

**In Attendance:** Jim Katsiaficas, Brian Bronson, Roberta Manter, Karla Black, Ryan Pelletier, and John Monk.

Meeting called to order by Jim Katsiaficas at 12:00 p.m.

Jim opened the meeting by discussing the work that had been previously done, changes the Commission made at its last meeting, and issues and solutions that have been discussed.

Jim walked through his memo that he sent to the members of the subcommittee on current laws and how they could be used to support landowners on Abandoned and Discontinued Roads.

Roberta raised the closed to winter maintenance roads issue and how it can leave homeowners without access.

Jim responded that it was outside our charter as it does not apply to Abandoned and Discontinued Roads.

Jim walked through municipalities' ability to close roads, post roads (Title 29A) and how these tools could be used to help with Public Use issues on Abandoned and Discontinued roads.

Roberta had concerns about whether a town would enforce the closing of a road and asked if it would be possible to put in that a resident could request the town to do so.

Ryan asked if there was a difference between posting and weight limits authority?

Jim responded, no, under the law it can be temporary or seasonal closing or weight limits.

Roberta responded towns typically post a road for longer than needed but they can retract when it is no longer needed.

Jim stated there also is authority for selectmen or a town council to control traffic.

Jim felt that tailoring the winter closing law would not be the best fit but the temporary closing and municipality authority statute to close would be.

Jim doesn't think amending the "Public Way" definition in Title 23 to include "Public Easements" will work as there are two types of Public Easements. It is confusing and would cause issues. The best way forward would be to amend the temporary closings statute (Section 2395) to provide that municipalities can designate Public Ways **and** Public Easements for temporary closing to protect these roads during certain times of the year.

Karla asked if this would only include municipalities that maintain the easements and not ones that are not maintained? Woodland Owners would support something that included all easements not just the ones that the municipality is maintaining.

Ryan stated that he agrees with Karla, and it would still be a towns option to do it.

John asked if the idea is to tell the towns that the already discontinued roads that they don't maintain could be protected.

Ryan said some towns do take care of their easements.

Brian stated that the issue with Public Easements last year was that Rebecca insisted all roads are Public Easements and that public roads were not different from Public Easements.

Roberta said the Legislature's use of the term "Public Easement" was a poor choice of terminology.

Jim agreed and described the nature of the municipal roads and the history of these roads in Maine, how after 1977, the town is presumed to own the fee in all subdivision roads created, and before 1977, except for rangeways (which towns and cities may own in fee), town ways are established as a public easement of passage with a general right of public passage and utility easement beneath them. However, when we and the Legislature are talking about Public Easements, we are talking about the remaining public right in abandoned and discontinued roads and easements laid out to connect improved properties and recreational lands to public ways, and **not** the public easement of passage that underlies town ways.

Brian asked if there was a way to clarify that language? As that was the push back from MMA. Can we just say discontinued roads?

Jim said not every discontinued and abandoned road results in a Public Easement, so not possible.

Ryan felt the only way to overcome the issue is to have a new definition.

Jim responded by reviewing the history of different terms and what they meant during different times and how confusing that would be.

Brian concurred. He stated another issue is that many towns' ordinances aren't enforced unless they have a police force. Brian was concerned that making these changes might result in no help for those landowners. Whereas under Title 29A, wardens and state police could enforce the law under that statute.

Jim responded we can only work with what we have and what is included in the Public Easement definitions and all the other definitions of easements.

Brian asked Jim: Are confident it wouldn't affect the other roads?

Jim responded I am comfortable with that.

Roberta thinks we should recommend entering definitions into the law to clear it all up.

Brian stated if it is only giving the municipalities an option, then he is in favor of it and want to see what MMA has to say.

Jim thinks it should be a stand-alone bill to give it a greater likelihood to pass.

John wants an enforcement section so that it is a win.

Jim didn't see yet how that section is enforced, and he will look at enforcement and have a draft ready. Jim stated that making it ready for any easements would mean that landowners would have mud season protection.

Jim asked the group their ideas on whether it would be better to leave it to the municipality to determine trucks weights etc? Jim asked Ryan if he had any ideas based on his experience?

Ryan responded the only experience he had was on an ordinance that passed for the spring and required a permit for loggers to be able to use a road at that time and required them to post a bond. That way the town could recoup the cost of repairing the damage. Ryan said though they didn't use a weight limit, they just went with what was the springtime postings.

Jim asked for thoughts.

Brian asked if weight limits were already in law?

Ryan said not sure.

Brian thought the regulations were the same in all towns across the state.

Jim responded that DOT can limit traffic.

Ryan stated that his town buys the signs from the same place as DOT.

John stated that the weight limit is consistent across the state.

Roberta said the big trucks aren't the issue, it's the 4-wheel drive pickup. However, if we limit that, residents wouldn't be able to get in if they have trucks.

Jim read section 2395 into the record and that there are exemptions for fuel trucks, residents etc. Jim theorized that there is nothing that says you can't prohibit weight or a certain type of vehicles, but municipalities seem to have quite a bit of leeway.

Ryan said 23,000 pounds or less is restricted during posted roads.

Jim stated that changes made to Section 2395 would allow towns to restrict vehicle weight or type on public easements depending on what the town thinks.

Roberta's concern is that the town won't do it and feels that they would be resistant to doing so.

Ryan responded that he has a road association over a public easement and the town gives them money for the public easement.

A brief discussion from the subcommittee on the history of towns taking care of Public easements and using tax money to pay for public easements to maintain the roads.

Brian stated that having something that states the towns have the authority to put weight or seasonal use restrictions would solve some of the issues.

John said his concern is that if some towns use it and some don't that can be an issue.

Brian thought the only way to get around that would be to make the town responsible for the damage, but towns would not agree to that.

Ryan responded that he believes most towns would post if they had the ability and if residents ask to have the road posted.

Roberta was asked if she posted the road herself.

Roberta replied that they aren't allowed to.

Ryan stated on his road they post the road themselves based on what the town does.

Brian asked if the town could post closed for mud season instead of weight?

Jim thought so because DOT can restrict passage over any road.

There was a brief discussion among the subcommittee members on what that would mean and exceptions to the law with the hope that it will help those who are impacted by explorers.

Roberta raised the issue that there are consequences if someone damages a public easement, but the problem is you can't catch them and if you do catch them you have to prove they damage it and the extent of the damage.

Brian responded that they had the same issue on ATV trail and that is why they passed the law that anyone on the trail during mud season would be fined. That keeps people off and anyone who is not authorized can be charged.

Jim is going to prepare a draft, and will check the statutory authority and penalties that currently apply to all public easements and when and how municipalities can limit traffic on these roads. The Commission then can work with MMA to make sure the language is acceptable.

Roberta raised Jordan v. Canton and explained its significance to the issue.

Brian asked why the chart had that ATVs are riding too close to houses? What is causing that as they are supposed to be on trails.

Brian and Roberta had a discussion on what could be done and solutions.

Brian stated that the state doesn't have a speed limit for snowmobiles or ATVs. It would need to do so. However, there is a lot of pushback. The real issue is the noise from vehicles and tires.

Roberta suggested that ATV clubs should police their people.

Brian stated that there aren't any police, and they can't enforce a speed limit and that the clubs membership is about 15%.

John asked if we are looking to amend that municipalities have the ability to enforce on roads?

Jim said yes we are looking to amend Section 2395 so that municipalities can restrict vehicles on abandoned and discontinued roads.

The meeting ended at 1:35 p.m.

**ABANDONED AND DISCONTINUED ROAD COMMISSION  
SUBCOMMITTEE PUBLIC USE**

**July 25, 2024**  
**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, Joe Higgins, Karla Black, Ryan Pelletier, Kris MacCabe, John Monk.

Jim called the meeting to order at 12:00 p.m.

Jim opened the meeting discussing the history and progress the subcommittee had made in discussing issues facing landowners on abandoned and discontinued that have become public easements.

Roberta raised the constitutionality of landowners paying for roads being used by the public and that road associations will not fix the issue. She stated that there are two issues to be addressed regarding Public Easements. 1) if someone loses access for their property then they should be reimbursed, and 2) if public is using the roads that private landowners are fixing and not reimbursing them for use.

Jim replied that he understands her point but that if the commission recommends resolving this issue by causing municipalities to pay money then in his opinion nothing will be passed.

Jim reframed the argument by stating the goal of the subcommittee is to keep public easements in good shape especially those that are being repaired by the private landowners.

Jim went over the MDOT restrictions for posting the roads and the restrictions available to municipalities such as weight, limit traffic, mud season etc. There is nothing listing Public Easements being under the control of municipalities and so that should be added into section 2395, which would give municipalities the tools to protect the public easements.

Jim then went over the current available options (Title 17 and 23) to protect those who live on a public easement or punish those who damage public easements.

Jim thought the Commission could recommend adding that municipality can post during mud season, rain or anytime public use could damage the public easement, whether town maintains it or not, in section 2395 which would help alleviate some of the issues.

Ryan asked would it be too intrusive to municipalities to require bonds for those who want to access public easements for logging operations or construction projects? Ryan gave an example of one of the towns he worked with.

Ryan stated he did ask on the municipal official forum he belongs to how many towns have public easements and how many are maintained. One of the towns stated they had one Public easement and don't maintain it. But Standish and Gray have many Public Easements. Ryan thought it would be a good idea to speak with them and get a template for towns on how to handle Public Easements. Gray has 30 miles of Public Easements, and some have road associations. Gray also

provides snow removal through a private contractor on Public Easements. Ryan suggested it would be good to know how this came into being.

Roberta remembers when the court ruled that it was illegal to maintain roads and some towns stopped immediately and others called them public easements and used the statute to continue maintaining it under the fire and police protection clause.

Jim agreed and said he remembered law firms recommending that towns could continue to maintain these if they had releases and those living on the road allowed public access.

Jim believes that a municipality should have the authority to maintain the integrity of the roads (Public Easements) that people are maintaining.

However, Jim raised the issue of Sections 3021 and 3022 and that there are still two definitions of public easements. One Public Easement is limited to use by motor vehicles and by foot and the other does not have any limitation. These dueling definitions are unwieldy and make it more difficult for law enforcement.

Jim asked if everyone was okay with adding public easement to section 2395 and there was a unanimous agreement. The Subcommittee will present its findings to the Commission.

Jim raised if anyone else has any ideas such as minimum maintenance roads or other ideas that the subcommittee can start looking at those also.

Ryan asked Roberta about minimum maintenance and which states have them?

Roberta said New York had a proposed bill on minimum maintenance. She stated that the issue is that municipalities don't want to spend any more money than they must maintain roads they already have and are not open to adding a road. Roberta thinks the best way forward is either the municipalities pay to maintain a public easement or minimum maintenance or on those roads where they are not maintaining the public easement they allow Landowners to decide if want it to be private and let the landowners be the final say.

Roberta, Jim and Ryan spoke about public easement history, issues with being landlocked if there is no easement.

Ryan asked if there is no other current statute for minimum maintenance in USA and has there ever been for Maine?

Roberta said she will find one and can give it him

Jim said it was in Maine law and was found unconstitutional. (Jordan.v.Town.of.Canton) A town cannot do minimum maintenance and keep a public road without paying damages -- that was found unconstitutional. Lamb.v.New.Sharon further decided that non maintenance of a public easement is allowed.

There was a brief discussion on what town/municipalities should do with public easements and whether if they are not maintaining them they should be public easements and how to deal with transferring into private roads and what that would mean for town assessments (more money) and minimum maintenance roads.

Ryan asked Roberta who damages the Public Easements the most -- recreational or other uses?

Roberta said hunting, walking, snowmobiling and properly maintained ATV trails are not an issue. 4x4 trucks that drive in height of mud season and cause the road to wash out are a problem.

Logging companies are doing better but the weight of the vehicle is an issue if they grade a road but don't replace the gravel.

Ryan felt that could be handled with bonding.

Ryan wonders what the reaction would be if you proposed a limit on public easements, such as pickup trucks not allowed unless you are a landowners. Joy riding seems to be the issue that is damaging these public easement.

John asked how much is a rogue rider problem?. Across the state how many remain unresolved other than rogue riders?

Roberta thinks rogue riders are the most obvious, but the more people use a road where it is being maintained by private landowners, the more wear and tear on a road and the heavier cost to the landowner. So, limiting traffic would help.

Jim raised the issue that it is a public easement with public right to access -- it would be hard to distinguish that the people who live on them can have 4x4 but those who don't can't. What if you are a visitor or a logger? It needs to be carefully thought out.

Jim thought the next step is to work with MMA so municipalities can have language and knowledge of posting, the right to bond for access to public easement and bring it to the Commission to discuss.

Roberta felt that allowing a sign of warning on damage of road results in consequences might help.

Roberta to look up minimum maintenance laws on roads.

Jim ended the meeting at 12:50 pm.

## Abandoned and Discontinued Road Commission

### Public Use Subcommittee

September 10, 2024

**In attendance:** Jim Katsiaficas, Rebecca Graham, Kris MacCabe, Karla Black, Roberta Manter, John Monk, Ryan Pelletier.

Jim opened the meeting at 1:00 pm and handed the meeting off to Roberta to discuss minimum maintenance roads and how they would benefit Maine.

Roberta laid out her research and how some states have minimum roads standards and if someone lives on that road you cannot discontinue the road or stop maintenance. She found the different states have many different standards for rural roads that have homeowners who live on those roads.

Roberta then delved into the issues of the public using and damaging public easements which requires homeowners to expend their private funds for the public benefit. Roberta spoke about having a process to convert public easements into share private easements. That a seller should be aware of the status of the road and share that with the buyer so the buyer can protect themselves. She proposed the idea of minimum maintenance roads so that the road doesn't have to be restored to a high level or maintained at a high level but at minimal level to allow people to access their homes and get help when the road is torn up from public use.

Ryan asked if the idea of the minimum maintenance road would be for the Commission to suggest a standard that would allow for municipalities to consider adopting roads as minimum maintenance or is it a mandate.

Roberta replied that she is proposing a step in between having a full town-maintained Road and having the town discontinued a road because they can no longer afford to keep a road to full Town Road standard.

Roberta has found that there seems to be two consistent factors on why a town discontinues a road one was to reduce the cost to the town of maintaining these roads to full townway standard and the other was to reduce the town's liability if they're no longer liable for keeping it safe and convenient for the traveling public. If the town is only responsible for keeping the road reasonably passable then that would reduce the towns liability as well as the expense for the town. She gave her road as an example of the issues facing homeowners who live on these undefined roads.

Jim reiterated Ryan's question how would you apply this to the current discontinuance policy and abandonment. Jim asked if she was saying that those processes should be put on hold while people figure out do they want to try to negotiate a private easement or is a town going to hold a public easement. Do we want this idea of minimum maintenance to be another option on the menu? Do we want it to be available for a town looking backward to upgrade a public easement into a minimum maintenance road.

Jim and Roberta discuss the history of public easement definitions and changes to the law over the years.

Roberta feels towns can start with the roads they know and then look at the ones that they don't know, research, decide and have a final list of what road is what in the town.

John asked how many cases would be solved if Maine adopted that if there is a residence that is paying town taxes and then that road needs to be maintained by the town.

Roberta thought it would be solved for the people on roads, but it would hurt the towns because a lot of these roads are not up to local standards. However, the town needs to figure out why they have these roads and if they are being used for public access what type of access.

There was a discussion between Jim and Roberta about what Minimum maintenance roads would look like, authority on the roads, who would have the obligations and standards.

DUE TO TECHNICAL ISSUES THE VIDEO WAS CUT OFF AT 33-minute mark. The meeting was moved to TEAMS meeting. The following discussion continued with minimal maintenance roads.

The subcommittee discussed what is acceptable to towns and landowners.

Rebecca suggested sending out a list of questions to the towns to see how many public easements are maintained if at all.

Ryan felt that that public easements do what is needed to allow access to homeowners and the public to use the roads.

Roberta and Jim discussed how to make minimum maintenance roads a reality with Jim advocating for the town to have an option on whether to accept a road as a minimum maintenance, a look back process to opt out of the public easement and finally that public easements stays as it is a fallback for access.

The subcommittee agreed to have another meeting to discuss more on minimum maintenance and to allow time to research and draft proposals.

The meeting ended at 2:15pm.

**ABANDONED AND DISCONTINUED ROADS COMMISSION**  
Public Use Subcommittee Meeting Minutes

**October 3, 2024**

**Remote Meeting**

**In attendance:** Jim Katsiaficas, Ryan Pelletier, John Monk, Joe Higgins, Roberta Manter, and Karla Black.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

Jim opened the meeting by discussing where the subcommittee left off last time in their undertaking of researching and proposing minimum maintenance roads.

Jim stated that the subcommittee spoke about creating an option for minimum maintenance roads for municipalities so that homeowners who live on abandoned and discontinued roads, that are public easements, could approach a town and request minimum maintenance of their road but that it would not be mandatory. If the town's legislative body agreed then until a town meeting that revokes or terminates the town's agreement, the road would be minimally maintained. The town would be able to decide what level of maintenance it would provide. In addition, the town would not be liable for maintenance it does provide under either the highway defect act or the tort claims act.

Jim stated that he also hopes to fix Section 3105 A to have private ways change to public easements and then add it this section.

Roberta's concerns are that some towns still won't help with the minimum maintenance roads, unless it is mandatory. However, she understands that MMA will never approve it if it is mandatory.

Roberta also worried about places where the road starts as a Public Way and morphs into a Public easement or there are parts mixed in, that that will create issues.

Jim replied that in the fourth line of the suggested draft legislation it will only require a minimum level of year-round maintenance repair for a public easement that serves as access to one or more year-round residences, it does not state shall at least maintain the whole road up to the last year-round residents property.

Roberta stated that the last time she worked on this type of draft the Abandoned and Discontinued Road Commission was formed because the Legislature felt it was too complicated. However, the original bill that was put together had a list of requirements that must be met by landowners to the municipalities to maintain the roads. These restrictions included that it be a resident on an abandoned and discontinued road that had become a public easement, that the resident is taxed as a resident and where the town granted a building permit, but it would be mandatory for municipalities to maintain these roads.

Jim asked for a copy of the draft legislation. Roberta will provide the copy with her comments.

Roberta raised the idea of changing or clearing up language in Title 23 section 3026 A. The discontinuance statute says that it can be used for discontinuing a public easement, but her

concern is that it doesn't give any detail as to how to do that. Therefore, it should be amended on how it does apply to public easements.

Roberta also proposed the option of allowing towns or individuals on a public easement to discontinue the public easement, so they don't have to provide maintenance and make it a shared private easement.

Jim replied that it can be done now under state law.

Roberta raised the issue that it is seldom used as people aren't aware, it is unclear and cumbersome process. Also, the homeowners can all agree and the town after the year time can say no we aren't going to change this to a private road.

Roberta feels there should be two options -- either the towns do minimum maintenance, or they allow those on a Public Easements where there is no maintenance to become private roads, as long as no one would be landlocked. No one should be responsible for paying for the public right to use a road that is not funded by the public but private landowners.

Ryan proposed that perhaps the draft language should allow a direct petition to the voters on whether to create minimum maintenance roads. He thought then if there is an issue with the town's legislative body, a landowner can bypass them and allow the residents of the town to decide if they want a public easement with minimum maintenance. Ryan proposed that in the draft language there should be three ways to bring before the town legislative body, one is the town brings it before the legislative body, the landowners can request to be heard or by voter petition.

John stated that Roberta's personal situation on her road is a tough one, but the hope would be that with these changes others won't experience what she has experienced.

Jim is going to work on these proposals to see if he can't get a rough draft for the Commission to review and ultimately recommend for legislation.

There was brief discussion between Jim and Roberta touching on Limited Liability for those who live on abandoned and discontinued roads and that between the limited liability draft and this language for minimum maintenance it would free homeowners and towns from liability for maintenance on these roads.

Jim is going to review the documents on draft legislation on minimum maintenance roads. He hope to have something to present to the subcommittee and Full commission to see if they have changes and what their thoughts are.

The meeting was adjourned at 1:30 pm.

# APPENDIX

H

## **ABANDONED AND DISCONTINUED MEETING MINUTES**

### **Subcommittee Group 2 Limited Liability for Landowners**

**June 11, 2024**  
**Remote Meeting**

**In attendance:** Jim Katsiaficas, Roberta Manter, and Karla Black.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

Jim opened the meeting briefly touching on the Commission's Limited Liability draft from early this year. Jim emailed the draft to those in attendance at the meeting.

Roberta raised the issue that she cannot use screen share.

Heather will check with OIT and zoom to see work arounds or how to get it so everyone can share.

Jim then went through the previous template that the Commission had worked on last session, covering limitations of liability for damages and personal injury due to road work and issues around nonpayment for use, reimbursement for cost of care of the road, and environmental damages.

Roberta discussed her history with her road and issues.

Roberta stated that the issue was who is on the hook for environmental damage when you don't know who is responsible. Roberta proposed that the public or town should be required to pay for the damages if they are keeping the public easement.

Jim stated that the issue would be if the town decided not to hold the public easement, landowners would lose their public access to their land if there is no deeded right of way.

Roberta and Jim discussed the issues and solutions that might work.

Roberta suggested a poll with MMA to see if the members have public easements and how many vote to work on the public easements in their districts.

Jim thought we could ask and see.

Roberta thought of some solutions when no one know who caused the damage to a public easement would be a State fund or have it go through landowners relations program.

Karla felt it comes down to either the municipality or landowner to fix or repair.

Roberta stated the hardest thing is catching the perpetrators.

Jim had suggested cameras.

Roberta stated some people steal the cameras and some cameras can't sync to the cloud because there are no Wi-Fi connections.

Roberta, Jim and Karla further discussed public easement damages and the difficulty of catching the people who damage the road.

Roberta recommended those who jack up their trucks pay an excise tax and that money go to fixing the Public Easements.

Jim said the biggest issues for Limited Liability are that public easement maintenance by municipalities is fluid, so it can be hard to know what tasks the private owner or road association is to perform.

Roberta asked if there was an environmental disaster, is there an agency, fund or something else that could help pay for the damage.

Jim stated that he is not aware of one.

Jim then turned to the idea of asking our Commission members and members of the groups the Commission represents to look through the draft on the Limited Liability to see what other solutions or issues may arise.

Karla then pointed out that the draft Jim sent wasn't the official last draft and she listed out the two changes needed in the template which were in the language the commission had agreed to change the word may to shall in the cost and fees section and under number 4 limitations, the section added "reasonable known to the landowner."

Jim will send out an email with the draft landowner liability legislation to all the commission members, and a report of what the Subcommittee has done, what we hope to do and asking for any suggestions or thoughts.

Commission meeting ended at approximately 1:35 p.m.

**Abandoned and Discontinued Roads Association**  
**Limited Liability Subcommittee**

**July 18, 2024**  
**Remote Meeting**

**In attendance:** Jim Katsiaficas, Catherine Nadeau, Karla Black, Roberta Manter, Brian Bronson, and Joe Higgins.

Jim called the meeting to order at 12:03 pm.

Jim opened the meeting discussing the progress that has been made on this issue and whether it make sense to add limited liability to Section 159 A and the issues that could arise from doing so and his thinking that it would not be appropriate since this section is intended to relieve landowners from liability of recreational use of their land. The use of Public Easements for public access is not recreational use.

Jim instead proposed creating a new Section 159-E Section to limit landowner liability for public easements. He walked the Subcommittee through his draft “Section 159 E”, describing what it includes and how it would help those landowners who live on Public Easements that are discontinued and abandoned roads.

Brian, Cathy, Roberta, and Jim discussed reimbursement and different ways someone could be reimbursed for people who live on a road but don’t have a road association and concerns with if they can be reimbursed on Public Easements.

After the discussion, the subcommittee agreed to take out the reimbursement language. They will keep it as a backup in case the Legislature asks. The idea was for those who live and fix the road to be able to recoup money from others who live on the road who want to contribute to costs.

They moved on to a liability for landowners on a Public Easement. Karla raised the idea that landowners be shielded from all liability on the Public Easement, whether or not the town is maintaining it.

There was discussion on what the limited liability applied to between Jim, Roberta, Karla, and Brian.

Karla stated that her group feels that if a town and landowner are not taking care of a Public Easement and someone drives on the road, the landowner should not be held liable.

After a brief discussion, Jim is going to redraft the proposed bill to include Karla’s suggestion.

The subcommittee moved on to the environmental damage clause.

Jim explained that the law states that even if you didn't cause the damage to the road that led to environmental damage the state can still make you abate the environmental damage.

Catherine asked for an example of where that could happen.

Roberta gave the example of ruts that cause run off into the lake.

Jim stated the issue is that even if you didn't cause the issue and even if there are no criminal or civil sanctions the state can require a landowner to abate the damage, such as filling in the road and putting up a silt fence. You would still have the right to go and sue the individual, but you might need to track them down and if you can't find them you are still on the hook. Therefore, the draft being proposed in section 6b changes that and has it written that the landowner is not liable for environmental damage caused by third parties.

Jim warned that this might cause an issue with Maine DEP.

Brian hasn't heard of Maine DEP going after anyone or even landowners for damage caused by third parties.

Karla said she has not heard of any landowner having issues but has not been engaged with her members on this matter.

There was a discussion between Jim, Roberta, Karla and Brian on how this will work and issues that have or can occur.

Jim stated the draft will limit liability and expand liability protection.

Jim will redraft the limited liability legislation and will send the draft to the subcommittee to review. If anyone has any comments or suggested changes to let Jim know and he will work on a final draft to send to the Commission.

Jim thanked Commissioner Brian Bronson for his hard work on the Commission and wished him the best in retirement.

Meeting ended at 12:50 pm

# APPENDIX

I

**ABANDONED AND DISCONTINUES ROAD COMMISSION  
TERMS SUBCOMMITTEE MEETING**

**September 17, 2024**

**In attendance:** Jim Katsiafas, Roberta Manter, Peter Coughlan, Karla Black, Rebecca Graham, and Joe Higgins.

Jim opened the meeting at 1:05 pm and reviewed what the terms committee had been tasked with last year by the legislature, the suggested draft legislation and current charter.

Jim turned the meeting over to Roberta for her to provide an overview of the issues.

Roberta described the current issues with the confusing terminology regarding abandoned and discontinued roads, that they can be different types of definitions and restrictions depending on the date in time created, that the definition changed thru the years and has led to confusion of the terminology of private road, public way, public easement, private way.

After the overview, Jim requested that the subcommittee led by Roberta start with how to define a private way as private ways' continued use in MRSA and interchangeable use of Public Easement is causing confusion.

There was a brief discussion between Jim, Roberta and Peter on road signs being incorrectly label Private Way when they should be marked private road as the road is privately owned. Towns and municipalities are ordering the signs incorrectly. However, it seems that the people ordering have no idea of the difference between a private way and a private road.

Peter stated that there's nothing in state law that says any town must put up any street name, street name signs at all, even for 911. It is not a requirement. Is it best practice and a wise thing to do for public safety but not required under state law.

Jim asked if it is possible for Peter to include the difference in his training for municipalities through the local Road center.

Peter thought he could especially with the new federal roll out.

Jim asked if it would be coordinated with MMA and training programs.

Roberta raised the Opportunity for education at the MARA conference in two weeks.

Jim and Roberta discussed that private road, and public easements should be two clear definitions that do not refer or reference each other and that Public way definition needs to be completely clarified. Jim suggested adding an explanation that despite common usage a private road is not a private way.

Roberta and Jim then discussed what should be included in public easement definition with the changes made in law in 1941 and 1976.

They discussed the history and definition of gates and bars, public access , dead end roads, and side roads.

Roberta read the opinion of Justice Walden in *Brown v. Scholarsky* into the record.

Jim thought that the holding in the case raised an important point that if a municipality or state government under Maine's constitution, property can only be taken for public exigency.

Roberta discussed how private way has changed to become a public road, that it is unconstitutional to take someone's land for a public easement and there at the very least needs to be due process and just compensation.

Jim responded that can be confusing but the way things have evolve and what the Brown v Connors court pointed out is that these roads are supposed to be public with a right of passage.

Roberta disagreed. She believes that the constitution has lasted because it states our rights were given to us by the creator and not by men. Men can change their minds. If the laws need to change then so does the constitution.

Jim pointed out that over time the application of the constitution can change.

Jim turned back to the idea of forming definitions to classify the types of private ways with the exception may be of adding to it that there's a right of public access.

Roberta and Jim discussed and debated the history and reasoning on why the law was written the way it was for private ways and Public easements on discontinued and abandoned roads.

After the discussion, Jim proposed the following language “private ways reserved and discontinuance before 1965 and/or between 1965 and 1976”.

Roberta thought that could work.

Jim thought Roberta’s draft proposed definitions and numbering system would work to build a template. The definition of Discontinued roads Roberta provided could work if it was added or explained that the county commissioners have had jurisdiction over roads leading from town to town, could layout discontinuance, could layout Roads or parts of roads that would go from town to town until 1976. After 1976, all those county roads became town ways, and now the only roads that the counties have jurisdiction over are in the unorganized territory.

Jim and Roberta had a further discussion on what to add to the definitions and how to clear up the language and allow all the categories to exist.

There was a brief discussion between Jim and Roberta about minimal level of road care and how that could work for thru public easements vs dead end public easements.

Jim asked if anyone had any questions or comments.

Rebecca was raised the concern that sometime there is not a lot the town can do to maintain a public easement no matter the definition or history.

Jim replied that this would be a starting place to understand what the various components are for public easement or a private way.

Rebecca responded that the previous version the subcommittee had submitted mirrored what the Court had interpreted and how the court historically interpreted Public Easements. She stated that language should continue to be included otherwise it might create more confusion. In addition, the Commission also should explain that Windham public easement issue was resolved by a special local law and not a state law. Private and special laws are very individual circumstances.

Jim responded that the Maine issue is that the state does not have a definition of private way. This subcommittee is working on a definition of private way to account for the

history. Perhaps a better way forward is to replace that term private way with public easement.

Rebecca and Jim discussed the different types of public easements and whether it would make sense to have one type of public easement.

Jim asked if Margaret Cardoza wanted to comment on the proposals or give a comment or feedback. See attached for full comments.

Margaret felt that there are two separate definitions needed. One for Private Road and one for Private way/public easement. Margaret felt strongly that this would really help the state of Maine residents and legislators and all municipalities, unorganized or organized, to have this clarity of definition.

Margaret owns land in Windham and feels that private owners and municipalities could work cooperatively together. However, the definitions are driving everyone nuts because every time she speaks up about private way, she must add the word public easement. She feels that it needs to be one word since it's a joint, public and private, situation.

Jim replied that is why the legislature in 1976 decided to take all those private ways that had been created and called them public easements. However, because of the Road Association Statute using the term private way it has led to a great amount of frustration.

Roberta stated that she sees issues with the term private way consistently, issues with status of roads, issues with 3121 being applied incorrectly, so she believes the best way forward would be to fix the definition of private way.

Jim agreed with Roberta.

Jim is going to work on definition of a private way. Jim thought the way to move forward would be to think about how public easement would be defined, replace the terms private way in the road association statute and look at section 3121 because it is causing mischief.

Roberta described the issues section 3121 causes when people do not want to form a road association as most people are not aware that they can be charged for road maintenance.

Jim and Roberta had a discussion on how to interpret the law and where to find statutes and case law besides Westlaw. This was resolved when Jim stated that the state library should have West annotated statutes of Maine. They can be used to find the statute annotations, notes about various related cases, issues that are addressed and what the court decided. There is also MRSA which will link you to supreme court cases.

Roberta raised the confusion of lower court cases conflicting with higher court case decisions and that not everyone can afford to go to the Supreme Court to clean up mistakes in rulings.

Jim replied that the law is whatever the highest court in the state interprets and states their findings.

Jim is going to work up a draft based on Roberta's, copy, and circulate that. we can have a meeting after the full Commission hearing and then start working public easement definition.

Meeting ended at approximately 2:45 p.m.

**ABANDONED AND DISCONTINUED ROADS COMMISSION**  
Terms Subcommittee Meeting Minutes

**October 16, 2024**

**Remote Meeting**

**In attendance:** Jim Katsiaficas, Rebecca Graham, Roberta Manter, and Joe Higgins.

The meeting was called to order by Chair Jim Katsiaficas at approximately 1:00 pm.

Jim opened the meeting by discussing the subcommittees' undertaking of research, proposing changes to confusing terms and researching how to define a public easement.

After researching the Public Easement definition, Jim stated that the best way forward would be to remove the term Private Way out of the state law. He stated that even just taking the term private way out of the Road Association statute would help enormously.

Roberta agreed. She gave some history of Public Easements vs. Private Ways and the history behind passing the Private Road Association Statute and her issues with constitutionality of road association on a Public Easement.

There was a discussion between Roberta and Jim about the constitutionality of road associations on a Public Easements, benefits vs. cons including being landlocked, private landowners paying for public access, and issues around the problems created by misinterpretations of abandoned and discontinued road process.

Rebecca responded and raised the issue that if the argument is that private owners don't have a right to the public easement that creates an enormous problem for the public trails and that the notion that the state or individual needs to ask for an abutting landowner permission is already being practiced. Rebecca didn't think that you could separate out the private ownership of road that has a public easement over the road. Rebecca felt that the Commission should give the SLG committee a primer on how we got here and how we created the draft legislation. She felt the best way forward is Jim's suggestion.

Roberta replied that if a Public Easement is necessary for public access then a town should have the responsibility to pay for access not private landowners where they must continue to pay for damage caused by the public on the road and receive no reimbursement for maintaining said road.

Rebecca pointed out ultimately that the town is responsible for damage on public ways but if there was a massive climate event there are funds that people can qualify for to fix the road. If a town tries to plow private roads without an easement, as in Windham, it caused problems, and they had to get all the private roads made into public easements so they could continue the services they provide.

Rebecca said the solution is in the problem. She feels there needs to be an Ombudsman to assist and help communities and people deal with these problems.

Roberta replied that the problem though is that she hears from people who are not getting the help they need from their town or community.

Jim replied that he sees both sides of the issue and that it will continue to worsen as more people move on to abandoned and discontinued roads.

Jim reiterated that the way to move forward is not to define private way, but we should recommend taking out Private way and replacing it with Public easement in 3101-3105, it will have the benefit of allowing those who live on a public easement the opportunity to form road associations and create responsibility for maintaining the public easement. It will only be used though to the extent that the town doesn't maintain the road.

Roberta was wondering if we could get statistics on how many towns do maintain public easements and how many do not.

Jim suggested changing the title to Section 3101 3104 and have it say only Road Associations. Then, in the body of the law change the wording to "may be formed may be formed for private roads and public easements".

Roberta states that still wouldn't solve issues of those who live on a Public easement. She stated that there should be a better answer than having to hire a lawyer when there is an issue with a neighbor or logging company destroying the road because it takes a lot of time and money to get the issue resolved through the courts.

Roberta brought forward how having minimum maintenance roads would solve many issues.

Jim, Roberta and Rebecca discussed road materials with Rebecca suggesting a book by Perkins named Road Materials of Maine. They further discussed liability issues of building standard roads, potholes and defects.

Rebecca felt that a liaison in the Executive Office of the State Planning Office for Community Affairs would be helpful. Or a liaison under Peter in MDOT with the local roads assistance program overseeing mediation as they have a wealth of knowledge.

Roberta also mentioned that the Cooperative Extension's Agricultural Mediation Program has a great mediation program.

Everyone agreed it would be good to have a way to connect people to more sources or a point person to contact and share information and helpful programs.

Joe stated that private road ownership is hard for inland fisheries trail programs, that they need to work with homeowners/landowners for grant programs, if there was someone who was a specialist it would make it easier. In addition, he would like to see help from the towns in maintaining public easement trails and other trails that bring business into these municipalities.

Jim is going to work on a draft that will allow for Road Associations to be formed to maintain private roads or public easements and change Private Ways to Public Easements in the Road Association law section 3101-3105. The goal will be to bring this to the commission to have an informed conversation over the language and decide how to proceed with the draft.

Roberta reiterated that Public Easements need to be maintained or paid to be maintained by the municipality in which they reside.

There was a brief discussion on whether there was a statute that would prevent someone from being landlocked in Maine but so far no one has seen said statute.

Jim thought it would be a good idea to ask Peter about an ombudsman program thru MDOT and something that could be discussed at next week's meeting.

The meeting ended at 2:03 pm.

# APPENDIX

J

May 27, 2024

We, Mike and Keri O'Brien of 102 Cole Road Cornish Maine would like to share our story as it concerns a major problem occurring in the State of Maine

In August 2018 we, along with family purchased two parcels of land in Cornish through Real Estate 2000. Directions to the property from the listing were Kimball Hill Road to Old Cole Hill Road (Cole Road). Cole Road, as communicated to us is a discontinued road in the State of Maine, therefor public easement. Across the road 94 acres was purchased by George and Brenda Dubois a few months prior. All three parties worked collaboratively and had power brought in through CMP, which would signify public easement.

The three new property owners of Cole Road all built new homes. We actually hired the DuBois (Hometown Builders) to frame our new house. George Dubois constructed our mailboxes in a row at the end of Cole Road off of Kimball Hill Road, signifying our entrance. When we purchased our property, the listing directions stated Kimball Hill Road, take right on Cole Road.

After approximately two years of living in our new home, we began receiving threats and harassment from the DuBois about speeding on the road. Mind you, this is a dirt road and you cannot speed on the road without damaging your vehicle. They also started to claim that they owned the road. They began to threaten to put up a gate blocking us access to our homes. They claimed our access was through the other end of the road up Beldan Drive. Beldan Drive IS a private road that was made a private driveway by the previous builder who resided there. This was NOT our access. Also, coming from this direction also abuts the Dubois property, so why one end and not the other. It just doesn't make sense. The threats and harassment continued and we reached out to our closing attorney, Bergen Parkinson of Kennebunkport. At that time in 2021, Bergen Parkinson sent the Dubois a letter stating to cease and desist the harassment as Cole Road is public easement. Where did Bergen Parkinson get this information? This gave us a false sense of security leading us to believe our problems were over. (Letters attached)

On Saturday July 14, 2023 the Dubois did in fact put up a gate denying us access to our property! Who does this! This is our home! The police were called and we were told it's a civil matter and had to go before a judge. We also involved the local land warden who attempted to reason with the Dubois making the recommendation to keep the gate open until it went to court and they refused. How is it the Dubois were not arrested for blocking us access to our permanent residence? What would have happened if we had a fire or medical emergency?

Prior to the gate going up, our family member filed a claim with our title insurance company on one parcel of our property and she was paid out some money to pay for legal fees. We did hire an attorney and this attorney immediately filed a Temporary Restraining Order (TRO). The judge said the gate needed to come down and we were able to access our home again. However, the Dubois appealed and within days the gate went back up. How was this allowed by the judge in such short time? How was he able to really examine all the evidence in two days! A site visit was never even done. So the gate went back up and hence, no access to our permanent home again!

Luckily for us, the Sisson Conservation Trust allowed us to use our vehicles on their private property - hiking trails to get to our homes. These trails are not suitable for vehicles. We endured this torture for 2 1/2 months with damage being done to our vehicles. If Sisson didn't allow us through this way, we would have been forced to abandon our homes as we were **LANDLOCKED!** This is not supposed to happen in the state of Maine.

During this time, I also filed a claim on our property with the title Insurance company and at this point we were provided counsel by them.

Prior to this, we also attended multiple town meetings to address this issue with the selectman; however, the town was advised by MMA not to make a judgement on the road. How were we issued building permits by the town, they collect our tax money but they won't make a decision for a resident to access their own home!

*Bergen Parkinson at this time represented the town as counsel and they stepped down on this issue due to conflict of interest. They could have corrected the road status at that point but failed to do so.*

We were provided Attorney David Soley, Bernstein Shur, and this issue went to mediation. In our opinion, this mediation process was a complete sham. It wasn't about what was legal or right. It basically was about coming to a resolution to get the gate open. Our counsel did not have our interest at all, attorney Soley coerced us into signing a document that allows the Dubois control of the road just so we could get access to our home. Attorney Soley also stated to us, putting fear in us, that if this went to court we could potentially be locked out of our homes for two years. We have yet to see any documentation that shows anyone has ownership of the road. Attorney Turley claims the road is abandon believing the Dubois own to the center line of the road. We do not believe this to be true. The road was never abandon, if so there would be tree growth blocking the road. This road is 200 years old and there was never any access issues until the Dubois arrived.

Also attached are letters penned by Roberta Mantra, Maine Roadways, who did extensive research about the status of Cole Road. None of this documentation even came into play during mediation. In hindsight, we wished we had walked out of mediation; however, we also wanted access to our home! This entire process was a debacle.

We were forced to many concessions; speed limit of 10 MPH , keep in mind school zones are 15 mph we went back-and-forth with that to no avail.

The biggest concession of them all is we are not allowed to sue the DuBois's. We had to sign off on that in order to gain access to our home.

We were also forced to sell 4 acre lots. If we decide to subdivide the property how is it someone like this can put this restriction on us?

At this time we are forced to enter into a road maintenance agreement. Be advised, this is a life long cost and devaluation of the property.

The gate still remains in place, open, and this is a constant reminder of what happened on July 14 of 2023. We have to drive by it every time we leave our home which to say the least causes mental anguish. We asked attorney Soley to have the gate removed and he said it's on their property. We don't believe that to be true as there is a 66 foot wide easement to the best of my knowledge. CMP requires a 50 foot easement to erect poles and power.

How can these decisions be made without a site visit from the court, nor any of the attorneys involved in this matter? The bottom line mediation was a complete injustice to the innocent homeowners on Cole Road.

How can an attorney or judge for that matter decide the status of the road with no documentation as to the actual status of the road?

We now have the DuBois's controlling what we can do on our own property, major concession to gain access to our home, which we never should have lost in the first place.

We have attached to this letter a document written by Roberta Manter from Maine Roadway, who is extremely knowledgeable regarding Maine roads and our situation. Her research indicates Cole Road is still a town road. Also, even if Cole Road was abandoned, then the Dubois are also trespassing to get to their home. The first portion of Cole Road is property of homes on Kimball Hill to the left and right of Cole Road. So if we are trespassing going by the Dubois, they are trespassing going by Cogill and Shepardsons.

We have also included a document based on selectmen research classifying the road as public easement. So again, how was our attorney be allowed to change this? Just so we didn't clog the court system. The insurance company wanted this done cost effectively and quickly so in the end we suffered.

To say we have suffered mental anguish is an understatement. When the gate went back up by the gross decision of the judge, our propane company who had been

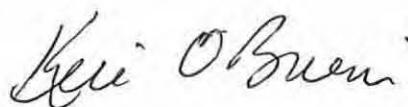
making deliveries for the past 4 years was greeted by the gate. He knocked on the door of the Dubois to have them unlock the gate so we could get propane, an essential for our daily living. She refused! We had to get the land warden involved again. We spent countless hours out of work, dealing with meetings and lawyers on an issue that never should have been allowed to get as far as it did. This is just one example of how this has caused much stress in our lives

In closing, Bergen Parkinson failed on many levels and so did the judge that allowed the gate to go back up. Our sources indicate this was passed onto attorney Scott Edmunds who then passed it onto a paralegal to do the title search. Our property currently valued between \$840K-1.2K is now unmarketable stigmatized property. Had Bergen Parkinson done their due diligence in reference to the road status, we would not be in this predicament. Bergen Parkinson should have either corrected the access prior to closing or advised us to walk away from the purchase of the land.

We feel we have lived a nightmare that should never have happened. The signed documents filed in court were basically based on us fearing not gaining access and not about what is **LEGAL!** In our opinion, these documents should be reversed based on what is legal and right. We were told recently that supposedly we had 21 days to appeal which we were never informed by Soley. If we had know this, we would have appealed. I sincerely hope the issue of discontinued-abandoned roads in Maine gets addressed as no one should lose access to their home.

If you have any further questions regarding this matter or need more documentation, please call us. Again, we are writing this letter for awareness. No one should go through what we did to get to our homes!!!

James Michael and Keri O'Brien  
102 Cole Road  
Cornish, Maine  
508-400-3504  
508-958-8262



# Selectman

## Cole Road Review continued:

June 28, 2023, Selectmen Business Meeting

Based on the documentation and review at the Selectmen's Meeting Dated 5/31/2023

- **3/3/1941:** Annual town meeting, Article 27: *To see if the town will discontinue from winter breaker the so called Either Cole Road.* Voted to pass over Article 27. **Exhibit C** (Presumption can be made that some form of winter maintenance existed.)
- **Review of all Annual Town Meetings and Special Warrant Article Town Meetings through 1965 have no mention of Cole Road for discontinuance.** (Presumption since no formal town vote occurred for discontinuance do the statutes prior to 1965 require discontinuance by town meeting, of note **EXHIBIT I page 3 of 5** lists roads that were approved and discontinued at town meetings Cole Road passed over Exhibit A 1931 and York County dismissed petition Exhibit C 1940 both previously documented at 5/31/ 2023 Selectmen's meeting.)
- **3/5/1973:** Annual Town Meeting, Article 51: *To see what sum the town will vote to appropriate from Revenue Sharing Trust Fund for mapping the town.* Approved \$3,000 **Exhibit J**
- 1974 Town Zoning map indicates Old Cole Road discontinued **Exhibit K.**

## Conclusion:

Presumption based on the documentation reviewed and Cole Road pass over for winter breaking along with the 1974 Town Zoning map. The conclusion can be made that the town determined presumed abandonment in 1974 discontinuing Cole Rd. Since the abandonment occurred after September 3, 1965 a public easement remains. **Exhibit D page 2 of 5 MMA road manual**

3700 ft. Beach  
1120 A. elevation  
about 100 yards  
below the surface  
and 1000 ft.  
from the beach



Exhibit C

Sarah B. Read  
Dorward W. Farnham  
Eva C. Sherratt  
H. C. 12  
Becky L. Reid  
Linda  
Cynthia L. Stevens  
H. C. 12  
Doris

Dear Mr. O'Brien,

You have asked us to provide you with a summary describing the rights and responsibilities of those who live on Cole Road. Specifically, we have looked into whether a party has the right to impose rules and restrictions upon others for the use of the road. Cole Road is legally considered an "abandoned road" by the Town of Cornish. When a road is abandoned, the town takes the position that it is no longer responsible for maintenance and repair of the roadway. The road may be private in the sense that the Town takes no responsibility in maintaining it, but a public easement then takes its place, and it remains a public right for anyone to have unrestricted access and use.

After a road has been converted to a public easement, the landowners are responsible for the continued maintenance of the road. As a landowner, you have all rights available to the general public, but you also have the responsibility to maintain and repair the road in any manner that is considered "reasonable." Reasonableness is difficult to define specifically, because it depends entirely on the facts and circumstances of the situation. Maine courts have generally found that minimally widening the road, filling holes and paving are all practices that may be considered reasonable.

It would be best for you and neighboring landowners to come to a consensus on what steps you can take to impose safety measures so all landowners can be on the same page and share in the expenses. If an agreement can't be met, Maine allows for a process to create a "road commission" comprised of landowners to make road decisions by a majority vote. This option should realistically be taken only if other agreements cannot be arranged, as the process is time consuming.

Everyone has the same rights to use the road. Any action by a landowner that limits the public's use of the road would be considered unreasonable. Nobody has the right to install any gate, fence, or other obstruction that would inhibit a person's ability to travel up and down the road. It is the responsibility of the landowners to ensure that the road remains traversable by the public. The abutting landowners are assuming the responsibility of maintenance from the town, but the road is required to remain accessible.

I hope this was able to give you more information on what rights and responsibilities you and your neighbors have as landowners on Cole Road. If you have any further questions, please don't hesitate to reach out.

Sincerely,

Franklin

Casey A. Fournier



George and Brenda Dubois  
16 Dreamers Way  
Cornish, Maine 04020

November 12, 2021

Cc:  
James and Kerry O'Brien  
Kathleen and Michael Maher

Dear Mr. and Mrs. Dubois,

Our firm represents Mr. and Mrs. O'Brien, and Mr. and Mrs. Maher in regard to your letter specifying your intent to restrict access to Cole Road, dated November 8, 2021. This letter serves as a formal notice to cease and desist in your attempts to restrict access to and from Cole Road.

In your letter, you assert an alleged right to terminate access to Cole Road effective December 10, 2021. You are hereby notified that you hold no right to restrict automotive or pedestrian traffic to Cole Road. Cole Road is not a private way, and you hold no exclusionary rights in the road itself. Cole Road is deemed an abandoned road by the Town of Cornish, and currently holds the status of a public easement. No individual or otherwise may control who can and cannot access a public easement, it exists for the use and benefit of the public at large.

Your attempts to restrict access to Cole Road is in direct violation of the laws of the State of Maine. Any continuation of your efforts to restrict access to Cole Road will result in a civil complaint for declaratory judgment. Further damages, including injunctive relief and attorney's fees may also be sought pursuant to 22 M.R.S.A. § 3029-A.

Any further questions should be directed to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Edmunds".

Scott M. Edmunds

## Maine ROADWays' position on Cole Road

### IS THE ROAD A PUBLIC EASEMENT?

Since no one has been able to produce proof that the road was ever actually discontinued, it would remain legally a town way, which the town would be obligated to repair (23 MRS §3651 et seq). The Dubois contend that the road was "discontinued," but their attorney evidently did a rather thorough search of the county records and was unable to produce a discontinuance. I found a county discontinuance of Watson Hill Road, but not of Cole Road. As of 1976 the road would therefore have become a town way (23 MRS §3021) and the Town has no record of having attempted to discontinue it *ever*, let alone after July 29, 1976, when it came within their jurisdiction.

If the Town still considers the road a public easement due to statutory abandonment, the Dubois do not own it and have no right to block the public easement. I do not understand how MMA can say the Selectboard has no authority to make any kind of legal determination regarding the road's status. The way I see it, the Selectboard does have the authority under 23 MRS §3028-A to declare that the road is *presumed* abandoned with a public easement retained, and then if anyone wants to dispute that determination, they can go through the appeals process. Since the earlier version of statutory abandonment, 23 MRS §3028, had no requirement for filing a Notice of Presumption of Abandonment, and since the presumption was something that occurred automatically after 30 years of lack of regular public maintenance, I think the Town has a case for claiming it was already presumed abandoned under §3028 at any time after July 29, 1976 when that law became available. If the Selectboard is not allowed to declare the road presumed abandoned, then since it has never been legally discontinued, it remains legally a town way.

The only way I can make sense of what MMA is saying is that MMA thinks it was a private road. But I have the county layout for Cole Rd in 1792, and since there is no record of the County ever having discontinued Cole Road, it would have become a town way as of July 1976. MMA does admit there is no documentation of the town having discontinued the road. Therefore if the town is not allowed to claim abandonment, it remains a town way.

The road *does not* qualify for common law abandonment because it has been continuously used for access to the various properties, including for logging. (More on that below.)

The fact that the Town issued building permits for properties on the road based on Cole Road frontage demonstrates that the town still considered the road to exist.

### DO THE DUBOIS' OWN THE ROAD? IS IT PRIVATE PROPERTY?

The Dubois refer to Cole Road as a "private road." That is different from "private property." A private road *is a road* that is owned by and gives access to the various abutting properties. If it were in fact abandoned by common law, as they argue, then there would be no road, but rather a patchwork of little pieces of private property. The Dubois' would have to trespass over the lands of Shepardson and Cogill in order to reach their own property. Whether it's still a public road in any form, even a public easement, OR if there is no remaining public easement and the land all belongs to the abutting property owners, then the agreement the Dubois forced the Mahers to sign

has no more weight than if they had tried to sell them the Brooklyn Bridge.

The Dubois purchased their property on the northwest side of the road in 2018, but didn't purchase their property on the southeast side of the road until 2020. Therefore they had no right to claim ownership of the entire road in 2019. If, as they contend, the road had been abandoned by common law, then they could only have controlled their half of the road and could not have demanded the Mahers contribute to maintenance of the whole road - only the half of the road that abutted their property.

If, as the Dubois argue, the road was abandoned by common law, then the Dubois cannot argue that the Mahers have access over the other end of the road because they would then have to trespass over the lands of Dubois, Lajoie, Beckwith, and Sisson Trust. In fact the Dubois' attorney demonstrated that the southwest end of the road appeared to be grown in and to have ceased to exist, but that the northeast end of the road is still visible.

The Dubois say that the Mahers can access their property from the southwest "without crossing our property." Yet the Dubois' property on the northwest side of the road encompasses all of the road opposite the Maher's lots 66 and 66A. If they could claim in 2019 that the Mahers could not use the northeast end of the road because it was owned by the Dubois, when the Dubois did not yet own their little lot on the southeast side of the road, then how can they say the Mahers can access their property from the south without crossing the Dubois' property?

I suppose they could claim the Mahers and O'Briens could build their own road from the south all the way to the end of the Dubois property over their own property without using the part of Cole Rd that abuts the Dubois property, but what makes them think the Mahers have a right to cross other people's private property to get from there to Rt 5? Evidently they believe they have private rights that others do not have. This is further illustrated by the fact that as President of the snowmobile club, George Dubois regularly uses the property of others. So the Dubois feel that they have a right to cross the property of the Shepardsons and Cogills, and that they can grant the Mahers and O'Briens a right to cross the property of the Lajoies, Beckwiths, and Sisson Trust, but they will not allow the Mahers and O'Briens to use the road where it crosses their own property or that of the Cogills and Shepardsons. What gives the Dubois such power over the lands and rights of others?

#### **WHAT CONSTITUTES COMMON LAW ABANDONMENT?**

Unlike statutory abandonment, common law abandonment is based not on a lack of maintenance but on a lack of use for twenty or more consecutive years. And unlike statutory abandonment, which retains a public easement, common law abandonment extinguishes ALL access rights, both public and private. In my opinion, a road is often its own best witness for a claim of common law abandonment. If there are twenty-year-old trees growing in the middle of the road so that it's impossible to drive between them, chances are no one has used it for a very long time. And if no one has used it at all for twenty years, chances are no one depends on the road for access to their property, so no one will be seriously injured if it is no longer a road.

There is a common misconception about common law abandonment. Many believe that use by

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the abutters and by hunters doesn't count. This stems from confusing the extinguishment of a public road with the establishment of a public road by adverse user. No matter how many landowners cross a piece of someone else's private land to get to their own property, they cannot establish a *public* way. Use by hunters and others using the land for recreational purposes also does not count, because their use is assumed to be by permission (even if no permission was specifically granted.) In order to establish a *public* way by prescription, the use has to be by people who are indistinguishable from the public as a whole.

On the other hand, even *one* private individual crossing another's land under the right circumstances can create a *private* easement by prescription. They must do so for at least twenty years without the owner's permission but with his acquiescence, or their use must be "so open, notorious and uninterrupted that acquiescence will be presumed." But the Maine Supreme Court has said that even intermittent use, such as that consistent with maintenance of a wood lot, can be sufficient to establish a *private* easement by prescription. See S.D. Warren v. Vernon, 697 A.2d 1280 (Me. 1997), Great Northern Paper Co. Inc. v Eldredge, 686 A.2d 1075, 1077 (Me. 1996), Gutcheon v. Becton, 585 A.2d 818, 821-22 (Me. 1991); Glover v. Graham, 459 A.2d at 1084-85, and McGray v. Lamontagne, 623 A.2d 161, (Me. 1993)

So private use is sufficient to *establish a private easement*, but common law abandonment *extinguishes ALL rights, public and private*. And because abandonment doesn't occur until the end of the period of abandonment, those who use the road cannot even claim a private right by prescription at the end of the twenty years, because for all that time they were still using it as a public road.

So, will use by the abutters alone prevent common law abandonment of a road that already exists? In Gay V. Dube, et al. 39 A.3d 52, 2012 ME 30, the Court said that use by the abutters was the use for which the road was established, and therefore it *was* public use. If you think about it, if the only access the abutters have is over the public road, and they have no deeded easements over that road, then their use of the road must be as members of the public, and therefore constitutes public use.

To illustrate an extreme case, suppose there is a dead end public road that provides the sole access to a dozen year-round private homes. The residents have used the road daily for fifty years or more. But one day, the town realizes that because the road is a dead end and goes nowhere that the public needs to go, the public hasn't had reason to use the road for twenty years. So the Town declares the road abandoned by common law, and suddenly all but the first two residents on each side of the road are legally land locked and cannot get to their homes. The residents protest, but MMA tells them that the legal status of the road can only be determined by a Court, and since the people on the road are of modest income, none of them can afford that. So the first two residents, who both have driveways from the main road, jump at the chance for privacy and put a locked gate across the entry to the road. The rest of the residents are all completely deprived of access, without either due process or just compensation. But access has been shown to be a property right attached to the property, which cannot Constitutionally be taken without BOTH due process and just compensation. Complete deprivation of access renders a property worthless, so just compensation would mean paying them the entire value that

the land had before access was lost.

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### **DOES COLE ROAD QUALIFY FOR COMMON LAW ABANDONMENT?**

Is there sufficient evidence of use of Cole Road to prevent common law abandonment? Based on the Supreme Court cases cited above, use for logging may be sufficient to prevent common law abandonment. Properties on Cole Road were previously owned by Diamond International Company, Scott Paper Company, S.D. Warren, and Herbert C. Haynes Inc, who all used the road for access to their wood lots. The deed from Herbert C. Haynes Inc to the Dubois says that at the time of the sale, the property was in tree growth. That requires a forestry management plan, including regular harvests - which could not be done if the road no longer existed. The Dunnells bought their property in 2004, and also logged their property regularly before selling it to the Mahers and O'Briens.

Google Earth's historic images clearly show there was logging going on in lot 64 at least as far back as 2003, which gives you twenty years' use. It looks like there have been a couple of areas on lot 64 that have been kept clear since at least 2003. (Skid yards?) Aerials from 1998 show lot 66 as having been pretty much clear-cut. A 1986 view on [historicaerials.com](http://historicaerials.com) shows lot 66 as heavily forested and lot 64 (and lot 63) looking bare by comparison. Same in 1962. So it certainly appears there has been pretty continuous management of lot 64 as a wood lot at least as far back as 1962, which is the earliest aerial photo I have been able to find..

The Shepardsons have owned their property since 1977. Patricia Shepardson said the road has been used continuously by them, by other property owners, and also for logging, hunting, and maple sugaring. The court has already acknowledged that, "The northeastern section of Cole Road used by the Plaintiffs and Defendants was relatively well maintained and even enabled the Mahers to have the component parts of a modular home delivered to their property by 'big rig.'"

A road that has not been used for twenty or more consecutive years will be well grown in, with brush and trees up to twenty years old growing within the traveled portion of the way. It would be impossible to drive a "big rig" with components of a modular home up a road that has not been used for twenty years. The Dubois' attorney claims that Cole Road was abandoned sometime before 1965. If that were true, there should be trees up to 57 years old growing in the road.

The fact that the Town has issued building permits on the road is evidence against common law abandonment, since if the road was abandoned by common law, there would be no road frontage. It would be good to get a copy of the town's requirement for road frontage and see exactly how it is worded. The fact that the town recognized properties as having road frontage could lead to a claim of "equitable estoppel" if they later try to change their position to common law abandonment. Equitable estoppel says that a town can't change its position if someone has relied on it to their detriment. So if you relied on them granting a building permit because they said you had access, and you built a house relying on that position, and then they said you have no access, they could be sued.

### **WINTER BREAKING**

The Defendants' Opposition to Motion for Temporary Restraining Order alleges that "a) Cole Road was not maintained during the winters starting in the 1920's; b) it was considered to be 'unsafe and not suitable for public travel' by nearby property owners as of 1931; (c) the Town claimed that it was 'badly out of repair' as of 1941; (d) Town records indicate that the Town seemed to believe(sic) that the road had been discontinued in 1942; and (e) the roadway no longer provided a vehicular thoroughfare as of the 1960's."

I believe his conclusion that the road was not maintained in the winters starting in the 1920's is due to his erroneous application of the law. He interprets "winter breaking" to refer to a vehicle breaking the soil if there is insufficient snow cover, and concludes that a refusal to suspend winter breaking means that the road was left covered with snow. The law that actually applied didn't come into existence until 1923, and it was RS Chapter 24, section 130, the predecessor of our current law that allows roads to be closed to winter maintenance. The fact that the county refused to close the road to winter maintenance indicates that the road was still in use and needed to be plowed. The evidence of logging in 1962 and since then refutes his allegation that the road "no longer provided a vehicular thoroughfare as of the 1960's."

#### **OTHER ACCESS**

I find it amusing that the Dubois' attorney argues the road was deemed "unsafe and not suitable for public travel" in 1931, and "badly out of repair" in 1941, that the Town has done no maintenance on the road, and that the southwest part of the road was not observable on aerial photos; yet now they claim the Mahers and O'Briens are not land locked because they can use the southwest end of the road. Their suggestion that the southwest portion of the road is safe and adequate for use by fuel delivery trucks and for emergency vehicles is ludicrous.

In addition, Beldan Drive is a private road over which the Mahers and O'Briens have no right of access, and the former road across the Sissen Trust is now a trail, over which vehicular access is prohibited. The fact that the Trust has allowed the residents temporary permission to use it underscores how dire the situation is. A section of Watson Hill Road was discontinued by the County in 1941.

#### **EASEMENT BY NECESSITY**

The Dunnells, who sold the property to the Mahers on August 22 of 2018, also had owned the property encompassing Beldan Drive, the private road across lots 55 and 55A. The Dunnells had already sold the Beldan Drive property to Coastal Realty on August 15, 2018. If they had sold the property to the Mahers before they sold the property to Coastal Realty, then IF the Maher property would have been otherwise land locked, the Dunnells would have been obligated to provide them with an "easement by necessity" over their lots 55 and 55A. But since they sold the land to Coastal Realty first, the Dunnells could no longer use Beldan Drive themselves, and had no right to grant access over it to the Mahers.

The fact that the Dunnells made no effort to retain for themselves an easement over Beldan Drive when they sold the property there supports their statement that they had consistently used the northeast end of the Cole Road for access and expected the buyers of their remaining land to be able to continue to do so.

## MAPS

Cole Road appears on Google Earth, the DOT Mapviewer, Historicaerials.com, E-911 map, and the town tax map. The sign at the end of the road is green with white lettering, which according to E-911 indicates a Town way. The DOT Mapviewer site shows both Beldan Drive and Cole Road as private roads. This information is provided to the DOT by the town. This is further proof that the Town considers Cole Road to be a road. But Pete Coughlan of the DOT will confirm that a designation of private road on that map does not indicate ownership or the legal status of roads, it merely indicates which roads the town identifies, and whether the town does or does not maintain each identified road. The fact that it shows up as a road indicates the town considers it is not relegated to the private property of the individual abutters.

## REAL ESTATE DISCLOSURES

Since the Mahers and the Dubois purchased all of their various properties after 2017, the seller's disclosure was required to state whether the access to the property was maintained by the public, and if not, who was responsible for maintenance. (33 MRS §193) The real estate disclosure on the Dubois property northwest of the road describes the property as "very private." (That's a warning flag for "questionable access.") Then it says, "New gravel road to building site." (But nowhere in the Dubois deed does it grant them ownership of, or even an easement over, that gravel road.) The disclosure states the Street Name as Kimball Hill. (But the deed description does not have any boundary touching Kimball Hill Road.) Street Type is listed as "Road." (Not "private property owned solely by this property owner.") Tax i.d. is listed as, "Lot 67 Kimball Hill Road, Cornish R867." (But again, the lot has no frontage on Kimball Hill Road, and no easement over Cole Road.) Most telling, the "Road Frontage" is listed as "No." The Directions to the lot say that from Kimball Hill Road, "Go straight at intersection in .15 mi see road on right. See sign 300 feet down road on right." Under Details, the disclosure says, "Site - Right of way, Rolling/Sloping, Wooded." Then it says, "Road - Dead End, Gravel/Dirt, Right of Way." *(Only there is no deeded right of way.)*

These disclosures should, at the very least, have raised some questions about ownership of the access to the property since it was stated to have no road frontage.

Now let's look at the Mahers' real estate disclosure. The Dubois insist that the Mahers and O'Briens knew when they bought it that it was a private road. But a "private road" is a shared access, not the private property of the owner of one of the lands it serves. If it were private property it would be a driveway, not a road. The Mahers' disclosure says the following:  
"Is the property subject to or have the benefits of any encroachments, easement, rights-of-way, leases, rights of first refusal, life estates, private way, private road/homeowner associations (including condominiums and PUD's) or restrictive covenants? X Unknown."

"Is access by means of a non-public way? X Yes. If YES, who is responsible for maintenance? Shared with landowners."

"Source of information: Seller."

Then there is a "Property Disclosure Addendum - (Roads/Road Maintenance)"

"Are there any abandoned or discontinued town ways, any public easements or private roads located on or abutting the property? X Yes." (But it fails to specify which.)

"If Yes, describe: Old Cole Hill Road and Watson Hill Road."

"If Yes, who is responsible for maintenance (including road association if any): No association fees apply. The landowners share road responsibility."

At the bottom of the page, it says, "NOTE: "Public easement" is defined as an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976."

This disclosure reasonably led the Mahers and O'Briens to believe the road was a public easement and that they would share in the maintenance thereof.

The deeds of each of the parties' parcels describe them as being bounded by the road, rather than granting to the center of the former road.

#### **EQUITABLE ESTOPPEL, EASEMENT BY ESTOPPEL**

The Dubois have consistently referred to Cole Road as a "private road." If it were abandoned by common law, there would be no road. A private road is not the same as private property. By calling it a private road, they have acknowledged that the road still exists and has not been extinguished. George Dubois was hired to frame the O'Brien's house, and did in fact frame it. Why would he help someone build a house which he felt had no access? Did he figure he could get paid for building a house which he could later buy for cheap because it was inaccessible? He also installed the community mailboxes at the end of the road, and he joined in granting easements for the power company and paying to have the line brought in.

The Mahers and O'Briens relied on Dubois' actions as assurance that the Cole Road provided access to their homes, and they relied on it to their serious detriment as they are now being deprived of access to the homes which they built in reliance on the indication that the Cole Road provided access. The "maintenance agreement" which the Dubois had them sign further assured them that as long as they were willing to contribute their fair share of the cost of maintenance, (which they were,) that they were assured of access. The Mahers and O'Briens were willing even to assume the entire cost of maintenance in order to negotiate an interim agreement, but the Dubois rejected that offer. Therefore the Dubois should be compelled by Equitable Estoppel and Easement by Estoppel to provide the Mahers and O'Briens with the access they were led to believe they could depend on.

#### **HISTORIC VALUE**

I did find a Plan of the Town that was drawn in 1795, and it shows the "County Road" which had been laid out by the County just a couple of years earlier. It appears it was the ONLY road in town worth showing on a map at that time! Would the Town want to give up on its oldest existing road?

That's all I can think of for now - I may have other ideas later, especially in response to what the Defendants say. I hope this is helpful.

Roberta Manter, Maine ROADWays  
(Residents & Owners on Abandoned & Discontinued Ways)  
[maineroadways.blogspot.com](http://maineroadways.blogspot.com)

Maine ROADWays on facebook  
(207) 685-9846 (Do not depend on the voicemail!)

**Leavitt-Soni, Heather A**

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**From:** Brenda Stickney - [REDACTED]  
**Sent:** Saturday, November 23, 2024 1:50 PM  
**To:** Leavitt-Soni, Heather A  
**Subject:** ABANDONED AND DISCONTINUED ROADS COMMISSION TESTIMONY

**EXTERNAL:** This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**ABANDONED AND DISCONTINUED ROADS COMMISSION  
Andover Maine**

Thirty-three years ago, we bought land in a subdivision which began in Andover North Surplus and ended in Andover. The subdivision is accessed via a one mile drive along the abandoned (in 1920s) portion of Sawyer Notch Road, this being a gravel dead end that was a county road, recently deemed a private way, first by selectmen and later by a court.

The subdivision off of this abandoned road was approved by the Andover Planning Board in 1990; no road name was ever provided on the plan (simply a 60' ROW). The plan indicated that the subdivision road would never be maintained by the town. For some unknown reason, the developer was not required by the Planning Board to upgrade the private way Sawyer Notch Road, as mandated by the Andover Subdivision Ordinance.

Yet, a few years later, the Andover Select Board accused landowners in the subdivision of "abusing" the bridge located at the beginning of the gravel portion of Sawyer Notch Road. The landowners were simply pouring concrete and ordering lumber deliveries while building cabins. The Select Board threatened to force the landowners to pay to replace the bridge on the public portion. One native Andover resident stated that rich out of staters need to pay the town expenses since natives have no money. The affected landowners (out of staters) reminded the Select Board that the Planning Board had approved the subdivision a few years earlier, and should have addressed the inadequate bridge with the developer at that time. The Town later replaced the bridge.

Sawyer Notch Road has not been maintained by the Town since the late 1920s according to an old record, (handwritten margin note - discontinued for maintenance, not an official discontinuance). However, the road has been used by the public over the years for recreation, including access to the Appalachian Trail which crosses through the notch two miles north. The road was declared a private way in a road dispute, following testimony that the road had not been maintained since (at least) the early 1970s.

The one-mile long gravel Sawyer Notch Road, plus the three spur roads off it, is used by 50 residents to access their property. A meeting was held years ago to form a formal road association. Some people attending the meeting were opposed to a formal road association, promising to contribute to the informal fund, but never did.

A handful of residents manage an informal road association, but the majority of landowners do not contribute to the fund. Over the years, different parts of the road have washed out and needed repairs, which were funded by the handful of residents. In the December 2023 rain storm, Sawyer Brook jumped over the banks and rushed down Sawyer Notch Road for a half mile, taking all of the gravel with it. It washed out the bridge to Copperfield Valley Road. Residents were trapped in their homes for 4 days; those on Copperfield Valley Road had to walk over the bridge to a waiting vehicle for three months to shop for groceries.

Should Andover maintain the many private roads in town? The Town can barely maintain its own public roads. Deep potholes are neglected for months until someone complains. The Andover Highway Commissioner was recently elected by a write in vote but has refused to serve. No one else ran for office. In fact, the Andover Select Board is most often elected by write-in votes. No one takes out papers for office; an undeclared write-in candidate is secretly promoted via social media and emails. Then he recruits a friend to fill the next vacancy (via write-in), and the tyranny begins.

Andover not only refuses to maintain private ways, it bullies its residents by changing their private road names after 25 years. Incredibly, assessors assign the highest land values in town to the properties in our subdivision; homes that cannot be accessed during major floods; property that is subject to the financial burden of massive amounts of private road maintenance, homes with no electric grid connection. Residents on Sawyer Notch Road and spur roads have spent nearly \$50,000 repairing the road after the December 2023 storm; the road is not even finished yet, requiring a top coat of finer gravel in the spring.

So... Why are we paying the highest property taxes in town? We are off grid and have to maintain our own roads (but don't get to name them). Seems like discriminatory government oppression to me.

Respectfully submitted,

Brenda Stickney  
Full-time resident of Skyline Drive, Andover, ME since 2002  
LANDOWNER OFF ABANDONED ROAD SINCE 1991  
207-357-7004

## Leavitt-Soni, Heather A

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**From:** Ildikó Mizák [REDACTED]  
**Sent:** Monday, December 9, 2024 3:47 AM  
**To:** Leavitt-Soni, Heather A  
**Subject:** Testimony for the December 10th ADRC meeting

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

To Whom It May Concern,

Hi,

Our names are Ildiko Mizak and Timothy Johns and we purchased 105 Rover Rd. Dixfield Maine 04224 on 11/04/2021. We were told that our road is a private road and the people on the road do the maintenance unfortunately without any town help.

Our road issues started when neighbors started telling us we are not allowed to fix the road because it is a private road and each landowner owes the center of the road and our property is not part of the road even though we have the address and the previous owners used this road. Also we were told we are consider ourself lucky to use the road because they can block the road any time they pleased to do so, especially the neighbors below us because they have properties on both side of the road. The road itself is in a terrible shape because no one is maintaining it. We were told that the previous owners maintained the road and it was not private until the neighbors below us moved in and somehow made it private.

Because the road is in terrible shape and knowing that they can block the way any time they pleased, we tried to find out more about our road situations but it was very difficult to collect knowledge about it because no one really knew the rules and laws of the abandoned roads. Not even the town.

We really did not have major problems using the road until mud season. My understanding about the mud season, it is not a set date, it usually starts when it is getting warmer and the ground is softer so when weather conditions change. Well we were told by the neighbors an exact date when the season is starting disregarding any weather conditions. We were also told that we have to park our vehicle at the bottom of the road and either walk up or use a fourwheeler. There is no parking lot at the bottom of the road, so you either ask the landowner for parking permission or park the vehicle illegally.

Unfortunately we both have health issues so sometimes we had to use our vehicle to get up and down. Neighbors below us did not like that we disobeyed their demand so they put a one inch thick metal rope across the road on the steep hill tied to a tree. To release the cable you had to climb a 2 foot hill and unlock a lock. We found that dangerous and we voiced our concern to them but they did not care.

Unfortunately one day when I tried to open this lock I slipped and fell off the hill and an ambulance had to get me to take me to the hospital. The ambulance had a hard time coming up because of the road conditions.

After they released me and on the way home we noticed they put the cable back like nothing happened. That moment we knew we needed legal help, fortunately our title company takes care of the attorney fees but if we wouldn't have them we would looking to spend up to \$70.000 just to have a piece of paper saying we have the right to go to our home and no one allowed to put us in danger to do so.

It is an ongoing legal battle since 2022. Because of the road problems in 2022 Timothy had to file a protection of harassment against the neighbor below us.

Also because of the road in 2024 I Ildiko had to file a protection of abuse against an other neighbor on the road. We both have active protection orders from our neighbors.  
I never thought that leaving on a private road could cause physical and mental harm to us. I never experience fear for just going home until we moved here.  
The town washed their hands saying you are on your own no matter what.

Thank you for reading it!

Sincerely

Ildiko Mizak and Timothy Johns









Thomas Maher

Dearborn Dr. (discontinued), (discontinued) Stetson

I have lived on this road for two decades. My town taxes frontage on a dirt road with no services and no maintenance taxed for frontage at the same rate as lake front property.

My road has no drainage and runs downhill causing a huge ice flow several inches thick and a hundred feet wide that crosses Lapoint Rd, a blacktop town-maintained road, presenting a constant danger to people on that road. I have brought this to the attention of the town with pictures and certified letters. The only response was a little dirt dropped at the bottom of the road and no drainage work done at all.

My road started as a through road until enough people moved to the other side to trigger maintenance by the town at which time the town split the road into two separate roads denying maintenance to either road with no recorded public notice.

There are constant vehicles and trucks cutting through the road mostly from people that have no abutting property but like cruising dirt roads causing further damage and huge ruts in mud season.

A few years ago, a tree fell on the power lines causing a fire in the tree cover. I called the local fire department at that time and heard sirens and trucks but no response. I drove past the fire to the end of the road and was told by the fire chief that "they couldn't drive up the road". Luckily the fire burned out and CMP made repairs but due to the status of the road CMP has been unresponsive to many years of warnings about overhanging dead limbs causing more than one outage.

My road is  $\frac{1}{2}$  a mile long. In the winter, we are allowed one 5-gallon bucket of dirt for each driveway. The town considers the  $\frac{1}{2}$  mile long road as one driveway. Maybe I could use a salt shaker to spread the dirt a few grains every few yards.

I have begged the town to just drive up and dump some gravel in order to let me navigate the deep ruts that cover the entire distance. They refuse.

I have asked the town to let me buy a truck load of gravel from their supplier at the town price, again they refuse.

During the past two decades my wife and I have raised special needs children with medical needs. I made the town aware of this and they told me the only thing they could do is if my house was on fire they would try to find an available plow truck to clear the way for a fire truck, again they would not provide any gravel, even to just dump it in a pile so I could spread it.

I am now 76 years old and plowing is getting to be hard, while maintaining a plow equipped pickup truck is expensive but necessary. I have to pay to have sand spread on the  $\frac{1}{2}$  mile road several times a year at \$150.00 per trip or the ice would be so bad I would slip off the road even with a four-wheel plow truck.

To add insult to injury the town plow trucks do not leave a gap at the end of the road, they simply plow it in to a depth of several feet and complain if I do not clear it off down to the tar on the maintained road saying I am creating a hazard.

To anyone that thinks the towns will do something at some times to help those on discontinued roads please travel through Dearborn Dr. in the winter. Bring your boots so you can walk out when you get stuck.

I have included some pictures but due to the lack of depth perception what appears to be a small dip is several inches deep. The whole road simply becomes a river as it rains or snow melts. One picture shows hundreds of dollars of gravel in one small area that was needed because a four wheel truck with chains on all wheels could not pass. The road drops over 18 inches from one side to the other.

Respectfully, this is our reality.

Thomas Maher

# Jennifer Grady

8 Jewett Lane, Whitefield, ME 04353

[REDACTED]

December 6, 2024

Dear Maine Abandoned and Discontinued Roads Commission,

Thank you for listening to my testimony in regards to my problems with the Weary Pond Road in Whitefield. My husband Steve Grady and I, along with other land owners of property on the Weary Pond Road have continuously used, maintained and enjoyed this ancient and historical road for generations. This road is documented as one of Maine's oldest roads, once known as the King's Highway and was the road used to transport the masts for the USS Constitution in the winter of 1796-1797.

We have spent thousands of hours and dollars to keep this road open to all. Some of the other land owners have contributed their time and resources and some have not, but it was never a problem. Unfortunately a new out-of-state land owner arrived in 2019 and disrupted the use of this centuries old shared road, by gating his section in the middle of this road. This has prevented through passage to anyone. This destroyed the snowmobile trail which was the main trail for people to get to the gas station, and the trails from Alna into Jefferson. This destroyed the route for people to reach Weary Pond in the winter to ice fish, skate , cross country ski and enjoy the outdoors. It destroyed the ability of the locals to take a ride down this country road to visit with friends and neighbors. This road was not just a trail in the woods but a maintained road you could drive a car on in the Summer and Fall. We would even plow it in certain winter conditions to allow people better winter access. All lost because of one's selfishness and complete disregard for other community members.

We have never asked the Town of Whitefield with help to maintain this road. But in my research I did find in the Town Warrants and the Whitefield Selectmen minutes that money has been spent on this road for maintenance. The land on the north end of this road was even considered in 1975 to be purchased by the Town of Whitefield to become a recreational area on Weary Pond Road for the citizens. The Town of Whitefield denied another citizen from gating this road in 1981 because it was used by so many and they declared it would be illegal to do so.

There have been numerous fires in the woods on this road, fires that have destroyed camps on this road, people have been injured and required rescue service on the road and there have been two deaths, one drowning and one of natural causes that required services. But now through passage is no longer allowed and that is concerning to all of us land owners now that we have limited emergency access because of the gates installed by this individual.

None of us on this road get any services from the Town of Whitefield. There are six individuals who live on this road year round and multiple landowners with camps and none of us receive reductions in our property taxes, as a matter of fact our town was recently assessed and we are all taxed even more, as the basic house lot assessment was increased dramatically. Our Town of Whitefield Selectmen are of no help in this matter because of the threats of lawsuits by the individual gating the road.

The Weary Pond Road even though not maintained by the Town of Whitefield and never officially discontinued by our town ( it was discontinued and turned over to the Town in 1820 by Lincoln County ) was used year round for generations and always considered a public way by all until one person who moved to our town from away gated his portion of the road, threatens to sue the Town of Whitefield if they challenge him, threatens and does sue us over our efforts to keep this road available to the citizens. My husband and I continue to fight but the court system is ridiculously slow and because of the lack of definitive laws in regards to discontinued / abandoned roads this is a horrible and expensive uphill battle that is very discouraging. We are not fighting him to just be able to access our property (we own properties on both sides of his gates ) which we really feel we are entitled to, but to also ensure the ability of others to use the road as their parents and previous generations have been doing since the 1600's.

Through access to this road is very important to the land owners and citizens who use it ! Why can one individual have the ability to take it away ? What if other landowners on this road had done this ? There are many of us who own both sides of this road and if we had installed gates it would have been a huge issue because it would deny others access, but because he is in the middle of this road and others can access their properties from the North or South ends of the Weary Pond Road he states that this is acceptable, but now leaving us with properties on either sides of his gates and denied through passage. This was a very friendly, social road, with neighbors visiting neighbors which has now been destroyed. It was one of Whitefield's most used outdoor recreational areas which has been seriously, negatively affected by his gates. The road has been used for through passage to enjoy by all since the 1600's , so how

is it okay for one person who has been here for less than 5 years take this away from us all when he is the ONLY landowner on the road who wants this. To make matters worse he has sold most of his property here in Whitefield at a huge profit and moved away, but has kept this piece on Weary Pond Road and continues to barricade us all out.

The loss of access to Maine's woods, ponds, lakes and shorelands is becoming worse every year. Most people in Maine cannot afford to own properties that give them access to the great outdoors. You can find incidents in every part of Maine where outdoor recreation areas have been lost to Maine people due to others moving here to Maine and selfishly taking away opportunities for us to enjoy the great outdoors.

I hope the members of this Commission seriously consider these issues and not just the landowner's rights when forming legislation to address Abandoned and Discontinued Roads laws. Maine is called " Vacation Land" but most of Maine's people have to work to survive, do not have the money to go on vacation, so on their days off they just venture out into their community to go fishing, take a ride or walk their dog on a dirt road, go swimming ,canoeing or kayaking in a local pond or lake, hike in the woods and more and more these opportunities continue to disappear because Maine is being bought up by others who do not care.

Sincerely yours,

Jennifer Grady

To the Abandoned Roads Commission,

Thank you all for your continued efforts to address the issues of discontinued and abandoned roads within our State, a problem that has been ignored for decades.

My wife and I moved into our home on a private road about 12 years ago. Our property has an easement written into it for access to a state road about 800 feet from our home. Years later through word of mouth, we found that this wasn't a private easement, it was a public easement. When originally purchasing our home, the title insurance didn't identify the easement as public, nor was it identified on our title, or any readily available Town map. The only official reference I found to it from the Town was from a Town Warrant that referred to our road as "road" noted with property boundary Owners and the two roads on either side. Considering the nature of a public easement and its effect on property value and burden for both current and future property owners, a public easement should be easier to identify.

Since then, I have cataloged every road (that I can find) in Town that has been up for discontinuance since 1965. The intent of this research is to share with the Town to allow current and future property owners in town to make informed decision when purchasing, selling or improving property. This research included documenting the location of discontinuance, what was put on the warrant articles, and what was recorded in Town Meeting minutes. My next effort is to review Select Board minutes for abandonment.

My understanding is that this inventory doesn't necessarily indicate the legal status of the road, but, at least can be used to provide visibility into a roads status.

The impact that these roads can have on community members is significant, however, under current law, the location and status of these roads as well as the information to determine the status is buried within Town documents. If one person in the community has time to pull together an inventory of impacted roads (albeit dozens of hours over a few years), it seems to me municipalities throughout the state could do so as well. Understanding that most municipalities are short on staff, there many impacted members of these communities (including me) who would likely serve on volunteer committees research these roads through Town records. I would recommend that all municipalities inventory all roads that were abandoned or discontinued with the date and the recorded article with all applicable amendments, based on available documentation.

After years of discussions with the Town, neighbors, and other stakeholders, the public easement through a section of our property was removed at Town Meeting. This process took about 7 years to complete. Since removing the public easement, damage to our property has reduced, while maintaining non ATV or motorized vehicle recreational activity.

Respectfully,

Paul Denis

Bowdoinham

## Leavitt-Soni, Heather A

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**From:** Priscilla Karlgren [REDACTED]  
**Sent:** Monday, January 13, 2025 8:04 AM  
**To:** Leavitt-Soni, Heather A  
**Subject:** Abandoned and Discontinued Road Commission

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

We live on a discontinued/unmaintained road in Carthage, Maine. We do believe that weight limits during mud season would be a good idea. However, that is not a problem for us, as we are in a different situation. The first half mile of the road is maintained (if you can call it that) and the next mile to our property is not. So during mud season, the road is posted at Route 2.

With the first half mile being "maintained" and the road continuing, there is no notice or signage of the rest of the road being unmaintained.

The two of us do the majority of maintenance (stone, gravel, culverts, grading, raking, plowing, etc.) both physically and financially, with very occasional help from 5 other landowners. Therefore, even minimum maintenance (in summer) or any help would be greatly appreciated. If it is not mandatory, we doubt it would happen, but it might if pushed.

We strongly feel that liability should be limited. We put our own resources into maintaining and improving the road. We should not be punished or sued for making the road accessible and safer, so that we can get to our home.

Thank you for your time.

Priscilla and Steve Karlgren

1000 Smith Road

Carthage, Maine

**From:** [Priscilla Karlgren](#)  
**To:** [Leavitt-Soni, Heather A](#)  
**Subject:** Testimony for the Abandoned and Discontinued Roads Commission  
**Date:** Monday, December 9, 2024 4:29:14 PM

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**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

To Whom It May Concern:

We live on a road for which the first half mile is serviced by the Town of Carthage (very poorly). There is a mile from there to our property line that contains a year round resident, 4 camps and a maple sugaring shack, and is also used by the public. This part of Smith Road is discontinued and is not serviced by the town. We have been exclusively maintaining the road in all seasons. We pay significant taxes to the town, yet don't receive any road maintenance.

We asked the Town about assistance about 10 years ago (and since) but were told no. After the first ½ mile, the road continues as a discontinued road (no signage) from there to our property. Because of no signage, we get public vehicular traffic (cars, trucks, 4 wheelers, snow machines, etc). These vehicles often have no respect for the road, and we have to repair the damages, in addition to regular maintenance.

Sincerely,

Steven and Priscilla Karlgren

1000 Smith Road

Carthage, Maine 04224

P.s. We have a hard time getting the Town to take care of a Town bridge (not strong enough for a fire truck) and the first half mile that they are responsible for. The part the town is responsible for is a disgrace. Our complaints receive constant excuses and delays. The town doesn't properly maintain what they should, so further help is not expected.

## Leavitt-Soni, Heather A

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**From:** Lee Cart [REDACTED]  
**Sent:** Tuesday, January 14, 2025 10:12 AM  
**To:** Leavitt-Soni, Heather A  
**Subject:** Discontinued road

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Heather,

I have lived on a discontinued road for 22 years. It was not a big deal when my husband was alive as together, we could figure stuff out. Now that I am a widow of a year, I see it is much more difficult to deal with the road on my own.

I have new neighbors who live beyond my driveway and they also would like the town to do minimal work and snow plowing on this section of the road.

From the 'town' line to my driveway is about 500 feet, so not a lot of distance, but it would make my life easier to know the town could help maintain that stretch.

I live in Wellington.

Thanks,

Ms. Lee E. Cart

## **Testimony Regarding Abandoned and Discontinued Roads in Maine**

Chairperson and Members of the Committee,

My name is Thomas Davidson and I live on a portion of an abandoned road called the Old Town Farm Road in Fairfield.

I am here to offer testimony in support of several initiatives related to the management and regulation of abandoned and discontinued roads in Maine. My focus includes the need to implement weight limits, establish minimum maintenance standards, and limit the liability of landowners who voluntarily maintain these roads. To illustrate my points, I will use the Old Town Farm Road in Fairfield, Maine, as an example.

### **Support for Posting Weight Limits**

Abandoned and discontinued roads, such as the Old Town Farm Road, are often fragile and susceptible to damage from heavy vehicles. These roads, which may not have been designed for modern traffic, can quickly deteriorate under excessive weight. I strongly support the implementation of posted weight limits on such roads to protect them from avoidable damage. For instance, on the Old Town Farm Road, the absence of weight restrictions has allowed heavy equipment from past logging activities to traverse the route, leading to rutting and erosion that makes the road unsafe and expensive to repair.

Weight limits would not only preserve these roads but also ensure the safety of residents at our dwelling located on the Town Farm Road. Clear and enforceable limits would prevent further deterioration and maintain access for emergency vehicles, recreational users, and light local traffic.

### **Support for Minimum Maintenance Standards by Towns**

Minimum maintenance standards are essential to preserving the functionality and safety of abandoned and discontinued roads while respecting the limited resources of towns. Many of these roads, like the Old Town Farm Road, provide important connections for residents, recreational users, and property owners. However, without a clear framework for basic upkeep, these roads quickly fall into disrepair, becoming impassable and hazardous.

By requiring towns to provide minimum maintenance—such as occasional grading, culvert clearing, and brush control—we can ensure these roads remain navigable and useful. This

approach balances the needs of the community with the financial realities of municipal budgets. The Old Town Farm Road serves as a prime example: with minimal, targeted maintenance, the road could remain a valuable asset for residents and visitors without overburdening the town's resources. Presently, I maintain the portion of the Old Town Farm Road up to my residents which includes, gravel, grading, brush removal and winter plowing.

## **Support for Limiting Landowner Liability**

One of the most contentious issues surrounding discontinued roads is the role of adjacent landowners who voluntarily maintain them. Many landowners, out of a sense of community or necessity, take it upon themselves to clear debris, fill potholes, or manage drainage. However, without liability protections, these individuals risk legal repercussions for their efforts.

I strongly support measures that limit the liability of landowners who maintain discontinued roads in good faith. For instance, on the Old Town Farm Road, I have occasionally repaired sections of the road to ensure access to my property. Without liability protections, these well-intentioned efforts could expose me to lawsuits in the event of accidents or disputes. By limiting liability, we encourage community involvement and ensure these roads are cared for without undue legal risk.

## **Conclusion**

The issues surrounding abandoned and discontinued roads in Maine require a balanced approach that protects infrastructure, respects property rights, and promotes community involvement. The Old Town Farm Road in Fairfield exemplifies the challenges and opportunities in addressing these issues. By supporting the posting of weight limits, establishing minimum maintenance standards for towns, and limiting the liability of landowners, we can ensure that these roads remain functional and safe for all who rely on them.

Thank you for your consideration, and I urge the Committee to take on these important matters.

## Leavitt-Soni, Heather A

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**From:** wyattneu [REDACTED]  
**Sent:** Wednesday, December 11, 2024 10:17 PM  
**To:** Leavitt-Soni, Heather A  
**Subject:** FW: Dec 10th written testimony

**Categories:** Red Category

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Tiffany LaClair  
Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** wyattneu [REDACTED]  
**Date:** 12/10/24 12:51 PM (GMT-05:00)  
**To:** heather.a.levitt-soni@maine.gov  
**Subject:** Dec 10th written testimony

Dear Abandoned and Discontinued Roads Commission,

Our road was abandoned by the town they state their is a supposed "public easement". We were never aware of any of the road issues when we purchased this property. We have only had issues with the town of Jackson since we moved in. We have spent over \$7000 in gravel and truck/plow repairs to be able to get in and out of our home. We asked for a tax reduction they said no. We get NO services from the town and we don't want any. We have brought them proof that our deeds say we own to the center line and both sides and that the so called easement was done incorrectly but they state different and that it has to get in front of a judge. This will cost a LOT of money and take years at our expense again. We understand every situation is different and properties are potentially landlocked but why is court the only way to dispute a public easement if a town governing body has the voting authority at an annual meeting to keep an easement regardless of written proof and documentation because "it's always been that way" and certain town members are also the same ones who want to keep these easements for their benefit and use with no upkeep. In our case we are fine with the maintenance and upkeep if we can keep the general public and town off of it. Our homestead is now limited because of the amount of traffic. The fact that we make it passable and the town opened TOWN ROADS to ATVs/UTV, side by sides and snowmobiles they now use our road even more. We have brought this to their attention and they did nothing, so now even more damage is done. We had to rent an excavator and ditch and widen the road just to keep the snowmobiles off in the winter. This took a 3 year battle with the town and local atv/snowmobile club. Also run by the same town governing body. In our specific case we should be able

to use our property to the fullest, not pay full taxes on all 3 of our properties and should not have be harassed by the people that use, abuse and destroy it.

We hope this Commission can come to find a way to help in this statewide issue and help legislation find a process of removing easements IF there is no need for them as in our case. Thank you for reading this testimony

Tiffany and Erick LaClair

Kimball Hill Road

Tiffany LaClair

Sent from my Verizon, Samsung Galaxy smartphone

## Leavitt-Soni, Heather A

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**From:** Ildikó Mizák [REDACTED]  
**Sent:** Tuesday, January 14, 2025 7:53 AM  
**To:** Leavitt-Soni, Heather A; roadways@juno.com  
**Subject:** Minimum road maintenance

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Hi,

My name is Ildiko Mizak and I live on a private road with my fiancée Timothy Johns. Our home is 105 Rover Rd. Dixfield. When we purchased our home we were told that it is a private road the people on the road do the maintenance and it's not mandatory to the landowners to do so. My fiancée has experience with road maintenance so he taught he could help maintain the road. When he wanted to fix something on the road two of our neighbors started to act like they own the road telling us we have no right to use the road or maintain it without their permission. That is why we are still in a legal battle.

If the road would go back to town maintenance even if it's minimum I strongly believe it would be a great solution for us. I am sure we aren't the only ones with this type of problem, unfortunately some people think if the town doesn't want it then they own it and they have the right to tell others how to use it.

Sometimes these people get violent because of this belief. If the town takes care of it even with minimum maintenance I am sure these people would either move or except the situation.

I would be very grateful if the town would sand our road or dump gravel ones in a while to fill up the holes. I'd be open to buy gravel from town on discounted price since they buy it in bulk it is cheaper for them then it is for me to buy from other sources little at the time. I am not asking for paved road or full maintenance, I just would like to live on a road that emergency vehicle can safely use it when we needed, also not afraid what my neighbor will do if I need to fix or sand the road. I think low town maintenance road should have a sign for the public users saying it's a low maintained road for local traffic use it at your own risk.

Thank you so much for the opportunity to share.

Best regards

Ildiko Mizak and Timothy Johns

Maine Abandoned & Discontinued Roads Commission  
Testimony for January 14, 2025 meeting  
Jennifer and Steve Grady, Whitefield, ME

#1. Add Public easements to the law that allow towns to temporary weight limits on town ways to prevent damage whenever the road is soft:

A. Yes, this is reasonable, as it would help to prevent damage in the Spring “mud season”. We have not recently (within the past 40 years ) had problems with damage done by logging operations because they have been good stewards of the roads and have made improvements or repaired any damage that was caused by trucks and heavy equipment. In the past this was not so and there was definitely damage done, but now logging operations have so many more rules, environmental regulations to adhere to and public scrutiny to be aware of in order to secure jobs that many of these contractors actually improve the condition of these roads. If it were not for loggers many of these roads would not exist today. Loggers most times improve these roads to allow the necessary access to harvest wood and leave them in good condition when the job is done.

#2. Limit the liability of a landowner who maintains a public easement:

A. Having the law not create any duty of care to keep the road safe for public use ( drive at your own risk ) is a good idea and should be definitive in the law. Not limiting

liability for a malicious act or failure to warn against a dangerous condition known to the landowner seems reasonable. We have had issues with the person barricading this type of road here in Whitefield by purposely creating damaging and harmful conditions to vehicles, snowmobiles and horses that would be attempting through travel.

B. Maine does have M.R. S. Title 14 159-A , Limited Liability For Recreational or Harvesting Activities which is a great relief to those of us who share our lands for others to enjoy. The laws for traveling and use of these roads should be similar.

#3. Create a minimum maintenance option for public easements:

A. Roadways that have multiple properties, with multiple owners on them or roadways that allow travel from one town/state road through to another town/state road should have access guaranteed to the landowners of these properties. The town should be able to determine the extent of maintenance done, but if no maintenance is done by the town these properties they should not be taxed as house lots. Plowing, sanding should not be included and other maintenance optional to towns at their discretion. Is it possible to allow towns to offer no town maintenance or liability and offer a reduced tax assessment for properties on these roads?

#4. Change the term in 23 MRS sections 3101-3106 from “private way” to “public easement”.

A. If a road has multiple properties on it or allows through travel from one town/state road to another town/ state road all the property owners on said road should be allowed access for through travel. This is the current situation we are in, as we own properties on both sides of one landowner on the road that is obstructing passage of all to travel through, thus creating hardship for us and other property owners by denying all of us use of the road over his property.

B. I personally think the “public easement” is is the fair solution. When multiple property owners use a road it becomes a necessity to prevent others from taking control of a road simply because they own property on the road and then deny other property owners the use of the road that they own property on too. Very unfair.

C. Landowners typically decide what improvements they make to their sections of these roads or help neighbors with their improvements. Yes, there are costs and frustrations when someone from the general public who does not own property on the road or contribute to maintenance does damage, but is not more important to make sure landowners on these roads can access their properties.

D. The compulsory road association requirement is concerning. There are different types of landowners; those living on the road full time, those who seasonally use their property on the road, those who simply have

woodlots or undeveloped property and all have different needs or requirements of financial output. I do not think this law should be changed to deprive any from public maintenance if it is allowed. I agree with Maine Woodlands that to require woodlot owners who only use the road sporadically to pay the same as someone who uses the road daily would be unfair. Most logging contractors are very good about repairing any damage done to roads and leave the roads in good condition when a job is completed. Fair and equitable assessment would be to leave the road in the condition it was in before the required heavy truck use of a job.

## #5. Personal Thoughts:

A. Change “private way” to “public easement” if the road has multiple properties and the road is a through road to allow all landowners access. There should be access by the best means to the people owning property on these roads.

B. Access is important to Maine’s forests, great ponds and lakes for the citizens of Maine to be able to hunt, fish, walk, snowmobile and all outdoor activities. As a life long resident of Maine I have watched our state become “The Vacationland” for out of staters at the expense of the local community members. It is getting worse every year ! This is an opportunity for a small fix to help keep access to Maine’s recreational woodlands.

C. I hope the Commission can get this “public easement” of Maine’s Abandoned & Discontinued Roads done because it has been an issue for many of us and there are many more stories each year of the same strifes, loss of access and problems that we are are enduring simply because there are vague definitions or lack of guidance in the current laws and rules.

D. Thank you all for your work and please attempt to keep these roads available to us, your Maine citizens you are representing. Especially those of us that own properties on these roads.

Sandra Bernier MBR

51 Northeast Road

Waterboro Me, 04087

Jan 14, 2025

Regarding: Blueberry Road - Discontinued Road In Waterboro Maine

Subject: Clarification on Road Status

Tax Payer ID [REDACTED]

Dear Sir/Madam,

I am writing regarding clarification on the language, and terminology of the decisions made by our ancestors to close, discontinue, and abandon roads. As it pertains to my situation I am trying to decide whether to donate the land in it's entirety to charity or conservation, or part of it, or subdivide, develop or sell it, but will need to disclose the state of the discontinued road located on Blueberry Road In Waterboro Maine in order to proceed with any of these options.

I spent from age 6 months to 7 years in the town of Waterboro and am a graduate of Massabesic High School in Waterboro. I am deeply passionate about protecting the water from Nestle and foreign nationals. I originally bought 117 acres in the town with the dream of maybe starting a campground or some other type of sustainable business. I have since moved on from that dream and wish to see it donated to my church for green burials, weddings, and funerals and to build a church for my congregation. However, I am unclear on how and if I can open the road to get there due to the difficulty of finding records, I can't even be sure I have access to my property, (other than with 4 wheelers).

I bought it before the change in the disclosure law which would have required the seller to do this research on my behalf, and no one seems to be able to tell me if we can reopen it and maintain it ourselves. And then if the road would then be open to the public or if it would be a "private way" maintained by the association that I would create.

An inventory of roads, even if it was just a list saying where to find the record of discontinuance, would have been helpful. And even though my deed described the road as discontinued, I have no way of knowing what that meant. Did that make it a public easement, or did it mean there was no road by which the land would be consumed on both sides by the abutting property. I consulted with surveyors, attorneys, real estate agents, the town itself and activists for road rights and I am more confused than ever.

The road in question was laid out by the County in 1870. Then later in 1870 there was an appeal to Superior Court of the layout, but the layout was affirmed.

Then in 1934 the town asked the Commissioners to "close" the road. The Commissioners closed the road. That terminology is dubious because the Commissioners had no authority to "close" roads, only to discontinue them. Sometimes the two words were used interchangeably, and other times a "closing" was taken to be a temporary suspension of maintenance, with the road remaining open to use as a public easement.

Just a few years later, the same attorney Davis "changed his mind," and argued that on our road when the County said the road was to be "closed, to be retained as a private way subject "to gates and bars," that the County had the authority to "take an alternative action." Therefore he argued that our road WAS closed and became a private way, which is now known as a public easement. The Supreme Court agreed. What is the difference between a private way and public easement. New legislation should be enacted to clearly define the implications to the landowners.

There has been a later case where the Supreme Court said that a closing was a temporary action, and that if the road was not re-opened within thirty years, it would then be eligible for abandonment, which would make it a public easement. What is the difference between public easement and private way?

Between the conflicting terminology and the conflicting Court decisions, I'd hesitate to bet on what the current status of the road is. Now how can I sell or donate land, following the rules of "disclosure" if I don't understand what I am disclosing? At this time, is there a process by which all abutting landowners can collaborate and create an association and draw up deeds that extend the right of way and grant each other a shared private access while assuming the maintenance. And if not should our taxes be lowered being that our land is effectively "locked"?

If there is any additional information required or if you need further clarification, please do not hesitate to contact Sandra Bernier at [REDACTED]

We can also be reached at [REDACTED]

Sincerely,

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Sandra Bernier

ABANDONED AND DISCONTINUED  
ROADS'  
YOU TUBE TRANSCRIPTS OF  
PUBLIC COMMENTS

## **Abandoned and Discontinued Road Commission**

**Aaron Talgo**

**Public Comment you tube transcript**

**08/08/2024**

Hello, my name is Aaron Talgo, I currently reside in Searsport. I have property on the old cob Road. It is an abandoned town road. SW decided to remove some trees from their woodland lot which is behind my property. They used my portion of the cob road to access their wood lot. I spoke to the wood cutters, and they explained that they would be wood cutting. They told me when they first pulled in that they would maintain the road and fix anything if it got damaged and maybe even fixed the road up even better than it was before they started. From day one they broke two culverts and really made a mess with the road. I complained from day one to and they told me after they got started on the roadway that they couldn't put any money into the roadway because they weren't going to make any money off the wood lot. They was doing it as a favor to Tom Doak of Maine Woodlands. As of now, they actually haven't started cutting however they brought in a bunch of gravel, I am not sure how many loads, but they brought in loads of gravel to fix their portion of the cob road. That portion is behind me and in so doing they've messed up my road so the other night I went to a selectman's meeting in Searsport and asked them if they could help and they gave me a letter that they will send through the code enforcement officer. They are asking that they fix the road as Searsport doesn't have any responsibility to repair the damage. Aaron read the following letter into the record.

"Dated August 6, 2024, from the office of Code Enforcement town of Searsport. Says to whom it may concern, I am writing to inform you that the town of Searsport has received a complaint about Damage Done to a discontinued portion of the cobb road. As that portion of the cobb road is no longer in service it is not the town of Searsport's responsibility to repair damage caused by the use of public rights. The position of the office is that it would be in the best interest of you to repair the damaged caused by your logging operation before any litigation occurs, specifically the drainage covers that were crushed should be replaced and the road service surface should be brought back to usable condition as in its current condition it is significant Hazard not only to the residents of the car road but also to emergency Personnel who may be called upon to respond in the area. Your cooperation in this matter is greatly appreciated. Victor Maza code enforcement.

Aaron was thanked for his public comment.

# THE ROAD BEFORE LOGGING TRUCK CAME DOWN THE ROAD

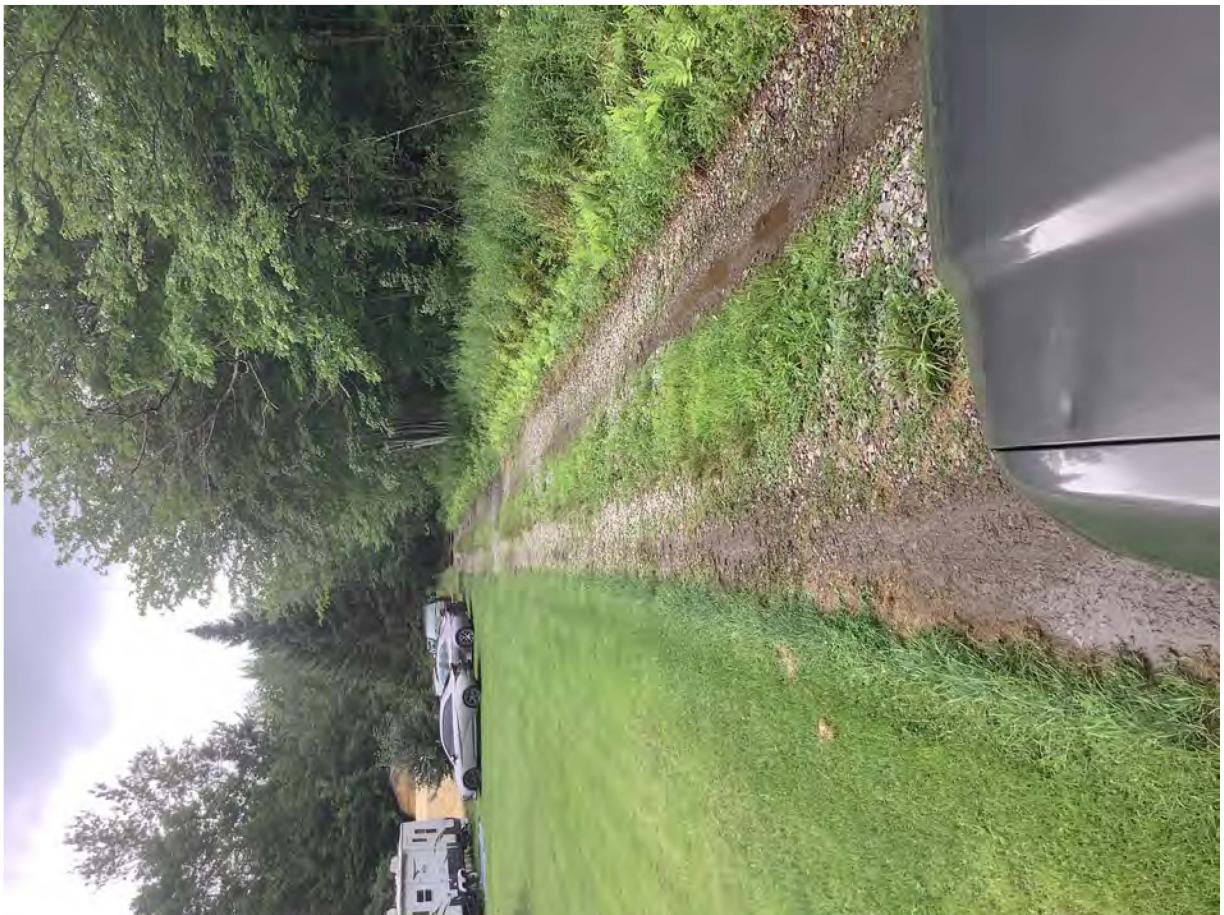
**From:** [Aaron Talgo](#)  
**To:** [Leavitt-Soni, Heather A](#)  
**Date:** Monday, August 5, 2024 5:54:19 PM

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# THE ROAD AFTER THE LOGGING TRUCKS CAME DOWN

**From:** [Aaron Talgo](#)  
**To:** [Leavitt-Soni, Heather A](#)  
**Subject:** Re:  
**Date:** Tuesday, August 6, 2024 9:48:45 AM

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On Tue, Aug 6, 2024 at 6:45 AM Aaron Talgo [REDACTED] > wrote:



On Tue, Aug 6, 2024 at 6:45 AM Aaron Talgo [REDACTED] wrote:



On Tue, Aug 6, 2024 at 6:44 AM Aaron Talgo [REDACTED] > wrote:



On Tue, Aug 6, 2024 at 6:43 AM Aaron Talgo [REDACTED] > wrote:



On Mon, Aug 5, 2024 at 3:15 PM Aaron Talgo [REDACTED] wrote:

On Mon, Aug 5, 2024 at 2:49 PM Aaron Talgo [REDACTED] wrote:



## ADRC Public Testimony Transcript

October 25, 2024

**Margaret Cardoza, Windham Maine**

Hi. my name is Margaret Cardosa and I have a camp in Windham. Our association has 74 owners, we provide four public easements, and two roads are private that benefit from our public easements. Also, a member of Mara and I definitely have to thank Heather for helping make us connect. I do appreciate her work very much. I have been eager to speak since March of this year and have been in pursuit of this opportunity. I had attended the LD 2264 and I was the one that requested to change the word or and change the word and to or under uh section 3105 a um because I'm aware of uh the word and meant full maintenance by the entire town and I'm new from speaking to our town counselor uh was not very happy about that so I was happy to see it got changed I'm also happy to see that it says legislative body instead of inhabitants because in example on our road we had um a sewage plant put in by our town on our road which is uh well about 500 feet to a um a pond that feeds into the ocean um and we really had no vote one because it's a camp we're not voting members um two um it was voted by all inhabitants and so thereby our single complaint of oh no not that on our Camp Road uh would not be enough of a voice compared to the entire town so I was happy to see you had removed inhabitant and had led legislative body in there instead narrowing it down to just a few people um I'd like to congratulate your chairman for presenting to the legislation. I was so impressed uh this committee is very well supported and led. um The challenges I observed were although there was a majority vote by your commission um the few minor votes uh spoke up against a lot of the information creating quite some confusion for the commission. And uh for the state and local government. So, I was very concerned uh for the sake of the reputation of the decision that was made by the commission although it was a majority or three force or whatever uh that challenge of hearing the contradictions. I'm of course an advocate of free speech the challenge of uh leadership though on behalf of the commission uh I would encourage your commission to consider when you want to submit a uh a recommendation by your commission and there is minority vote that allowing your chair to report that and be thankful that your minority vote was heard. otherwise, um it was it very confusing um the messages. So, you might want to get some mediation on the commission to practice utilizing mediation since there's been discussion about that um I also been act I was also active with the judicial committee that helped with, and Roberta and I were involved for that title 23 um section 3121. Now originally the intention was by Bank Associations and by uh real estate to create that um that law to serve Property Owners under for four owners whatever um because if you look at the road associations law of um 3101 it talks about um if there's four or more so real estate couldn't sell very easily and Banks wouldn't Ure and Veterans were having trouble so that was created we had our two lawyers from Mara involved helping with the write up of that there's still a lot of quirks in it that need some revision but my intention of fighting on that legislation was clearly defining a separation between private road and a public easement I am in support of your decision to change the private way to public easement because uh frankly uh the chaos of the word private uh and way still can to the common sense create confusion well it's a private road no it's not it's a public so you the terminologies really uh are a big issue and I would be in support to see it change to public easement and work on SEC uh title 23

3121 for private roads so that that definition of this is a gated community. I been very much in favor of you know utilizing title 23 30 1 in this private road section to help those people work out decisions uh and I was very happy to see particularly when there were four or less they had the choice to be informal. I mean have you ever tried to have a voting procedural. You know Robert's rules are kind of a thing for three people. It's yeah you want it informal to make decisions um, so I do appreciate that respect of options . um I have a hard message though I'm challenged because I'm um I I'm happy to see the Woodland um Representatives here and I'm sorry to see that uh such a support is departing but encouraged there will be more that same quality. My grandfather was a lumberjack so hey up there in Millinocket you bet you I understand the uh forestry support. If you look at title 23 3101 section six forestry is exempt from Road associations and I'm uh pretty I was quite distressed and it almost felt like there's more protection for trees and Woodland lumbering than there is for children who are abused I'm a little overwhelmed at seeing the power of our lumber system um that is affecting us so I'm thoughtful of you've already been exempt from this so uh please understand how to um receive some balance but also some responsibility it's pretty heavy when you see a lumbered truck coming through and you know creating massive gutters in in the roads so um there's got to be some balance and um willingness to support each other um then finally um uh I'm a little overwhelmed to hearing about the maintenance discussion um because hello my deed talks about the width of our roads and this is already a controversy but there's a limitations going on with maintenance of our roads plus the um topographically I think you all know what I meant by that word the land is shaped in so many different ways and we have no police protection except for our personal property we have no police protection so if we're going to be dealing with maintenance so there's a you know letting the public you know free for all on our roads I'm a little concerned about the requirements of Maintenance as well as our safety issues of our neighborhood and I'm not kidding my neighbor had somebody dump a toilet on their property for just dropped it off threw it there I mean uh the concern of lack of uh police protection is overwhelming so uh I'm a little concerned on this topic of Maintenance and then uh two more points if I may or am I out of time?

Jim Katsiaficas asked her to continue.

Okay two more points than um and I think it's very important to have a representative of the Department of Transportation here definitely um participating the discussion of public easement if there is an agreement that public is used then um maybe there's an issue in do that has some funding issues and has some regulatory issues and needs to research and have some modifications if it's at Federal level because if we're entertaining the public on our camp roads our dirt roads um do needs to be involved in addition to the municipalities and so then um finally um I'm very uh I recognize the way we run our meetings as a road Association at an annual meeting is the same as a town would so we do uh we do our elections there we do our budget there we do you know we do our stuff just you know when do how much we're paying and blah blah blah it's majority vote and can you imagine telling a town you must have of your residents three fours of those residents um approve of a decision I tell you that is totally impossible when Windham had 2/rds. requirement to get the public easement for snow plowing. We had somebody from the hospital come to sign the document and get it notarized, we had another person in a nursing home getting signatures stop uh that 2/3 requirement and let the locals decide just like the annual meetings are if you want a voice you come to your meetings you give a proxy you do an absentee ballot you do

your participation if you want to be heard but to regulate how people are to vote how many people must vote this is overwhelming so I would encourage you to take a look at that section under 4A where it says majority keep it simple make it understandable and um that kind of what I wanted to say I'm very impressed with your leadership here as a whole Commission the contributions you're on your way and I'm happy to see that I can support and if not assist or help in any way possible the great work going on thank you

## Abandoned and Discontinue Roads Commission Meeting Public Comment

### Transcript from you tube

November 2024

Margaret Cardoza

Hello again, I appreciate the work you are all doing thank you Mr. Chairman and members of the commission. I'd like to correct myself from the previous public comment from the last meeting. I misunderstood and thereby um I definitely am in favor of the work you're doing regarding uh the minimum maintenance issues that the town would be proposed to do um and I'm grateful to hear that uh the other comment I needed to remind you that at the um state and local government the chairman of the um committee had stated why aren't we changing all our roads to public easement so thereby the town doesn't do a darn thing and makes all the owners responsible for all these roads they clearly pointing out this burden is unmanageable for any individual um and that there is a community need to work together. so I'm thoughtful of the issues of these definitions going on that um when someone says the road is discontinued don't you get it that means it's there's there it's a no man land thing it's uh but public easement being tagged on to it just is clear clearly doesn't sound discontinued if it has public easement so these definitions clearly need to be specifically understood by the common people of the world when you describe something that you don't have these um additions of public easement uh the private law Private Road law on 3120 1 distinguishes Section B only of 3101 it does not say a in 3101 talks about public easement whereas this private road law 3121 is supposed to be separated there really is a big difference of a private road and a public easement I'm definitely in favor of your work to change private way to public easement because a private way language you get the word private and people are stuck oh it's private well no it's not it's public easement so these definitions are essential that you're working on my concern is the definition of easement there's some responsibilities that when something is taken sold bought changed into an easement there's another party involved responsible public easement is defining thereby in common brain language that there must be the town or the state or whatever involved with the responsibilities of the care so um I think you might want to look up um the main Revenue Services just value under PL 36701 a that defines easements into the financial measurement of property values and when easements are involved those values change where does that money go uh what is going on with that money so I still wonder when you talk about MDOT and 911 um there's some money involved in an exchange between state and local work in addition to taxpayers um very concerned about um pass do uh really needs to take some responsibility and funding Peter if you want to graduate with retirement that you wouldn't have to be involved I understand uh you've earned your um purple heart for all the work you've been doing but uh there is a uh issue of public easement involving the public there's some public money issues that is missing here that the do if it's about a road seems to be responsible I think you might want to know that a town is responsible to notify 911 that a property has been identified and when whether it's a private road public something so that 911 is informed but that town knew when they reported to 911 what that Arrangement is with that property what kind of Roads so I think it's interesting for you to consider uh town has some of that information I don't know if it's such a burden that the expense of doing the work of an inventory would be such a concern since they are responsible to report to 911 what that road is I have spoken with 911 this is the clear information and the rules involved where the towns

report to 911 that information but the relationship between do and 911 um seems to have a need for allocation of funding in addition to um this Mutual relationships uh for the people I've also spoken with the State Fire Marshall they will rescue someone no matter what there's no obstacles they will not be stopped from denying a need to put out a fire or to rescue something someone um so uh the requirements on emergency rescue issues uh if you got a private road you're responsible to make sure that gates open for that emergency uh there's certain re duties involved about the concern that you've been talking about regarding emergency but I we need to clarify that this is the answering the four questions that the leg legislation has proposed to you about reducing negative impact on property owners and this liability issue that um obviously the emergency rescue um is a very serious issue but I like to point out so is the natural disaster issues and we've already been through it we know when a road has been washed out and destroyed um private owners burdened by this is overwhelming and FEMA has not provided any help about this particular situation what I mean is the fundings are provided for states to repair roads but when it comes to private roads I'm not uh I'm not hearing from FEMA saying they're going to help with the private roads um so I'm very concerned with natural disaster and then finally Please be aware there's no police protection on public easements we've had car accidents we have had vandalizing we have had destructions of Beyond just the roads because the public at large have no regulations on safety for us on these public easements so that would be great to reduce that negative impact please and then finally I can't I can't help but feel so thankful that our properties in Windham the solution was amazing by two/third each Road decided do you want this to be a public easement where the town would provide plowing or not three fours I'm totally opposed with three fours that that you're just asking for 100% in the real reality of people on roads that's not going to be possible but they really solved it with each Road deciding they had over 101 properties and three I think maybe five said nah we just want to be private we'll pay for our own responsibilities whereas all the others that's over 90 roads said yeah we have each property owner signed and agreed with the town over 2/3rd each Road of owners I'm in favor please plow our roads I'm very thankful that that would be a great solution that owners submit to the town are they in favor not someone who doesn't who can't vote in the town not a Town Council that you can't elect them because you can't vote in that town uh decide for you but that each of those Property Owners so what Peter was saying let the let the owners decide let the people decide how about those owners on that road they decide I hope that would be a consideration of how to solve such a difficult situation that you all are going through but I hope I've been supportive and encouraging and I thank you for your time.

## **Abandoned and Discontinued Roads Commission Meeting Public Comment**

**December 10, 2024**

**Jennifer Whitmore**

### **Transcribed Public Testimony**

Yes my name is Jennifer and I um met Roberta through the Facebook. um super thankful that she has been able to at least point us in some direction um it's really super frustrating for me as a homeowner and my family to live on a road like this when we bought um here they were we were told seasonal maintenance um and you know we really didn't think too much of it until you know we started assuming more and more of the burden um you know they say our road is a public easement road but there's no absolutely no documentation staying that it's a public easement Road they have a piece of paper at the Town written public easement Road um so you know I think what's really important and you guys talk about you know the town we pay a lot of money to the town for taxes and the town should have to supply us with the roads um and what they legally are and if that means they have to do research because someone else at the Town didn't prior do research then that's what they need to do our tax money pays um you know and hearing your letters from those other other persons you know we don't get any anything from our town we can go to the dump you know we don't get any road maintenance from them um and it's a big fight to get them to even do anything on the road we've given the town checks for \$2,500 for gravel and and paid the town for gravel and done things and it just it it irritates me and makes me ugly because we have neighbors that don't help um we're we have taken on the responsibility of getting in the road so that we can get get into our home um we just had our in-laws living here 84 and 94 um you know that's a big burden too God forbid an ambulance or someone had to get down this road um you know and then what I have done um which has made a lot of the town's people very angry is I put up cameras all the way up and down our properties um and I have I know exactly who goes up and down the road um you know they call me the road Warden and they don't like me um but I'm not going to let them out there and damage it and it's just really frustrating that there's no help and that and that there's no like no one can you know make them give us us the information we need we get a letter from the town from that that MMA group basically that tells us or that gives us some information but it's just it's just wrong so it's really frustrating and something really needs to be done I guess that's about all I have unless anyone has any questions.

## **Abandoned and Discontinued Road Commission Meeting**

### **Public Comment**

**December 10<sup>th</sup>**

#### **Gretchen –you tube transcript**

I just want to give a special shout out to Roberta she's been amazing through everything and I just don't know what I would have done without her but anyway um so mine's a little interesting .I live on a road um that's Town maintained but the extension that I am on is not um so when we first moved out year 25 years ago we was sold the property as being on a discontinued uh right away so we purchased the property what the town told us at the time when we pulled the building permit they were not going to maintain it down here and that we had to build the road up to town specs to get to our house you know for emergency vehicles things like that we didn't have a problem with that um we went back and forth with a town they would put out a private road sign um at the end of our driveway because the old rideway the cars were dumping trash and things like that coming in here um then a new batch of Selectmen would come to our small town and they wouldn't like the sign being there so they'd pull it out so we went back and forth like for years with us so one day I went to the town hall and I walked in it was 2022 and they said your ears must have been ringing we were just talking about you we should be plowing that road that you live on I'm like really oh wow I came here for a private sign but that would be great we were told when we first moved out here by the the plow the town's plow contractors employees that they should be plowing you guys there's no reason this is a Town Road and we're like yeah yeah whatever so the town Selectmen all agreed that our extension should be plowed everybody signed the agreement that we would be plowed for 2022 while they determined what type of road we were on. everybody signed except for our road commissioner and coincidentally in my small town the road commissioner also picks his own personal company to be awarded the contract for this town winter snow removal every year like if other competing contractors come in because he's Road commissioner he's able to pick his own private company to be the bid winner but anyway and that that's been the same way for 25 years so what happened is he refused to sign the Selectmen letter but all the Selectmen signed it and said don't worry you're going to be plowed this year and we heard one of the selectman said yeah he said you guys are just going to complain about how he plows it and I'm like we've never I've never even met him I don't even know who he is I mean you know keep in mind guys we've lived here 22 years um so come the next at the end of 2022 I think it was a day before Christmas we had a snowstorm predicted and I had a knock on the door from a selectman with a letter saying that they've determined our road to be a private driveway and they were no going to no longer going to plow anymore and of course the weather forecast had a big snowstorm the first snowstorm of 2023 was coming so I'm like oh this is great whatever I mean you know here's our letter it's a private driveway we don't need to worry about anything and that was part of the determination I'm like is this a Right Way is it a driveway I mean if you're telling us everybody can cross here why should we have to maintain it ourself and that's why they decided to plow while they figured it out they called it a private driveway until the person that wanted to walk through there got mad about something called the town hall and complained about a frean down way way further past our house than she couldn't walk her dog conveniently as conveniently so I called the town the town says oh yeah well I worded that letter wrong yeah everybody can walk through there all they want so come to find another thing

I ended up hearing through the neighborhood was the road commissioner at the end of 2022 told the town I will absolutely not do the the plow bid for you guys this winter if I have to plow their driveway so the town select V said oh okay you don't have to so I've got a little more going on here than just the status of the road I've got what feels like it feels like a kindof a bully situation where we've got a road commissioner who just doesn't want to do this and i' and I've heard through the grape Vine that the the family was upset when we bought the property because that family had wanted it that is my road commissioner so I don't know if that's true or not but at any rate so we're out here you know we've got this person that's walking their dog through the RightWay literally lives a mile away she has to go out of her way to come here. My husband had just been home for four days after a quadruple bypass surgery and she was on my front lawn cutting down trees in the right away my trees cutting down my trees on my front lawn because she said they wer in the right away so we've got all kinds of like stuff going on here and it's frustrating and I have no idea who to talk to and I'm not rich to go hire an attorney to get this town backwoods town politics stuff sorted out that's what I feel like I'm a we're a victim of I don't feel like it's the discontinued stuff necessarily that's so pressing I don't care if people walk through here as long as they're not taking a chainsaw in my yard I don't care as long as they don't damage things and and most are very courteous but I just feel like um the town we're get we're actually coincidentally the road I live on WE the highest taxpaying resident on this whole street and there's about 25 houses we get no break in taxes either um but yeah that's pretty much what I'm going through and I've Roberta knows a lot about it because I've been complaining to her a lot but it's just really throws me off when I walk intothe town hall and the selectman literally look at you and say we should have been plowing you all along we're going to plow you and they the town owns the land across from us so they're like they own all the land on the RightWay they acquired it while we were living out here from back taxes someone didn't pay their taxes I guess over there and coincidentally the year they chose to plow us they also clear their wood lot over there so I don't know if the pl I don't know if that was part of them getting in there for the wood lot and just playing me along for I don't know I don't know what happened but anyway it's just very frustrating I don't know where to turn because I'm not rich and don't want to be hiring a lawyer so but thank you for um letting me talk I appreciate it.

## Abandoned and Discontinued Roads Commission and Public Comments

December 10, 2024

### Jonathan Billings transcribed Public Comments

yeah I'm I guess I would speak just for a minute I'm not sure how much this will help um I yes became aware can you hear me okay or can you hear me now yes thank you sorry about that that's okay I'm not sure how much I really have to add to this I don't know a lot about um this Committee just a little bit and I did speak with Roberta via email recently um I my issue is with Portland property that I'm under contract and I am purchasing regardless of what happens um it was peace property that was on the market for quite a while and I my understanding is a lot of people went and looked at this property and wanted it but were basically run off by the neighbors um saying you don't have land access you have no way to get in here um the situation here and I guess hopefully this might help you guys you know going forward is this situation was created in 1978 when a town decided to um discontinue a section of a road and this is a road that has been in existence for probably 200 years um the road was used for quite a long time probably right up through the 80s or the 90s but with the replacement of a state road coming through in the 20s people had other ways to get around town um but the road was still used and the town actually owned property on this road in the very beginning and what happened around 78 from what I'm finding through my research is the town sold the lot and when the town sold the lot this was a rogue that came it was quite steep to get up and you know had stone walls on both sides of it was over the years it was it was trenched down so far below the grade of the that the land had been before you know which probably trying to make it easier to you know drive up back in the day um and then somebody also had put in a road a little bit up the road that came in that was shorter and it was much easier to use and I know you know coming from where I came from where was 90% dirt roads and 10% roads I know exactly what was going on here you know 20 30 years ago people were using this for a shortcut to get one to one side of town well anyways what happened is the town you know did their due process in 1978 and they discontinued the road um they had sold off the property the town owned a lot there they didn't really need it anymore but by doing that they just shut off a small section of Road the next section of Road saw less use and in that day and time which I think in 76 was the year that they took out of the wording where you could put up a gate or a saw horse or whatnot which I'm guessing that was all happening back then you know so the youth became less and less and as Generations go on and children don't realize hey this back road here is successful even though my dad used to use it this road sort of you know stopped being used a lot so this next section of road goes through one p basically a buts state land on one side and another person's land on the other side and that person has is under the assumption that the road is abandoned um the problem is the next lot up is the land that I'm buying and dating through my deed research um through the course of eight Deeds back to 1906 that that property description is a piece of property Bound by 40 rods by 40 rods by 40 rods by 40 rods and is using the road as one of the lines and across the street is the state owned land the real only access for this property is this 4/10 of a mile up through the discontinued land and then the assumed abandoned land um you could continue further and it does continue up another 1.1 miles and lands on another road but that's going through State Property which is accessible in the winter time by foot or snowmobile I'm guessing but you can't drive it in the summertime because you're then you're going through state land and that's another whole can of worms um so my situation that you know I've I basically have you know approached both of the land

owners trying to you know say hi I'm your new neighbor and keep it nice and you know obviously with nobody you know being on that piece property for years you know there's some apprehension in the beginning and after some conversations for an hour or so you know the moods were lightened and one person actually said hey you can use my snow wheel right there to get up there you know they were really nice people um but you know the other property owner is still saying well we don't want Vehicles going up this road and you know you could walk it but and I'm not looking to bring Utilities in this road I'm looking this property is for an off grid cabin um so I'm not really interested in that and I don't mind snow Bing in but in the summertime I will need access with a vehicle but at least get some you know supplies and equipment in there um there's quite a bit of pine in there I'll probably cut down to build the cabin and I'll need to bring a mill up to do it um but I would say in the future if you guys are trying to help people go these towns so that these issues don't arise the big thing I see here is that the road was discontinued by the town just the first section which leads to other issues and they knew that this property was out back and one of you know one of my big issues just look at my notes is that the town actually taxes the property is taxed and on the tax card it actually says the number which is 50 and it says the name of the road so and they're calling it a road that is really not in existence because if you Google this road or look up any roads in main or go to the town and try to find this road there is no road with this name um that was a person that was that lived on the road back in the early 1900s um that was a prominent figure in Massachusetts that built a Summer residence up there and it's no longer the house is no longer there it's gone and it's actually a historic site but you know biggest issue is that beginning section you know and they when they did record it they did record it has a public easement there but the next section of road is the road that I'm going to have a problem with and it looks like you know there's a good possibility for me I'm going to have to petition the court for an easement um by necessity which is going to cost me money um and it really shouldn't um and I'm hoping that I could still work this out with the land owners I'm not a spend some more time I don't really need access until summer anyways the snow on the ground I'm closing in a couple weeks you know so I hope to work this out you know just between us but it still leads me to the issue down the road let's pretend we work it out what happens down the road when I die and my children inherit this and then same family maybe inherits the land is this going to become an issue down the road which leads me to the believe I still need to go to the court unless they want to give me something in writing but that's my situation hopefully that helps thank you for your comments.

## Abandoned and Discontinued Roads Association

December 10, 2024 Meeting

### Public Comment given by Roberta Manter-you tube Transcript

Roberta yeah um I'd like to put in some testimony as myself rather than as a commission member if it's okay to do that um and my husband might want to put in a word or two . I actually have some testimony written up here I and this is this is somewhat changing the uh the subject here a little bit but uh it's something that we keep coming back to in most every issue in every court case there is a winner and a loser there are cases where one party wins one issue and the other party wins another issue but in each issue there is a winner and loser I've been told repeatedly that Jordan versus Canton can't be applied to public easement because the limited user Highway law was repealed but in that case the town lost its limited user Highway and because not because the law had been repealed because it hadn't yet but because the court said a public easement of travel with no public maintenance would inevitably be destroyed that destruction did not take place at the time the road was declared to be a limited user Highway the court said the access to abutting properties would inevitably be destroyed future tents and the loss of access required just compensation which the law did not provide Kenneth Jordan won that issue the court determined that What mattered was not the legal status of the highway but the actual and practical consequences future tents of governmental action whatever that action might be they compared it to where a limited access Highway like Route 95 cuts off access to a side road causing a property access to be lost so obviously they were talking about the principle of distraction of access by any means not specifically by being declared of limited use and value to the traveling public and therefore a limited user Highway we who live on these roads suffer the consequences of the governmental action that made our access into public roads with no public maintenance the very thing that the court and Jordan said would inevitably destroy the road see footnote one of town of Fayette versus Manter where the court said that the public has an unfettered right of access over a public easement but the town has no responsibility for maintenance we had asked the court to consider whether 23 mrsa section 3028 was constitutional and the Court's answer was that since they were not basing their decision on abandonment quote our analysis of the legal issues posed by this case makes it unnecessary to discuss or decide the merits of the maner statutory or constitutional arguments so that issue remains unexamined by the court I've been told that Lamb versus New Sharon declared abandonment to be constitutional show me where that decision says that an abandoned Road remains a public easement of travel it doesn't it says that it is well established that public rights may be lost through neglect show me where Lamb says that a public easement of travel with no public maintenance is constitutional it doesn't it merely says that the public had lost its right to demand the road be maintained and it said that there was no taking requiring just compensation because the public rights had been lost through long neglect but nowhere did it say this road shall now be open to public use without any public maintenance and that is constitutional it just didn't say that walowski versus brown said that the taking of land for a private way now known as a public easement was constitutional but a few years later Brown versus Warchalowski said that the taking of a private way without a showing of public need was unconstitutional that issue was not addressed in the earlier case abandonment under Section 3028 basically requires a showing that the public has not needed the road for 30 years and then declares it to be a public easement where's the public exigency that issue was not addressed in Lamb versus New Sharon we tried to bring up that issue in Fayette versus Manter but the court found an alternative method of declaring

Young Road to be a public easement so they could avoid addressing the constitutionality of Abandonment. In my opinion it's time this commission stopped saying that public easements on abandoned and discontinued roads are constitutional and instead admitted the truth a public easement or travel with no public maintenance will inevitably be destroyed that destroys property access repeatedly and indefinitely there is no practical way to make compensation for that the truth is that the reason no one wants to address that core issue is that no one has yet figured out a way to resolve the issue without opening a huge can of worm so let's be honest and say that that is a real problem and stop pretending that public roads without public maintenance are constitutional so that's what I have to say on it um I know I keep I keep coming back to the same issue but it doesn't go away and you've heard from these people that have testified that uh these Roads when they get used by the public and don't get maintained by the public they end up being real problems and it's not right for the land owners to be forced to maintain these roads without any compensation and you know they they don't necessarily want to maintain them it's not like this is something that uh they're voluntary do voluntarily doing they're being forced to maintain it because if they don't nobody else is going to do either and pretty soon they won't have access thank you.

## Abandoned and Discontinued Roads Commission Meeting Public Comment

December 10, 2024

### David Manter- transcribed testimony.

well yeah I think it got a couple points off on it you want to say anything more really quickly uh because I bought my property in 1971 prior to the 1976 Act of this the state of making all private ways into public easements I can debate the issue of my road being a private way but even at that that's ex post facto nobody gave me any notice I didn't go to the legislature didn't know about it so that makes it unconstitutional right there you cannot have a public easement on this road because no notice no compensation nothing and a public easement as it's now understood is a road that comes into effect because it was abandoned and wasn't maintained for 30 years my road hadn't not been maintained for 30 years because of that but in the US Constitution in Article 1 Section one it says there'll be one lawmaking agency in the country and that's in the federal level but it also says in article 6 and I'm going to paraphrase this that the constitution laws pursuant to it are the law of the land semicolon and the judges of every state shall be bound thereby and anything in there the state's constitutions or laws to the contrary all right uh notwithstanding or have no standing that means the courts are supposed to do their work in accordance with the law not by their own opinion and unfortunately much of this problem exists because like in our case the town went to the county asking for a discontinuance the county gave them a closing that's not what the town asked for then they said it was a private Way private ways were specifically known what they were by Statute they weren't laid out over public roads they were to a property that no did not yet have access now if we want to keep playing games of lying to one another covering our tracks you know what that means that you're forcing me to take care of a road against my will for the Public's benefit in violation of the 13th Amendment of the United States Constitution and even though the state only made its decision in Canton on its own Constitution it was directly in compliance with the US Constitution about not taking private property for public purposes good luck when this lawsuit comes up you've got to let the legislature know that what they have done by calling a public even of travel as the state supreme court said in 7 1970 all of a sudden now becomes a specific type of road but a public easement of travel is meaningless unless there public maintenance that a problem they've got to understand that then maybe we can do something and primarily into the future because anything you do to the past is and therefore unconstitutional so you can't make a law that becomes unconstitutional on its face I'm sorry but I'm sick and tired of hearing this garbage going on thank you. Rebecca and you the people who wrote up that rule because it's in the legislative record saying that they went to Maine Municipal to have that law written.

## **Abandoned and Discontinued Roads Commission Meeting**

**December 10, 2024**

### **Public Comment**

#### **Elizabeth Slain-you tube transcript**

I am with main real estate Co and I'm actually on here Roberta asked me to jump on I have a couple clients who have some property in Poland right over the Raymond Poland line and they would like to sell it but we are in a fight with the neighbors that live at the beginning of the road they're saying that where it it's a private drive and after that it turns into what used to be the old black cat Road and they're saying that these folks have no right away to the property we've talked to lawyers and going down the route of having you know spending lots and lots of money to fight with these neighbors I mean I have one gentleman who has 58 Acres up there and another woman who has like eight Acres who want to sell their property they've been paying lots of taxes on it the town has been neither town has been helpful Poland or um Raymond I've got the most information from Roberta um um and I'm hopefully going to be connecting with the Historical Society to try to get some more but they are open like on Wednesday from like 5: to 8 and the contact number doesn't work or the email so I don't even know if I'm going to show up there tomorrow and someone's going to be there to help me um so it's just frustrating as a real on the realtor end of this too and like the previous lady I mean I feel bad you know when you're selling a property the last thing you want to do is sell something that has problems like this with it um so yeah we're trying I mean are the parcels of land I have have been surveyed and everything um and it shows the you know old black cat Road there but it's just we're up against this wall I have had Neighbors come out one guy came out and told me he was calling the police on me that we were up there just walking these folks land so it's it gets a little crazy out there and it would be nice to have a resource for us to um get some answers because the towns are zero help. I that's all I have any questions

There was brief question, discussion and answer period following Elizabeth's testimony.

## Abandoned and Discontinued Road Meeting Public Comment

January 14, 2025

### Chris Kuzma, Springville, ME -you tube transcript

My name's Chris Kuzma and I am in Springville and I live along the old railroad Trail and we have an auxiliary trail that is Public Access that is private land but has an easement to some extent and kind of listening to some of this and a friend of mine kind of let me know that you guys were having the hearing today so one of my concerns is my neighbor and I share Public Access through an easement on private land so if the town or nobody else is maintaining it what happens if somebody trips on a log or gets hurt on my land through a public easement and the liability issue issues and that was mentioned a few times but not really completely discussed so part of my concern would be with any changes or any legislations to easements right away in those things what does a private land owner with a public easement that has been through there like do I have to worry do I have to put up a fence do I have to post the land and put up signs to protect myself from potential liability of anybody and their brother walking through a public easement on my land if that makes sense that does make sense and again not to give legal advice but just to say where the commission's been the commission has heard of concerns that folks who own property abutting public easements who have to maintain those public easements uh are concerned about their own liability if someone should trip fall get hurt I got a Raspberry patch I got a Raspberry patch and I stepped on a log and bruised a rib a couple years ago so like if somebody in their family is walking down there and their kid says there's raspberries and picks them and falls and gets hurt it's a public right away on an I guess it's part of a land trust and a trail in the easement but how do I know like if somebody walks into my property is that an issue we so that's something that's something else I think the maintenance of public easements on private lands needs to be considered and we have been considering the issue of the maintenance of public easements by persons abutting it and a proposed a legislative fix to limit liability for land owners for what happens when people use that public right of access and may get injured as a result of work done by the abutter so that's something that you'll see in our draft report there's a proposed uh Bill encourage you to take a look at that but appreciate thankfully like I said one of my friends sent me this link and let me know what was going on because I have land here but then I also have some wood lot and wood you know Woodland on one of the old railroad trails and that's another issue that comes up with easement in land is the town of Sanford before it became a city when the state came in and created you know Emin a domain to create the railroad the city deed like that 50 foot wide railroad B to themselves versus removing the easement so some sections in some areas of this public access are Town owned indeed or other areas go through private land owners that sounds like it's above our job description to try to work on some of that simply because we're looking at abandoned and discontinued roads and not some of these other sections but we appreciate the concerns and thank you for your input all right man thank you everybody for listening.

## Abandoned and Discontinued Roads Commission Meeting Public Comment

January 14, 2025-You Tube Transcript

**Sandra Bernier, Waterboro, Maine**

My name is Sandy I'm a mayor born and raised in Waterboro Maine moved to Boston in 1996 I was fortunate enough to buy a camp up in 2012 when I was pregnant with my first child we have an association we also have issues with the town hardly ever grading the road leading up to the association but that's actually not what I want to talk about what I want to talk about is in this town of Waterboro of over 8,000 residents I go to the website and I do not see a road commissioner even listed as a human that I can contact so I went to the town hall I was directed to a Jason Champion who's listed as the Public Works director so my first question is does every town are they required to have a road commissioner because right now Waterboro is not even listing one and I would like to see like an inventory of that are there other towns that don't have real Commissioners because who are we supposed to talk to if there isn't one right so I went to the town hall and Jason Champion said oh that'd be like a million dollars to open that road I have no idea where he got that number so I own at this point it's to be debated because there's an error in my deed but that's a separate issue also somewhere between 60 and 70 Acres it's a lot of wetlands I'm on a mission to protect it from foreign nationalists from Nestle everybody knows how Nestle has moved in um but I'm unclear because it's a discontinued road that was discontinued in 1934 if I have the right to open the road if it's something where I work with the neighbors I can't really get like a clear answer um I want to use it for conservation you know um I want to protect the Land. So I can't really get a straight answer especially because there's no Road commissioner listed and the guy who I talked to is listed again he didn't really seem to know what he was doing or much about the roads I actually my sister went to high school with him and he's a younger guy like whatever like I don't know who to turn to because again there's no Road commissioner so is there a requirement that every town is supposed to have one and maybe it's just not listed on the website but the other issue with these websites is when you hit like to email them you fill out the email and then you hit submit and then it says hey are you a robot and then you say no and then it spits you around and then I never get a confirmation email back as to whether or not they've received it so somebody needs to be reviewing like how we communicate with our towns that we're spending all this money on taxes to employ because that's frustrating so I don't know if we can address that but it's extremely frustrating to communicate with these people to get straight answers .

Peter Coughlan "Sandy let me comment here that I'm looking at the Waterboro website and I see under the Department of Public Works Jason's address his phone number his picture"

Sandra: yes I've written to him I wrote so I wrote through the portal which again I never could see if it was going through I've also sent him an email over a week ago he has not responded um what is the reasonable amount of time to hear about from these people again I've been a land owner here at the lake for 12 years pay now I'm up to almost 5 ,000 in property tax my other piece of property is over 2,000 a year so I'm paying taxes my kids don't go to school here we maintain our own Road here I really just feel like I don't know again he hasn't written me back and I know who he is like he was a he was an eth grade when I was a senior you know I know him um but he was just kind of

like smug and thought I was coming in to cause trouble like I'm not trying to cause trouble I'm just trying to ask questions and he just is like oh that would be like a million dollars I'm like right I'm a nonprofit I can raise that with Grant you know for my mission but again I don't know again is public works the same thing as a road commissioner because that's not clear they should write Road commissioner

Jim Katsiaficas: " I don't know that Public Works is the same as Road commissioner it's not it's a different title I can answer you that every town is required to have a road commissioner but that that's an a title so in some towns it could be the town manager it could be a selectman it could be uh it could be the road it could be your Public Works guy uh okay and actually the select board could be a board of Road Commissioners so there are several options in Maine uh that's said I mean we're our role is to help us understand the issues and help work with the legislature and advise them and how to resolve the issues so we appreciate your comments um but we can't give out legal advice on these things."

Sandra: I've talked to lawyers activists I've talked to other people like I'm not expecting I'm just like simply saying that maybe it would be helpful for the Community if it was a little bit more clear on their websites who actually deals with the roads and then if people if again these websites are extremely difficult these portals the messages don't seem to be going through when I write them and again it spits me around in circles it doesn't matter if on a computer or on a phone so it's just I live in Massachusetts I'm not up here full-time you know so I shouldn't have to go to the town hall to communicate with my people that are working for us you know what I mean like it's just a frustrating system all the way around. Thank You

**Abandoned and Discontinued Road Commission Public Comment**

**January 14, 2025**

**Raymond Bersch- Transcript from you tube**

yes thank you um I understand where the report's going but I would like to make some comments on the definition of Private Road in your report um the first one where it means a private way owned and maintained over which an owner May restrict um in my Essence U access to our road is over a an easement a private easement um that is silent as to whether the owner or the grantor the grantee if you will in that case can actually restrict the maintenance of that road um or access to that road uh so by adopting that method of just finding a private road you're leaving out uh folks that would be in the same kind of a situation that I'm in um and then Private Road means a uh a way privately owned and maintained over which there's no public right of access I understand that means public easement and which is what you're concerned about um but when you when you adopt that if you adopt that or I suggest the legislation adopt that you come into uh conflict with the recently past uh 23 3121 um which was meant strictly as a uh as a uh in for the for the Lending Community um that would uh that that mandates that there be um uh shared uh maintenance on a private road that you would eliminate that in in 3121 if you adopt that particular uh definition so that that's my comments and I understand you you've got to move this thing along but I would like to see if um you could consider a different method a different definition of a private road thank you.

## Abandoned and Discontinued Roads Commission Public Comment

January 14, 2024-- Transcript from you tube

**Janice Velli, Wellington, ME-**

My name is Janice Velli and I live in the town of Wellington and I moved here recently in August and I'm on a discontinued Road I had gone to the town to request some maintenance on my road just to be plowed out and I specified that I didn't want anything else done just to be plowed out I had even volunteered to pay extra in my taxes to have it done um but the selectman told me that they couldn't do that they couldn't just arbitrarily charge one person extra taxes to have the road done um but their first response to me too was that you chose to live there and my response to them was yes I did I did choose to live here because we're in the midst of a crisis here with housing and this is what I could afford I bought this place because was what I could afford um so the town stand is that it's a discontinued Road they said you know I said well it is a safety issue as well I said there's myself and another neighbor were both senior women who live alone and were concerned about being able to get emergency you know Vehicles down here and they said well you know we had this problem once before somebody else had a fire at their camp and his Camp burned to the ground they said uh matter of fact it happened twice because we couldn't get into him but he has to fend for himself and I just felt like that wasn't really a very uh good greeting for somebody just moving to town more or less telling you to fend for yourself to me I feel that it is a huge safety issue and that it really should be minimum maintenance uh on road should be a mandate because of what just happened in Los Angeles where all those homes burned down we are a heavily forested state if somebody's Camp starts to burn and there's a wildfire you know they could lose a lot more than what it cost them to maintain a road we're talking you could lose an entire town so it's the fire aspect as well as having an ambulance be able to get in here um I just feel that it's something that should be mandated if you have residents living on a road that we should be at least minimally maintaining the road um we a lot of towns have had a huge influx in population people have moved here and do we tell these people. well, you know we're not going to build new schools for your children we're not going to do whatever we're not bringing in utilities you know we're only going to take care of what's been done who's been living here right along. um I just think it should be something that really needs to uh be mandated because especially in smaller towns too I live in a town that has less than 300 people living in it and if the town's people decide well we don't want to maintain that because you're new here we we're not going to you know worry about new people moving in we're only going to take care of those who've lived here for a long time politics plays a lot in everything in our lives so that's my feeling about having it mandated but um I just wanted to say I felt that this is something I'm glad to hear that the that there's a committee working on it and I thank you all for that and thank you all for taking the time to listen to me .