

MAINE STATE LEGISLATURE

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**STATE OF MAINE 133rd LEGISLATURE
SECOND REGULAR SESSION**

**2026 REPORT OF
THE MAINE ABANDONED AND DISCONTINUED ROADS COMMISSION
TO THE
JOINT STANDING COMMITTEE ON STATE AND LOCAL
GOVERNMENT,
JOINT STANDING COMMITTEE ON AGRICULTURE, CONSERVATION
AND FORESTRY,
AND
JOINT STANDING COMMITTEE ON INLAND FISHERIES AND
WILDLIFE.**

Commission Members:

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Tanya Emery
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February 1, 2026

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EXECUTIVE SUMMARY

Since January 2025, the twelve-member Maine Abandoned and Discontinued Roads Commission (the “Commission”) has 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.

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’s recommendations in its February 1, 2024, Report resulted in LD 2264, enacted as PL 2023, chapter 642, which 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.

The Commission’s recommendations in its February 1, 2025, Report resulted in LD 1985, which was enacted by the House on June 9, 2025, enacted by the Senate on June 25, 2025, and which, after being held by the Governor after the Legislature adjourned *sine die* on June 25, 2025, became law without the Governor’s signature on January 11, 2026 as P.L. 2025, chapter 518.

While that legislation was held, the Commission continued to meet, and it will be discussing the following issues in 2026:

1. Who should have the authority to allow use of a public easement by an All-Terrain Vehicle (ATV) operator – the landowner, who owns the fee in the half of the public easement along the property, or the municipality or county that holds the public easement and has authority to regulate and enforce public access over it?
2. Should the Legislature declare a “solemn occasion” and ask the Maine Supreme Judicial Court to determine the constitutionality of:
 - a) private landowners having to maintain the public easement abutting their property at their own private expense for public use in order to utilize the public easement for access to their property, and/or
 - b) public easements generally, where the public has a right of access but there is no guarantee of public maintenance (or should public maintenance of public easements be required)?
3. Should public easements:
 - a) be eliminated where there no longer is a need for public access or a private road association can maintain the way, and no property will be landlocked?
 - b) prospectively be prohibited unless the municipality will maintain them to some extent?
 - c) where allowed, limit public use to motor vehicles and foot traffic (as in 23 M.R.S. § 3022) or to certain motorized vehicles?
 - d) where allowed, result in property tax reductions where the municipality does not maintain the public easement?
 - e) where allowed, prohibit issuance of new building permits for residences accessed by the public easement unless the municipality maintains the public easement?
4. Conducting a survey of municipal officials regarding public easement information and maintenance (the Commission prepared a survey last year, but it was not distributed for response).
5. Creation of municipal inventories of public roads, when they were created, extent of road rights, physical condition and legal status (where known), and of trails for vehicles such as ATVs and snowmobiles, including club trails.
6. Consideration of a centralized Statewide repository for municipal inventory information (obtained through 5. above) regarding the legal status of public roads, the extent of maintenance and by whom, and regarding trail information.
7. Clarification of the real estate road status disclosure laws to require provision of information to the buyer on the legal status of roads (including whether abandoned or discontinued, with or without a public easement) providing access to the property being offered for sale, where that

information is available (and implementation of 5. and 6. above may make that information more available).

8. Consideration of whether the discontinuance statute, 23 M.R.S. § 3026-A, should be separated into two -- one for town ways and one for public easements to make it easier to discontinue public easements

9. Assisting municipalities (perhaps through the Maine Office of Community Affairs) with clarifying and correcting past inconsistent or incomplete road discontinuance and abandonment proceedings and actions.

10. Review 23 M.R.S. § 3028-A to determine whether the authority of county commission commissioners with regard to county roads should be similar to that of municipal officials with regard to town ways.

11. Review LD 1562, PL 2025, chapter 395, and the elimination of appeals of municipal road maintenance to county commissioners.

12. Creation of 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.

13. Review LD 1562, PL 2025, chapter 395, and the elimination of appeals of municipal road maintenance to county commissioners.

14. Creation of 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.

I. INTRODUCTION

The 130th 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 and 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 131st 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 six 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 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. §§3 101-3106, part of which was enacted as PL 2023, chapter 642.

PL 2023, chapter 642. In addition, chapter 642 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

prepared draft legislation to implement its recommendations and submitted these recommendations with the Annual report on February 5th, 2025, to the Joint Standing Committee on State and Local Government.

PL 2025, chapter 518. Our recommendations were incorporated into LD 1985, which was enacted by the House on June 9, 2025, enacted by the Senate on June 25, 2025, but was held by Governor's Action on July 8, 2025, with no further resolution as the Legislature adjourned *sine die* on June 25, 2025; it became law without the Governor's signature on January 11, 2026, as PL 2025, chapter 518.

II. COMMISSION PROCESS

A. Commission Meetings

1. First Meeting, January 14, 2025. Discussed and reviewed the Annual Report to the Legislature. The Commission voted unanimously to bring forward the following recommendations:

- a) An Act to Clarify Municipal Authority to Protect Public Easements,
- b) Limited Liability for Repairs and Maintenance of a Public Easement
- c) An Act to create a Minimum Maintenance Option for Public Easement.

After voting, the Commission heard public comments from 1) Janice Velli, Wellington, ME; 2) Raymond Bersch, Windham, ME; 3) Sandra, Waterboro Maine; and 4) Chris Kuzma, Springville, Maine concerning impacts and issues faced with living on abandoned and discontinued roads.

2. Second Meeting, April 10, 2025. The Commission discussed the upcoming meeting with State and Local Government Committee of the Legislature (SLG). There was a strong discussion on the SLG request for our input on LD 928, "An Act to Maintain Public Access to Town Ways in Maine." The Commission voted unanimously to request LD 928 be sent from SLG to the Commission for review. The Commission briefly discussed LD 928 and concluded that State law already authorized municipalities to maintain and enforce public access over public easements without need for the proposed legislation. The Commission agreed to appear before SLG to present its recommendations on LD 928, and in response to SLG's invitation, prepared a follow-up memorandum to municipal officials about the issue. The Commission discussed how to find bills or have SLG reach us when there are bills that would pertain to its abandoned and discontinued roads purview. The Commission briefly discussed who would like to continue being a commissioner and who will not be returning after their term. The Commission then heard Public Comments from Margaret Cardoza.

3. Third Meeting, June 23, 2025. NO QUORUM/NO MEETING. The Commission attempted to meet to discuss next steps after the House and Senate enactment. As there was no quorum, the members who called in decided to wait until the bill was law and meet after the summer.

4. Fourth Meeting, November 6, 2025. The Commission elected a public access officer to comply with the new law subject to the Freedom of Information Act and members are working

on being certified. The Commission discussed LD 1985 enactment by the House and Senate. The Commission hopes the bill becomes law in January 2026. In addition, the Commission discussed future actions to help those impacted by abandoned and discontinued roads.

5. Fifth Meeting, December 2, 2025. The Commission discussed FOAA training requirements and had a brief discussion on the new appointments for Commissioners. The Commission is still waiting for the Senate to appoint two new members and the House one member. After a lengthy discussion on future actions, Commissioners agreed to write up their suggestions on future actions for the next year.

6. Sixth Meeting, January 5, 2026. The Commission discussed what future actions and ideas they would like to discuss in the coming year to help those impacted by abandoned and discontinued roads.

7. Seventh Meeting, January 21, 2026. The Commission unanimously voted to approve the Executive Summary and Annual report to the Legislature.

III. DISCUSSION AND RECOMMENDATION

The Commission continues in its role as a standing committee to receive and respond to requests from the Legislature and its joint standing committees and to offer its members' perspectives on proposed legislation. It also continues to collect input from Commission members and from the public on issues and concerns regarding abandoned and discontinued roads and public easements, and to propose legislative solutions to these issues and concerns.

In the year ahead, the Commission intends to continue with its charge to reduce the degree of confusion that surrounds the terminology and processes related to abandoned and discontinued roads and public easements. The Commission also will determine which of the following several topics to pursue as it considers draft legislation:

Since this legislation was held, the Commission has continued to meet, and it will be discussing the following issues in 2026:

1. Who should have the authority to allow use of a public easement by an All-Terrain Vehicle (ATV) operator – the landowner, who owns the fee in the half of the public easement along the property, or the municipality or county that holds the public easement and has authority to regulate and enforce public access over it?

2. Should the Legislature declare a “solemn occasion” and ask the Maine Supreme Judicial Court to determine the constitutionality of:

- a)** private landowners having to maintain the public easement abutting their property at their own private expense for public use in order to utilize the public easement for access to their property, and/or
- b)** public easements generally, where the public has a right of access but there is no

guarantee of public maintenance (or should public maintenance of public easements be required)?

3. Should public easements:

- a)** be eliminated where there no longer is a need for public access or a private road association can maintain the way, and no property will be landlocked?
- b)** prospectively be prohibited unless the municipality will maintain them to some extent?
- c)** where allowed, limit public use to motor vehicles and foot traffic (as in 23 M.R.S. § 3022) or to certain motorized vehicles?
- d)** where allowed, result in property tax reductions where the municipality does not maintain the public easement?
- e)** where allowed, prohibit issuance of new building permits for residences accessed by the public easement unless the municipality maintains the public easement?

4. Conducting a survey of municipal officials regarding public easement information and maintenance (the Commission prepared a survey last year, but it was not distributed for response).

5. Creation of municipal inventories of public roads, when they were created, extent of road rights, physical condition and legal status (where known), and of trails for vehicles such as ATVs and snowmobiles, including club trails.

8. Consideration of a centralized Statewide repository for municipal inventory information (obtained through 5. above) regarding the legal status of public roads, the extent of maintenance and by whom, and regarding trail information.

9. Clarification of the real estate road status disclosure laws to require provision of information to the buyer on the legal status of roads (including whether abandoned or discontinued, with or without a public easement) providing access to the property being offered for sale, where that information is available (and implementation of 5. and 6. above may make that information more available).

10. Consideration of whether the discontinuance statute, 23 M.R.S. § 3026-A, should be separated into two -- one for town ways and one for public easements to make it easier to discontinue public easements

11. Assisting municipalities (perhaps through the Maine Office of Community Affairs) with clarifying and correcting past inconsistent or incomplete road discontinuance and abandonment proceedings and actions.

12. Review 23 M.R.S. § 3028-A to determine whether the authority of county commission commissioners with regard to county roads should be similar to that of municipal officials with regard to town ways.

13. Review LD 1562, PL 2025, chapter 395, and the elimination of appeals of municipal road maintenance to county commissioners.

14. Creation of 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.

15. 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 continue progress on these issues each session.

APPENDIX

A

BILL LD 1513



130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1513

H.P. 1121

House of Representatives, April 15, 2021

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

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.

A handwritten signature in cursive script that reads "R B. Hunt".

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.

Committee Amendment to BILL LD 1513

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Date: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

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

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1121, L.D. 1513, “An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences”

Amend the bill by striking out the title and substituting the following:
'An Act To Establish the Maine Abandoned and Discontinued Roads Commission'
Amend the bill by striking out everything after the enacting clause and inserting the following:

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

<u>Transportation:</u>	<u>Maine Abandoned and Discontinued</u>	<u>Expenses Only</u>	<u>23 MRSA</u>
<u>Roads</u>	<u>Roads Commission</u>		<u>§3036</u>

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;**

COMMITTEE AMENDMENT

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 (1) Owners of property that abuts an abandoned or discontinued road;
2 (2) Owners of property accessible only by traveling over an abandoned or
3 discontinued road;
4 (3) Recreational users of an abandoned or discontinued road;
5 (4) Members of the public;
6 (5) Municipal, county or state governments; and
7 (6) The physical integrity of an abandoned or discontinued road and surrounding
8 land;
9 C. Develop recommendations on ways to address matters considered by the
10 commission, including recommendations for statutory changes; and
11 D. Review legislation affecting abandoned or discontinued roads and provide
12 information to joint standing committees of the Legislature upon request.
13 3. Chair. The members of the commission shall elect from among the membership a
14 chair, who serves a 3-year term. The chair continues to hold the office until a successor is
15 elected and may serve multiple terms. The chair calls and presides over meetings of the
16 commission. In the absence of the chair, the member designated by the Commissioner of
17 Inland Fisheries and Wildlife or the member designated by the Commissioner of
18 Agriculture, Conservation and Forestry may preside over meetings.
19 4. Term of office. Members of the commission serve 3-year terms. A member may
20 serve after the expiration of that member's term until a successor has been appointed. A
21 member may serve multiple terms.
22 5. Meetings. The commission shall meet at least 3 times, but may meet no more than
23 6 times, each year.
24 6. Subcommittees. The commission may establish subcommittees to meet to conduct
25 the work of the commission. Subcommittees may invite persons who are not members of
26 the commission to participate in a nonvoting capacity.
27 7. Public comment. The commission shall accept public comment during its meetings.
28 8. Staff support. The Office of the Attorney General shall provide staff support to the
29 commission.
30 9. Bylaws. The commission may, by a majority vote of the members, adopt or amend
31 bylaws as necessary or appropriate to carry out the purposes or exercise the powers of the
32 commission. Prior to adoption or amendment of bylaws, the commission shall ask the
33 member designated by the Attorney General to review the bylaws and provide comments
34 to the commission.
35 10. Fund established. The Road Commission Fund is established as a nonlapsing fund
36 within the Office of the Attorney General to support the work of the commission. The fund
37 consists of any funds received from any public or private source.
38 11. Report. By February 1, 2023, and annually thereafter, the commission shall submit
39 a report of its activities and any recommended statutory changes to the joint standing
40 committee of the Legislature having jurisdiction over state and local government matters,
41 the joint standing committee of the Legislature having jurisdiction over agriculture,

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.

28 GENERAL FUND	2021-22	2022-23
29 POSITIONS - LEGISLATIVE COUNT	0.000	1.000
30 Personal Services	\$0	\$59,188
31 All Other	\$0	\$3,919
32		
33 GENERAL FUND TOTAL	\$0	\$63,107

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.

38 OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
39 Unallocated	\$0	\$500
40		
41 OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$500

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

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

SUMMARY

This amendment replaces the bill. It establishes the Maine Abandoned and Discontinued Roads Commission. The commission is charged with prioritizing matters related to abandoned and discontinued roads that have a significant negative impact, qualitatively or quantitatively, on residential owners of property that abuts the road, recreational users of the road, members of the public, municipal, county or state governments and the physical integrity of the road and surrounding land; developing recommendations to address the prioritized matters, recommending statutory changes; and reviewing legislation. The commission has the authority to receive funds to support the work of the commission. The commission must report 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 inland fisheries and wildlife matters and the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters by February 1, 2023 and annually thereafter. The committees have authority to report out bills in response to the reports. The Office of the Attorney General is required to provide staff support to the commission. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED
(See attached)

LD 1513 becomes

PUBLIC LAW Chapter 743

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 §12004-1, sub-§83-A is enacted to read:

83-A.

<u>Transportation:</u>	<u>Maine Abandoned and Discontinued</u>	<u>Expenses Only</u>	<u>23 MRSA</u>
<u>Roads</u>	<u>Roads Commission</u>		<u>§3036</u>

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 12004-1, 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;

8. 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.

GENERAL FUND	2021-22	2022-23	2023-24
POSITIONS - LEGISLATIVE COUNT	0.000	1.000	1.000
Personal Services	\$0	\$59,188	\$59,188
All Other	\$0	\$3,919	\$3,919
GENERAL FUND TOTAL	\$0	\$63,107	\$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.

OTHER SPECIAL REVENUE FUNDS	2022-23	2023-24
Unallocated	\$500	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$500	\$500

ATTORNEY GENERAL, DEPARTMENT OF THE DEPARTMENT TOTALS	2022-23	2023-24
GENERAL FUND	\$63,107	\$63,107
OTHER SPECIAL REVENUE FUNDS	\$500	\$500
DEPARTMENT TOTAL -ALL FUNDS	<u>\$63,607</u>	<u>\$63,607</u>

APPENDIX B

BILL LD 461



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 461

S.P. 215

In Senate, February 6, 2023

An Act Regarding Private Roads

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

A handwritten signature in black ink, appearing to read 'D 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.

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

2 **Sec. 1. 23 MRSA §1903, sub-§10-A**, as repealed and replaced by PL 1981, c. 318,
3 §1, is amended to read:

4 **10-A. Private way.** "Private way" means a ~~private road, driveway or~~ public easement
5 as defined in section 3021, subsection 2.

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

7 **10-D. Private road.** "Private road" means a privately owned and maintained road
8 over which the owner may restrict passage.

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

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

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

20 **SUBCHAPTER 2**

21 **PRIVATE WAYS ROADS**

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

24 **§3104. Penalties and process**

25 Money recovered under sections 3102 and 3103 is for the use of the owners. In any
26 notice of claim or process for the money's recovery, a description of the owners as owners
27 of parcels of land benefited by the private road, private way or bridge by name, clearly
28 describing each owner's parcel of land by the book and page number of the owner's deed
29 as recorded in the county's registry of deeds and the private road, private way or bridge, is
30 sufficient. If the private road, private way or bridge is shown on a plan recorded in the
31 county's registry of deeds, the plan's recording reference is sufficient. Such process is not
32 abated by the death of any owner or by the transfer of any owner's interest. Any money
33 owed pursuant to section 3101, 3102 or 3103 is an obligation that is personal to the owners
34 of the subject parcels, jointly or severally, and also burdens the parcel and runs with the
35 land upon the transfer of any owner's interest. After June 30, 2018, any money owed
36 pursuant to section 3101, 3102 or 3103 is not an obligation that burdens the parcel or runs
37 with the land upon the transfer of any owner's interest unless a notice of claim is recorded
38 in the county's registry of deeds prior to the transfer. ~~A notice of claim filed in the registry~~
39 ~~of deeds expires 18 months from the date of recording unless extended prior to the~~
40 ~~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:

1 (1) Withholding by the agency contracting the work of final payment under
2 contract; or

3 (2) The furnishing of a bond by the contractor to guarantee suitable repair or
4 payment of damages.

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.

12 **Sec. 12. Municipalities to develop or update list of town ways, private ways
13 and private roads.** Each municipality shall develop or update publicly available
14 inventories relating to all known town ways, private ways and private roads within its
15 borders and share such inventories with the Department of Transportation, Bureau of
16 Maintenance and Operations by November 1, 2023. Boards of county commissioners,
17 landowners, road associations, surveyors and other interested parties may share relevant
18 information related to town ways, private ways and private roads with municipalities and
19 the Department of Transportation, Bureau of Maintenance and Operations. By January 1,
20 2024, the Department of Transportation shall provide to the Joint Standing Committee on
21 State and Local Government an update on the status of road inventories developed by
22 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.

29 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.

Committee Amendment LD 461

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Date:

(Filing No. S-)

STATE AND LOCAL GOVERNMENT

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

**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 215, L.D. 461, “An Act Regarding Private Roads”

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

'An Act Regarding Private Ways and Private Roads'

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

'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:

COMMITTEE AMENDMENT

1 1. Contract for repair. A contract for repairs or maintenance to the private road,
2 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)

BILL LD 461 becomes

PUBLIC LAW Chapter 387

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

BILL LD 2264



131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2264

S.P. 982

In Senate, March 12, 2024

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, appearing to read "D M Grant".

DAREK M. GRANT
Secretary of the Senate

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

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

3 **SUBCHAPTER 2**

4 **PRIVATE WAYS ROADS AND PUBLIC EASEMENTS**

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

7 **§3101. Call of meetings; maintenance; repairs**

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

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

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

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

27 **2. Call of meeting.** When 4 or more parcels of land are benefited by a private road,
28 ~~private way public easement not repaired or maintained by a municipality or bridge as an~~
29 ~~easement or by fee ownership of the private road, private way public easement or bridge,~~
30 the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by
31 different persons, may make written application to a notary public to call a meeting. The
32 notary may issue a warrant or similar written notice setting forth the time, place and purpose
33 of the meeting. Copies of the warrant or similar written notice must be mailed by means
34 of the United States Postal Service to the owners of all the parcels benefited by the private
35 road, ~~private way public easement~~ or bridge at the addresses set forth in the municipal tax
36 records at least 30 days before the date of the meeting. The notice must inform the owners
37 of the planned meeting's agenda and specify all items to be voted on, including, but not
38 limited to, all proposed budget items or amendments that will determine the amount of
39 money to be paid by each owner pursuant to subsection 5. Subsequent meetings may be
40 called in the same manner or by a commissioner or board appointed at a previous meeting
41 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
6 easement not repaired or maintained by a municipality or bridge represents one vote under
7 this section; except that, if the bylaws of the association authorize more than one vote, then
8 each parcel may represent no more than 2 votes under this subsection. The call to a meeting
9 may state that an owner may elect in writing to appoint another owner to vote in the owner's
10 stead. Owners voting by absentee ballot must be polled on all voting items that were not
11 included in the agenda and the final tally must be reported to the owners.

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

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

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

44 **6. Commercial or forest management purposes.** This section does not apply to a
45 private road, ~~private-way~~ public easement or bridge constructed or primarily used for
46 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.

Committee Amendment to

LD 2264

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Date: (Filing No. S-)

STATE AND LOCAL GOVERNMENT

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

**STATE OF MAINE
SENATE
131ST LEGISLATURE
SECOND REGULAR SESSION**

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

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

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

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

'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

COMMITTEE AMENDMENT

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

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

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

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

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

12 **SUMMARY**

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

21 **FISCAL NOTE REQUIRED**

22 (See attached)

COMMITTEE AMENDMENT

BILL LD 2264 becomes
PUBLIC LAW Chapter 642

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

Bill LD 1985



132nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2025

Legislative Document

No. 1985

H.P. 1332

House of Representatives, June 9, 2025

**An Act to Implement the Recommendations of the Maine
Abandoned and Discontinued Roads Commission**

Reported by Representative SALISBURY of Westbrook for the Joint Standing Committee on State and Local Government pursuant to the Maine Revised Statutes, Title 23, section 3036, subsection 11.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 14 MRSA §159-E** is enacted to read:

3 **§159-E. Limited liability for repairs and maintenance of public easement**

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

6 A. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2
7 and as described in Title 23, section 3022.

8 B. "Repairs and maintenance" includes, but is not limited to, snowplowing, snow
9 removal, sanding and ice control; grading and adding gravel and surface material;
10 installing reclaimed asphalt or grinding existing pavement for reuse; installing,
11 cleaning and replacing culverts; creating and maintaining ditches, drains and other
12 storm water management infrastructure; creating and maintaining sight distances on
13 curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.

14 **2. Limitation of liability; repairs and maintenance of public easement.** Except as
15 otherwise provided in this section, an owner, lessee or occupant of property abutting a
16 public easement or a portion of a public easement, including, but not limited to, a road
17 association formed under Title 23, Part 3, chapter 305, subchapter 2 and a member of that
18 road association, or an agent of such persons, is not liable for personal injury, property
19 damage or death caused by:

20 A. Repairs and maintenance conducted on that public easement by the owner, lessee
21 or occupant, or the agent of such persons, if the repairs and maintenance were
22 conducted in order for the owner, lessee or occupant to access the owner's, lessee's or
23 occupant's property over the public easement from a public way; or

24 B. Public access or public use of the public easement.

25 **3. Exception; dangerous conditions.** The limitations in subsection 2 do not limit any
26 liability that may otherwise exist for a willful or malicious creation of, or failure to guard
27 or warn against, a dangerous condition on a public easement that is reasonably known to
28 an owner, lessee or occupant of property abutting the public easement.

29 **4. Duty not created.** This section does not create a duty of care for an owner, lessee
30 or occupant of property abutting a public easement to keep, or grounds for liability for
31 injury to a person or property for failure to keep, a public easement safe for public access
32 or public use for persons entering the public easement for such purposes.

33 **5. Landowner liability for environmental damage by others.** In accordance with
34 this section, an owner, lessee or occupant of property abutting a public easement, including,
35 but not limited to, a road association formed under Title 23, Part 3, chapter 305, subchapter
36 2 and a member of that road association, or an agent of such persons, that conducts repairs
37 and maintenance on the public easement or suffers the public access or use of the public
38 easement:

39 A. In accordance with Title 12, section 685-C, subsection 11 and Title 38, section
40 347-A, subsection 7, is not subject to criminal sanctions or civil penalties or forfeitures
41 for a violation of laws or rules enforced by the Maine Land Use Planning Commission
42 or the Department of Environmental Protection, as applicable, if the owner, lessee or

1 occupant provides substantial credible evidence to the Maine Land Use Planning
2 Commission or the Department of Environmental Protection, as applicable, that the
3 violation was committed by a person other than the owner, lessee or occupant or a
4 contractor, employee or agent of the owner, lessee or occupant; and

5 B. Notwithstanding Title 12, section 685-C, subsection 11 and Title 38, section 347-A,
6 subsection 7, if the owner, lessee or occupant provides the substantial credible evidence
7 described in paragraph A, the owner, lessee or occupant may not be held responsible
8 for remediating or abating the environmental damage caused by the violation or for the
9 costs of such remediation or abatement.

10 **6. Legal costs; attorney's fees.** If an owner, lessee or occupant of property abutting
11 a public easement or a portion of a public easement, including, but not limited to, a road
12 association formed under Title 23, Part 3, chapter 305, subchapter 2 and a member of that
13 road association, or an agent of such persons, that conducts repairs and maintenance on the
14 public easement or suffers the public access or use of the public easement is found not
15 liable for personal injury, property damage or death pursuant to this section, the court shall
16 award the owner, lessee or occupant any direct legal costs, including reasonable attorney's
17 fees.

18 **Sec. 2. 23 MRSA §3105-A,** as amended by PL 2023, c. 642, §2, is further amended
19 to read:

20 **§3105-A. Use of town equipment**

21 The legislative body of any town or village corporation at a legal town or village
22 corporation meeting may authorize the municipal officers of the town or assessors of the
23 village corporation to use the town's or village corporation's highway equipment on ~~private~~
24 ways ~~public easements~~ within such town or village corporation to plow, maintain or repair
25 those ~~private ways~~ public easements to the extent directed by the legislative body and
26 whenever such municipal officers or assessors consider it advisable in the best interest of
27 the town or village corporation for fire and police protection. As used in this section,
28 "public easement" has the same meaning as in section 3021, subsection 2 and as described
29 in section 3022.

30 **1. Repairs and maintenance of public easements.** The municipal officers of a town
31 or the assessors of a village corporation, on their own initiative or upon written petition
32 pursuant to Title 30-A, section 2521 of the owners, lessees or occupants of property used
33 as year-round primary residences that are located along or only accessible over one or more
34 public easements, may request the legislative body of the town or village corporation to
35 vote to provide a minimum level of year-round repairs and maintenance for the public
36 easement or easements. The minimum level of year-round repairs and maintenance for a
37 public easement or easements that may be provided by a town or village corporation under
38 this subsection:

39 A. May be provided up to the driveway of the last year-round primary residence that
40 is located along or only accessible over the public easement and that is furthest from
41 the nearest public way;

42 B. Must be lower than the standard for maintenance of highways, town ways and
43 streets under section 3651;

1 C. May include annual grading, repair, maintenance, snowplowing and replacement
2 of drains and culverts as required to keep the public easement reasonably passable for
3 residential access as determined by the town or village corporation; and

4 D. If approved by a vote of the legislative body of the town or village corporation,
5 must continue to be provided until the legislative body votes to discontinue providing
6 year-round repairs and maintenance.

7 **2. Required signage.** A town or village corporation that votes to provide a minimum
8 level of year-round repairs and maintenance of a public easement pursuant to subsection 1
9 shall, at each intersection of such public easement with a public way or private road, install
10 and maintain a sign reasonably visible to drivers at the entrance to the public easement that
11 reads: "Minimum Maintenance Road - Travel at Your Own Risk." The sign required under
12 this subsection must conform to the requirements of the most recent Manual on Uniform
13 Traffic Control Devices for Streets and Highways published by the United States
14 Department of Transportation, Federal Highway Administration, including, but not limited
15 to, the requirement that the sign be a minimum 24-inch-by-24-inch diamond shape with
16 black lettering at least 3 inches high on a yellow retroreflective background.

17 **3. Liability.** A town or village corporation that votes to provide a minimum level of
18 year-round repairs and maintenance of a public easement pursuant to subsection 1 is
19 immune from liability relating to that repairs and maintenance under the Maine Tort Claims
20 Act and under Title 23, chapter 313.

21 **Sec. 3. 29-A MRSA §2395, sub-§4,** as amended by PL 2017, c. 25, §1, is further
22 amended to read:

23 **4. Designation by counties and municipalities.** County commissioners and
24 municipal officers may designate public ways, other than those in subsection 3, and public
25 easements, regardless of whether the county or municipality maintains or repairs the public
26 easement, and impose restrictions within their respective jurisdictions similar to those made
27 by the Department of Transportation under subsection 3. Any vehicle delivering home
28 heating fuel or organic animal bedding material and operating in accordance with a permit
29 issued by the Department of Transportation pursuant to this section may travel over any
30 county or town way or public easement without a specific municipal or county permit. A
31 municipality may impose additional restrictions for a vehicle delivering home heating fuel
32 or organic animal bedding material to operate on public ways and public easements within
33 that municipality but may not require a permit to operate according to those restrictions.
34 As used in this subsection, "public easement" has the same meaning as in Title 23, section
35 3021, subsection 2 and as described in Title 23, section 3022.

36 **Sec. 4. Appropriations and allocations.** The following appropriations and
37 allocations are made.

38 **ATTORNEY GENERAL, DEPARTMENT OF THE**
39 **Road Commission Fund Z353**

40 Initiative: Provides ongoing appropriations of \$6,500 to the Road Commission Fund
41 program to provide expense reimbursement for members and to support the work of the
42 Maine Abandoned and Discontinued Roads Commission.

43 **GENERAL FUND** **2025-26** **2026-27**

1	All Other	\$6,500	\$6,500
2			
3	GENERAL FUND TOTAL	\$6,500	\$6,500

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SUMMARY

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This bill is reported out by the Joint Standing Committee on State and Local Government pursuant to the Maine Revised Statutes, Title 23, section 3036, subsection 11 and implements the recommendations of the Maine Abandoned and Discontinued Roads Commission included in its annual report dated February 3, 2025.

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The bill limits liability for repairs and maintenance of a public easement of an owner, lessee or occupant of property abutting a public easement. It also amends current law to provide municipalities and village corporations, through a vote of approval by their legislative bodies, the option to determine if they will be responsible to maintain and repair public easements or portions of public easements to a minimum level of maintenance until the legislative body votes to discontinue providing year-round repairs and maintenance. It provides that county commissioners and municipal officers may designate public ways and public easements regardless of whether the municipality maintains or repairs the public easements and impose restrictions within their respective jurisdictions similar to those made by the Department of Transportation. It also provides an ongoing annual appropriation of \$6,500 to the Road Commission Fund program to provide expense reimbursement for members and to support the work of the Maine Abandoned and Discontinued Roads Commission.

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FISCAL NOTE REQUIRED

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(See attached)



132nd MAINE LEGISLATURE

LD 1985

LR 2549(01)

An Act to Implement the Recommendations of the Maine Abandoned and Discontinued Roads Commission

Fiscal Note for Original Bill

Sponsor:

Committee: State and Local Government

Fiscal Note Required: Yes

Fiscal Note

	FY 2025-26	FY 2026-27	Projections FY 2027-28	Projections FY 2028-29
Net Cost (Savings)				
General Fund	\$6,500	\$6,500	\$6,500	\$6,500
Appropriations/Allocations				
General Fund	\$6,500	\$6,500	\$6,500	\$6,500

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees will increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The bill includes General Fund appropriations to the Office of the Attorney General of \$6,500 beginning in fiscal year 2025-26 to provide expense reimbursement for members and to support the work of the Maine Abandoned and Discontinued Roads Commission.

BILL LD 1985 becomes
PUBLIC LAW Chapter 518

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 1332 - L.D. 1985

**An Act to Implement the Recommendations of the Maine Abandoned and
Discontinued Roads Commission**

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

Sec. 1. 14 MRSA §159-E is enacted to read:

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

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

A. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2 and as described in Title 23, section 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. Limitation of liability; repairs and maintenance of public easement. Except as otherwise provided in this section, an owner, lessee or occupant of property abutting a public easement or a portion of a public easement, including, but not limited to, a road association formed under Title 23, Part 3, chapter 305, subchapter 2 and a member of that road association, or an agent of such persons, is not liable for personal injury, property damage or death caused by:

A. Repairs and maintenance conducted on that public easement by the owner, lessee or occupant, or the agent of such persons, if the repairs and maintenance were conducted in order for the owner, lessee or occupant to access the owner's, lessee's or occupant's property over the public easement from a public way; or

B. Public access or public use of the public easement.

3. Exception; dangerous conditions. The limitations in subsection 2 do 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 a public easement that is reasonably known to an owner, lessee or occupant of property abutting the public easement.

4. Duty not created. This section does not create a duty of care for an owner, lessee or occupant of property abutting a public easement to keep, or grounds for liability for injury to a person or property for failure to keep, a public easement safe for public access or public use for persons entering the public easement for such purposes.

5. Landowner liability for environmental damage by others. In accordance with this section, an owner, lessee or occupant of property abutting a public easement, including, but not limited to, a road association formed under Title 23, Part 3, chapter 305, subchapter 2 and a member of that road association, or an agent of such persons, that conducts repairs and maintenance on the public easement or suffers the public access or use of the public easement:

A. In accordance with Title 12, section 685-C, subsection 11 and Title 38, section 347-A, subsection 7, is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the Maine Land Use Planning Commission or the Department of Environmental Protection, as applicable, if the owner, lessee or occupant provides substantial credible evidence to the Maine Land Use Planning Commission or the Department of Environmental Protection, as applicable, that the violation was committed by a person other than the owner, lessee or occupant or a contractor, employee or agent of the owner, lessee or occupant; and

B. Notwithstanding Title 12, section 685-C, subsection 11 and Title 38, section 347-A, subsection 7, if the owner, lessee or occupant provides the substantial credible evidence described in paragraph A, the owner, lessee or occupant may not be held responsible for remediating or abating the environmental damage caused by the violation or for the costs of such remediation or abatement.

6. Legal costs; attorney's fees. If an owner, lessee or occupant of property abutting a public easement or a portion of a public easement, including, but not limited to, a road association formed under Title 23, Part 3, chapter 305, subchapter 2 and a member of that road association, or an agent of such persons, that conducts repairs and maintenance on the public easement or suffers the public access or use of the public easement is found not liable for personal injury, property damage or death pursuant to this section, the court shall award the owner, lessee or occupant any direct legal costs, including reasonable attorney's fees.

Sec. 2. 23 MRSA §3105-A, as amended by PL 2023, c. 642, §2, is further amended to read:

§3105-A. Use of town equipment

The 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 the town's or village corporation's highway equipment on ~~private ways~~ public easements within such town or village corporation to plow, maintain or repair those ~~private ways~~ public easements 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. As used in this section,

"public easement" has the same meaning as in section 3021, subsection 2 and as described in section 3022.

1. Repairs and maintenance of public easements. The municipal officers of a town or the assessors of a village corporation, on their own initiative or upon written petition pursuant to Title 30-A, section 2521 of the owners, lessees or occupants of property used as year-round primary residences that are located along or only accessible over one or more public easements, may request the legislative body of the town or village corporation to vote to provide a minimum level of year-round repairs and maintenance for the public easement or easements. The minimum level of year-round repairs and maintenance for a public easement or easements that may be provided by a town or village corporation under this subsection:

A. May be provided up to the driveway of the last year-round primary residence that is located along or only accessible over the public easement and that is furthest from the nearest public way;

B. Must be lower than the standard for maintenance of highways, town ways and streets under section 3651;

C. May include annual grading, repair, maintenance, snowplowing and replacement of drains and culverts as required to keep the public easement reasonably passable for residential access as determined by the town or village corporation; and

D. If approved by a vote of the legislative body of the town or village corporation, must continue to be provided until the legislative body votes to discontinue providing year-round repairs and maintenance.

2. Required signage. A town or village corporation that votes to provide a minimum level of year-round repairs and maintenance of a public easement pursuant to subsection 1 shall, at each intersection of such public easement with a public way or private road, install and maintain a sign reasonably visible to drivers at the entrance to the public easement that reads: "Minimum Maintenance Road - Travel at Your Own Risk." The sign required under this subsection must conform to the requirements of the most recent Manual on Uniform Traffic Control Devices for Streets and Highways published by the United States Department of Transportation, Federal Highway Administration, including, but not limited to, the requirement that the sign be a minimum 24-inch-by-24-inch diamond shape with black lettering at least 3 inches high on a yellow retroreflective background.

3. Liability. A town or village corporation that votes to provide a minimum level of year-round repairs and maintenance of a public easement pursuant to subsection 1 is immune from liability relating to that repairs and maintenance under the Maine Tort Claims Act and under Title 23, chapter 313.

Sec. 3. 29-A MRSA §2395, sub-§4, as amended by PL 2017, c. 25, §1, is further amended to read:

4. Designation by counties and municipalities. County commissioners and municipal officers may designate public ways, other than those in subsection 3, and public easements, regardless of whether the county or municipality maintains or repairs the public easement, 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. As used in this subsection, "public easement" has the same meaning as in Title 23, section 3021, subsection 2 and as described in Title 23, section 3022.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Road Commission Fund Z353

Initiative: Provides ongoing appropriations of \$6,500 to the Road Commission Fund program to provide expense reimbursement for members and to support the work of the Maine Abandoned and Discontinued Roads Commission.

GENERAL FUND	2025-26	2026-27
All Other	\$6,500	\$6,500
GENERAL FUND TOTAL	\$6,500	\$6,500

APPENDIX

E

**Maine Abandoned and Discontinued Roads
Commission Membership**

Name	Representing
1. Corporal Kris McCabe	Member who is an employee of Maine Department of Inland Fisheries & Wildlife (MDIF&W).
2. Matthew Foster ¹	Member who is an employee of Maine Department of Agriculture, Conservation and Forestry (DACF).
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. Tanya Emery ² , Maine Municipal Association	Member of a statewide association representing municipalities.
6. Tom Doak	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. Thomas Skolfield ³ , 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

¹ Matthew Foster was appointed in October of 2025.

² Tanya Emery was appointed in 2025.

³ Thomas Skolfield was appointed in 2026

abandoned or discontinued road or that is accessible only by traveling over an abandoned or discontinued road.

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

F

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	
	TOTAL:	
	Yes:	11
	No:	0
	Abstain:	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	
	VOTES:	
	Yes	11
	No	0
	Abstention	0

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	
	VOTES:	
	Yes	11
	No	0
	Abstention	0

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	
	VOTES:	
	Yes	4
	No	5
	Abstention	2

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	
	VOTES:	
	Yes	11
	No	0
	Abstention	0

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	
	VOTES:	
	Yes	9
	No	2
	Abstention	0

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	
	VOTES:	

	Yes	11
	No	0
	Abstention	0

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 28th of January so the final product to Heather by January 30th 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.

Abandoned and Discontinued Road Commission Meeting Minutes

April 10, 2025 Remote Meeting

In: Jim Katsiaficas, Roberta Manter, Steven Young, John Monk, Ryan Pelletier, Peter Coughlan, Kris MacCabe, Catherine Nadeau.

Absent: Rebecca Graham, Vivian Mikhail, Tom Doak and Joe Higgins.

The January 14, 2025, meeting minutes were unanimously approved by a roll call vote.

Jim opened the meeting noting April 16, 2025, meeting at 1 pm with the State and Local Committee of the Legislature. Jim gave a comprehensive overview of what he plans to review with the Committee, and what he has been asked to review by the SLG committee. He asked who on the Commission is planning on attending.

There was a brief discussion on who would be attending, funding for the commission, how to attend the meeting remotely, and LD 928.

Jim gave an overview of LD 928.

Jim then asked for the opinions and thoughts of the Commissioners on the proposed bill.

Roberta raised her concerns with the bill, history of the road issue and history of gates and bars. She also pointed out it is now moot as the town of Sangerville has seized the road by eminent domain.

Jim, Ryan, Kris and Roberta spoke about gates and bars and whether it is prudent to have that as an option to slow down those who are using public easements and issues with public easements.

Ryan raised the issue that even the commissioners had different opinions on this bill. As Roberta has already testified for the bill hearing, maybe have Roberta testimony stand for us.

Roberta felt that maybe we should suggest amending the bill to make some changes so as not to miss a chance.

Ryan argued that for this particular bill, the Commission should state that we are neither for or against as not all of the Commissioners are in favor of this bill.

Jim read the law from the bill in the record.

Jim argued that the problem with the bill is the 15 years' wait, whereas right now people can go to court and request that the gate and bars to a road be removed. If the municipalities want to act to prevent roads from being blocked, they can right now.

Jim felt that the current law should be left the way it is but amend other laws to include the phrase that municipalities have authority to take down gates and bars, so it applies to all discontinued roads and section 3026A.

Roberta wants to amend the bill to state that people can erect unlocked gates.

Jim replied that that is the issue, people are putting up locked gates to not allow people in.

Roberta argued that it is a nuisance for people to rip up the road.

John stated that gates would be inefficient for snowmobiles and complicate things.

Catherine raised that it would complicate things for the ATV rider.

John thinks the gate would chill snowmobiling activity.

Kris raised the issue that snowmobiles can be going up to 100 miles an hour and IF&W is not going to give landowners a gate if there are other landowners down the road who need access. Seasonal gates work but if it is not a group gate being maintained it causes problems.

Jim is concerned about whether the gates can be seen and if someone gets hurt.

Ryan is in favor of temporary gates to protect roads during mud season or issues with the road as tearing up roads is a springtime issue.

Jim asked would it make sense to say to the SLG committee that LD 928 only addresses those public easements that result from statutory abandonment of town ways, that Municipalities already have the ability to protect the public's right to travel over public easements; and there is no basis behind a 15-year date. Furthermore, we can point out that the Commission has put forward a bill for Municipalities to be allowed to post for closing roads during certain seasons.

Roberta said the biggest problem is it doesn't prevent the mudding pick up trucks only the heavy trucks.

Peter said the posting of public easement is basic in local traffic ordinance and it can be aimed at whatever you want to. How do you define mud runners or enforce it?

Jim stated yes but a municipality could post a difference for gravel and dirt roads vs paved roads.

Brief discussion between Kris and John is that homeowners who live on the roads can cause just as much damage and that everyone needs to take responsibility for the road.

There was a brief discussion about who spoke on bill 928, their positions and how the Commission wants to handle its recommendation going forward.

Catherine advised if we want bill 928 to come back to this Commission then we need to request that.

Jim stated that he will testify that the Commission doesn't support it, as the law is sufficient as it currently is and those who spoke against asked for the bill to be sent over to the Commission.

The vote was taken to request the SLG committee to send the bill to the Commission for further review. Ryan, so moved and Kris seconded. Unanimously passed.

Jim moved on to other legislation that impacts Commission LD 1562.

Brief discussion on the bill, what is in it and thoughts of commissioners. As this bill doesn't affect abandoned and discontinued roads the bill was tabled for discussion.

The Commission then moved on to discuss LD 994. The bill proposes that those who live on a private road and that maintain that road can be reimbursed by any and all who live on the road for costs. Jim stated though that this bill applies to private roads and does not apply to abandoned and discontinued roads and is outside our purview.

There was a discussion with Roberta weighing in on her concerns about whether this bill could apply to abandoned and discontinued roads as those considered public easements but have not been cleared up in terms of the Maine Statutes. She feels strongly that individuals should not be required to pay for maintenance of public easements.

Ryan raised the concern that the Commission is not made aware of these bills that pertain to us. SLG Committee is new, and they are not familiar with us and that even with monitoring if they don't reach out we don't always know what bills apply or need input from the commission.

There was a discussion between Roberta, Ryan and Jim on how to get the information filter to the commission. Jim suggested the legislative analyst.

Jim moved on to discuss the reappointing or replacing Commissioners on the Commission. There was brief discussion on terms for Commissioners and that everyone is up at the same time and who will not be returning as Commissioners.

The commission then opened up to public comments and heard Margaret Cardoza speak.

Jim adjourned the meeting at Approximately 2:15 pm.

Abandoned and Discontinued Roads Commission Minutes

November 6, 2025

In attendance: Steve Young, Tanya Emery, Roberta Manter, Jim Katsiaficias, Peter Coughlan, Ryan Pelletier, Catherine Nadeau, John Monk and Tom Doak.

Absent: Kris McCabe, Matthew Foster and Vivian Mikhail

Jim called the meeting to order at 1:15 pm.

The April 10, 2025, meeting minutes were unanimously approved by a roll call vote with Tanya abstaining as she didn't attend that meeting.

Jim made a motion to elect Heather as the public access officer as the Commission falls under the new law which is now subject to the Freedom of Information Act. Motion was approved by unanimous roll call vote.

Jim asked about Public Testimony for David Manter as he had requested to appear. Roberta responded that Heather had suggested he put it in writing and the email with his comments was sent to all Commissioners.

Jim asked about any updates or announcements. Heather stated that we are waiting for three appointments for Commissioners, two from the Senate president and one from the Speaker of the house.

Jim then reviewed what the Commission had done in the past year and the legislation that was passed. Bill is with the governor waiting on signature which hopefully she will sign in January.

There was a discussion on if the bill LD 1985 had passed appropriations. Heather stated that it had and according to the Governor's office the end of the legislative session was a whirlwind, and the Governor intends to sign the bill when the Legislature is back in session.

Jim discussed that the Commission needs to elect a new chairman but perhaps that should be after the new Commissioners are appointed.

Jim then transitioned to the next steps for the Commission for the next legislative session.

Roberta made three suggestions on what she thinks the Commission should focus on.

First she discussed the Supreme Court cases in 1970 vs 1987 and how one case states the public will destroy a road so towns should maintain Abandoned and Discontinued roads if they are being used as public easements and other that is fine for the town to not maintain the road even if the public use it. She feels there should be some clarification.

Second, Roberta then mentioned the proposed amendment to 3105-A and issues she is having with her town, wording on the bill to get snowplowing of her road for safety issues, that there was no discussion was allowed in front of the town meeting, and she feels that was unfair and why the bill was voted down.

Third, Roberta thinks that the abandonment statute time period for asking for a hearing is too short and requires too many people to pitch in on it. She feels it doesn't give people enough time to do their research. In addition, the municipal officers should not be allowed to keep a public easement or not when someone would be landlocked.

Finally, she had concerns and briefly discussed the new Title 23 sections 3651 and 3652 but as it doesn't pertain to abandoned and discontinued roads it does not fall under our purview

Jim thought that Title 23 was tangentially related and something the Commission could look in to. Jim asked for thoughts on ideas for the Commission to investigate or recommend in the following year.

Roberta then raised the complicated discontinuance statute which she feels is caused by allowing landowners to grant each other a private easement. Roberta also stated that Towns are no longer attempting discontinuances. Roberta thought it might be helpful to split the statute into two statutes. One is for the discontinuation of a town way and one when the way is discontinued it becomes a public easement and also have a separate statute that is for discontinuance of a public easement.

Jim asked Roberta to put together her proposals for the changes and submit them to the Commission to review and decide if they want to proceed with recommending those changes.

Cathy congratulated Jim on his retirement. She asked about the bill LD 1985 of the legislation that we recommended that passed but is sitting on the Governor's desk.

Jim stated we hadn't made a lot of progress this year as we were waiting for the Governor's signature. He asked the Commissioners to think about the next steps or ideas that the Commission should investigate. If Commissioners can email those out before the next meeting then we can talk about those proposals.

The Commission then discussed the Annual Report and what should be in it the report for February 1, 2026. Jim will help review before the end of December.

Heather to send out poll for meeting in December.

Plan to finish the Annual Report draft before the end of December and vote to adopt it in January.

Jim hopes that by January they will be able to facilitate a turnover in Commission leadership and a discussion of options for where the Commission goes next, to get that teed up for January and the coming year.

There was a brief discussion on the rogue people who interrupted the meeting with graphic images and steps that will be taken to keep them out.

Steve and Jim graciously volunteered to stay through December and help out until their seats are filled. The Commission is thankful to them for their dedication and hard work.

John said that he hoped that Matt Foster from DACF and ATV program and Kris McCabe will be able to attend the meetings as he feels they come to the table with valid responses and problems that can occur in enforcing some of our recommendations.

Everyone agreed with John's statement and hope they can participate in the next meeting.

Meeting ended at 1:53 pm

ABANDONED AND DISCONTINUED ROAD MINUTES

December 2, 2025

In Attendance: Jim Katsificalis, Peter Coughlan, Steven Young, Roberta Manter, Catherine Nadeau, Tom Doak, Kris MacCabe, Tanya Emery, John Monk, Matthew Foster and Ryan Pelletier.

Absent: Vivian Mikhail

Please note there were some technical difficulties in the beginning.

Called to order at 10:15 am

There was a motion to amend the November 11, 2025, minutes, which was unanimously approved and then a unanimous vote to approve the minutes.

Ryan informed the Commission that the County Commissioners Association has a successor and that they are waiting for confirmation from the Senate. Heather requesting a copy of the appointment.

There was a brief discussion on the Legislation LD 1985.

Brief discussion with Heather about the freedom of access training completion (FOAA) certification; she will send out an email with the links for people to complete training and submit their certificates.

Steve asked if there was any movement to replace him. Heather said she had not heard back yet but did forward his recommendations. Steve is hoping Maine Coast Heritage Land Trust will fill the seat.

Tom asked if a commissioner could continue to serve until they are replaced. Heather confirmed that is correct.

Brief discussion on what applies to the Attorney member of the group if they no longer have a license.

There was discussion on the Annual report due to the legislature on February 5, 2026. Heather will work on the draft and have Jim take a look at the Executive Summary. There is no draft legislation for the Legislature this year.

Jim asked what initiatives or ideas the Commission wants to explore for next year.

Tom asked if we still have a list of things from the direction of the previous two bills from the Legislature.

Jim answered in the affirmative. He stated that the definitions for Public Easements are not consistent through the statutes and some initiatives weren't quite ready. Jim will review his notes and see what is missing. Jim asked if there are any additional problems or issues that the Commission wants to work on.

Tom then raised the issue of conflicting statutory language about ATVs on public easements or abandoned and discontinued roads.

Discussion among Tom, Kris, Roberta, Steve, and Jim on landowners giving permission for ATVs and snowmobiles, Public Use issues with regards to what a Public Easement is and what it means, Public rights to access, enforcement on Public Easements and confusion on what roads are Public Easements that allow such traffic and then liability for public easement if a town gives permission for public use and how that imputes to landowners who live on a public easement. The Commission agreed this is something to pursue and help clean up.

Jim then turned the meeting over to Roberta who raised the constitutionality of having a public road with no public maintenance. She wants to get an opinion by the Maine Supreme Court. She wondered how to get the Supreme Court to re-examine the issue of whether a public easement with no public maintenance is constitutional. She stated that there are Mainers who are paying to maintain these public roads who are entitled to services. She felt even with the changes to 23 MRS Section 3105 A, towns are not following the correct procedure at their annual meetings, poorly wording the referendum questions, not publicizing public hearings and causing mischief and misunderstanding.

Steve and Matt discussed issues of more people moving to remote spots and building roads and expecting that there would be no requirement for landowners to maintain public easements – it is their choice to buy and they should be responsible for finding access.

Roberta disagreed and outlined that if the roads are not maintained than those who live on the road lose access and used a personal example. Further, if someone is several properties in and they don't have a right of way over the intervening properties, or they don't want to sell or grant an easement, then people are landlocked. She feels that the biggest issue is until recently most people had no idea what type of road they were building on because the towns lost track of these roads and are confused by the complicated laws. In addition, most people don't understand what public easement means, and most think it means a public road. Roberta also responded to Matt that if the argument is that towns can't afford to maintain these roads how do you suppose the private landowners can afford to maintain these roads for the public's use?

Steve replied that the Commission has made progress with education on the MDOT Viewer and the new disclosure laws making realtors more aware. In addition, the Commission has explored suggestions for towns. He feels towns shouldn't grant building permits if they don't want the hassle or stipulate in the permit there are no services being provided on the road, what the road is and etc.

Roberta stated that if landowners are maintaining the easement as a private road, they would have no problem with it. It is that the public can use it any way they want. They are also taxed the same amount as those who live on a normal public road -- why shouldn't there be a discount? What really rubs the wrong way is when you're paying taxes at the same rate as people out on publicly maintained roads and then you're having to pay again to maintain the road. She stated that she does not get an exemption for being on a discontinued road. And various people we've talked to have said no, they get taxed at the same rate as anybody else.

Roberta, Steve and Tom had a brief discussion.

Jim asked Roberta to put her proposals together and that is something the Commission can take up at the next meeting. He will also start a list of those initiatives that the Commission started but hasn't finished. He reminded the Commissioners that we have a policy that all Commission initiatives or draft bills must be unanimously agreed upon before sending them to the Legislature. Jim stated that he didn't think the Commission would agree to request the Legislature to make a solemn occasion on the question of whether the public easement law is constitutional. However, he will add it to the Commission's list.

Roberta then brought forward that there were some tweaks she would suggest to the abandonment statute: 1) changing that municipal officers cannot terminate a public easement if it landlocks a landowner; 2) there should be a lock in for an appeal if a person files with the board of appeals or the County Commissioners that should preserve their place in line to be heard and stop the clock -- they shouldn't lose their standing or be disqualified because they missed the deadline; and 3) the discontinuance statute should be split into two statutes -- one for the discontinuance of a town way with retention of a public easement and one for discontinuance without retention of a public easement by allowing landowners to grant each other a private easement.

Roberta then discussed MMA survey of towns where 40 percent of the towns stated they had done an inventory. Roberta would like that inventory for those towns filed with the Registry of Deeds.

John agreed the Commission should only forward what the Commission unanimously agrees upon to the Legislature. He agrees if a town issues a building permit, it is on them to explain. The towns at some point need to accept liability. If you're paying taxes to these towns, then they need to provide some services and then just be clear about it.

Tom explained that people using a road that others are maintaining or blocking a road and now denying access have been told by the municipality that they don't know the status of this road, so landowner must sue to figure it out. The Commission has heard testimony on people blocking a road and not allowing landowners to access their land. It becomes a fight between two landowners.

Kris stated that the landowners try to involve law enforcement and they have to tell them it is a civil dispute and their only solution is to legally proceed in court.

Kris and Tom discussed an open space tax for recreational use to offset use of Public Easements.

Tom spoke about his property on an abandoned road, and he was taxed as house lot on a dirt road that he couldn't even use. He felt it is unfair, for some of these folks to be charged a house lot on a public easement but agreed that people who know they are buying on a discontinued road or building a house should not expect a town to pay for maintenance of the road. However, until recently no one knew the status of these roads including the towns and these roads had little use. Now the town declares these unused roads as a public easement, and everyone is using them. If you pay the same amount of tax as everyone it would be reasonable if you're not getting services to get a tax break from the town.

Matt stated that he agrees with Tom, but he feels that when people buy a piece of property they should be aware and that is on the buyer. If the status of the road is unknown it should be a huge red flag and he wouldn't buy that property just because it was cheaper and expect the town to fix the issue.

There was discussion on whether to set a deadline for town and people buying property on abandoned and discontinued roads to be left to their own devices between John and Ryan.

Roberta stated this is why having an inventory of roads is so important because then people could actually know when they're buying a piece of property or at least have a better idea when they're buying their property of what the status of that road is. Another point is some people don't realize the maintenance on a Public Easement. Once the road is nice everyone starts using it and destroys the road. She gave an example of people on her road and the outcome.

Cathy said the problem isn't the people who buy now, it is the people who bought and didn't know about the different types of roads and that is why this Commission has been formed. It is not because of the new people who ask all the right questions. It's about the people that did not ask the questions because they didn't know. She stated she is more worried about emergency situations such as fire or EMS. The town then needs to plow or cut down or move things to get a truck down the road, and it leads to an even larger cost.

Tom stated that there are three things he thinks would make a difference for a lot of situations. One, if it was clear that these roads are for motor vehicles and pedestrian traffic only. Second, there are there are public easements out there that don't serve really any public purpose, and we have got to find a way for the municipalities to get out of the business of holding easements if they don't need them. The landowners don't need them. If they only serve the local landowners, there should be a way to encourage that kind of mutual rights. Third, I think where there is a clear public interest and people living on these roads, the concept of minimally maintained public roads has merit.

Steve, Tom, Kris and Cathy definition of motor vehicles (including ebikes), Title 29A and Title 12 ramifications, and that the original purpose of a public easement was to prevent landlocking people.

Matt disagrees with the idea of basic maintenance or minimally maintained roads by the municipality as people always expect more and the roads will not meet the road standards.

Tanya agrees with Matt.

Jim requested those who came up with point or concepts for legislative changes to put them together in writing and we can take a look at the next meeting and decide what ones to pursue in the coming year.

Heather will get the draft Annual Report ready by the first week of January.

Pete and MMA to work on getting out information on the MaineDOT website with Mapviewer that shows roads that are public (not easements though).

Everyone agreed to a meeting on Monday, January 5th, 2026, at 9:00 am.

Everyone is to send their proposals to Heather to track and share.

Tanya stated that those who are interested in town tax rate information on abandoned and discontinued roads should let her know and she will help connect us to get the information.

Meeting ended unanimously at 11:50 am.

ABANDONED AND DISCONTINUED ROAD COMMISSION MEETING MINUTES

January 6, 2026

Remote Meeting

In Attendance: Jim Katsiaficas, Kris MacCabe, Roberta Manter, Steve Young, Tanya Emery, Matthew Foster, Tom Doak, Peter Coughlan.

Absent: Vivian Mikhail, Catherine Nadeau, Thomas Skolfield, John Monk.

Called to order at 9:05 am.

The December 6, 2025, minutes were unanimously approved.

Updates and announcements. Heather will email those who still need to do the FOAA requirements and thought that we should hear this week on the legislation LD 1985.

Jim moved on to discuss the Annual Report to the Legislature. Jim had sent out the draft for review on the different items that Commissioners were interested in pursuing.

Commissioners asked for a few additional days to review the Executive Summary. Jim set a timeline of end of the week for comments or requested changes. He requested a follow-up meeting for everyone to vote on approval of the Report. Meeting is set for January 16, 2026, at 9am.

Jim moved on to reviewing and prioritizing proposals for draft legislation for 2026.

Jim brought forward the first proposal on clearing up who has authority to allow access on abandoned and discontinued road, should a landowner or a municipality or a county have the authority to allow use by an ATV operator. Jim then went through the issues.

Kris agreed with Jim's Assessment.

Tom raised the issue of the confusing statutory language, and towns inventory of their roads.

Roberta stated that some towns have already made an inventory of their roads, that information should be stored where people can access the information and then people can make a logical decision if they want to buy on an Abandoned and Discontinued Road.

Roberta went on to state that the towns should record the votes on discontinuances and abandonment and place them where they can be found as a matter of public record. A disclosure requirement on real estate sales of such records that somebody has to look at

that index. But we need to start talking about indexing and who's going to do it. And if the counties, the registries are willing to do that, great.

Roberta than shared what the county index looked like for abandoned and discontinued roads.

Roberta then moved on to the question of who actually owns the easements and who has authority to make decisions on allowing others to use the road. The damage that is done by those who do not live on a public easement can lead to severe damage to the road.

Jim responded that those two ideas cover points of workplan part four and five in the draft.

Kris felt that it is important for recreational vehicle use because some owners want to shut down that access. He thought the clarification on where you get the permission from for all recreational vehicles is very important.

Tom asked Kris if a map or list of the recreational vehicle trails would help law enforcement.

Kris thought that would be helpful as the clubs work very hard on snowmobile trails even to get landowner permission to put the trails across because they have to sign an agreement with the State on these trails.

Matt responded that towns have been working hard to clear up abandoned and discontinued roads and he is concerned that an inventory would cause an unfunded mandate. However, municipalities have put an unfair burden on taxpayers by not properly handling these roads because it was the authority of the town to maintain them. Towns should list their inventory on how they were abandoned and whether they were abandoned with a public easement. He was unsure if the municipalities need to call out any specific types of recreation because public easement just means public easement. He stated he was curious from the MMA perspective.

Tanya felt that this sounds like an unfunded mandate. She stated that if it is a mandate, there is a funding cost, and municipalities are currently being asked to inventory a lot. She made a few suggestions on who to reach out to including Maine Office of Community Affairs. She wondered what the best way would be, so it wasn't an unfunded mandate.

Jim replied that what Roberta and John were talking about is that many municipalities do have road inventories. And if it's something as simple as providing a copy of what they already have, that's easy.

Tanya replied that the issue would be all the towns that don't have one or if there's a prescribed format or data that's missing and then municipalities that have an inventory have to go get it.

Jim replied that he understood but it is something worth exploring. The idea is that there should be a better resource for people to be able to check the box on a disclosure form as to whether they have access to their property and what the status is if that is known. There would be no need to file a declaratory judgment action. But if there's an order of discontinuance, if there's a vote on statutory abandonment, these are all public records that should be put into a database that can be used.

Tom stated that Matt actually brought up one of the issues that has caused one of the biggest problems that nobody really knows the status of town roads now and for whatever reason the record's lost. In those cases where there is no clear record, it's left up to the landowners to fight it out. And that's been one of the frustrating things. Landowners have to go to court to decide the status of what was a townway to find out what the town did actually did with the road.

Kris agreed. He stated that this is when they call the wardens and they want us to get involved and we tell them it is a civil dispute.

Roberta agreed and stated it is something that if towns knew how to do it, they could make a list of their roads starting with the roads they know. There was a survey done from MMA and 44% of the towns had already done a survey. Perhaps a volunteer could go through and look for those road articles and just write down the year and the warrant article number, make a list.

Jim replied that the idea of a road inventory that will help people is something that's worth discussing.

Jim then moved on to the second item on Roberta's list which is that private individuals are spending their private money to maintain public easements where municipalities don't and they're doing that because that's their access. Roberta has asked whether the Maine Legislature might declare a solemn occasion which is what it takes to go to the state supreme judicial court to talk about the constitutionality of proposed legislation. Jim asked if the Commission wanted to talk about this issue this year.

There was a discussion among Roberta, Matt, Tom and Jim with examples of why private funds being used for a public road is an issue, the damage caused by others using the road and who should actually maintain it, extinguishing public easements, expanding towns, who is responsible for knowingly buying on the road, limiting vehicles on public easements,

should town be responsible for maintenance, building permits when issued must list the type of road or not be issued and steps to take.

Jim then brought forward the fourth and fifth item on his list a centralized repository for information for road inventories. It would provide a database or starting place for buyers, attorneys, sellers and realtors. We can work with realtors to get the information out.

Jim reminded the Commission of the survey that was voted on last year to be distributed to MMA for towns to answer on their road inventory and that would be a good place to start.

Everyone was on board as starting with the survey as a starting point.

Jim then brought forward Roberta's idea of the power of county commissioners to abandon roads and to make the authority of county commission commissioners similar to that of municipal officials with regard to county roads. Jim explained the history of jurisdiction and laws that changed.

Brief discussion of including the LUPC on the discussion.

Peter stated that out of the 16 counties, 10 have road responsibilities in the unorganized territories, the other six don't.

Jim then brought forward section 3028-A and discussed the history of abandonment in Maine state law and that there are some tweaks that should be done to Title 23 section 3028-A. He asked if it should be added to the list.

The Commission decided to add it to the list and will invite LUPC to discuss.

Discussion with Roberta and Jim about abandonment and preventing towns from circumventing the law by saying the road was already abandoned under the old laws and votes not recorded .

There was discussion between Roberta and Jim on the discontinuance statute and whether the discontinuance statute should be separated, one for town ways and one for public easements to make it easier to if a town takes an inventory.

These two items were added to the Commission's list to discuss in the coming year.

Jim moved on to the next item: a method of extinguishing public easements so that owners of abutting land are not burdened by the cost of maintaining these roads for public use. Roberta proposed if towns must be allowed to have the final vote, then there should be some sort of incentive for the towns to give up roads that really no longer need to justify the cost of continued maintenance.

This topic will be added to the larger discussion of public easements in the coming year.

A brief discussion between Roberta, Jim and Tanya about the change to the LD 1562, chapter 395 in which the right of appeal to the county commissioners was repealed. And in its place, a municipality may authorize its board of appeals, which normally handles zoning matters, to hear petitions about maintenance of town ways. It may do so but is not required to. The county commissioners are out of the business of hearing these petitions altogether. So, there may or may not be any route short of mandamus under Rule 80 B to the Maine Superior Court to order towns to follow their obligation, which obligation now is a little more subjective than it used to be. But it's not abandoned and discontinued roads. I think it makes sense to put the law back to the way it was and say, "Oops, we didn't mean it."

Tanya will review the bill LD 1562, chapter 395.

Roberta and Jim further outlined the issues with the changes and how they impact individuals, county and municipal government.

Commission agreed to add to the list.

Jim then stated that he will work on the list for the executive summary and everyone to make sure they have their changes sent to us by Friday. Heather and Jim will make changes and send the changes of the executive summary to the commission for review.

The commission then heard public comments from David Manter of Fayette.

Meeting ended at 10:30 am

ABANDONED AND DISCONTINUED ROADS COMMISSION

January 16, 2026
Remote Meeting

In attendance: Jim Katsiaficas, Steve Young, Roberta Manter, Tanya Emery, Matthew Foster, Catherine Nadeau and Tom Skolfield.

Absent: Peter Coughlan, Tom Doak, Kris MacCabe, Vivian Mikhail and John Monk

Jim brought the meeting to order at 9:04 am.

January 5, 2026, minutes were unanimously approved.

Jim moved on to note that the Governor has allowed the new law the Maine Legislature had passed last session, PL 2005 Ch. 518 (which makes important changes to law to assist those individuals and municipalities with abandoned and discontinued roads protection s and provides funding for the Commissioner to be able to meet in person), to become law without signing.

Jim then turned the meeting to voting on the final draft of the Executive Summary and narrative for the Annual Report to the Legislature. Motion made by Steve to vote to approve the Executive Summary and narrative, seconded by Roberta, no further discussion.

Commissioner	Vote
Jim Katsiaficas	Yes
Kris MacCabe	Absent
Steve Young	Yes
Vivian Mikhail	Absent
John Monk	Absent
Roberta Manter	Yes
Tanya Emery	Yes
Catherine Nadeau	Yes
Tom Skolfield	Yes
Tom Doak	Absent
Peter Coughlan	Absent
Matthew Foster	Yes
TOTAL Tally	7 Yes 0 No 0 Abstention

Motions Carries unanimously. The Executive Summary is approved and will be submitted with the annual report to the Legislature on or before February 1, 2026.

Jim then stated Heather will assemble the Annual Report that is due to the Joint Standing Committee State and Local Government, Joint Standing Committee State Inland Fisheries and Wildlife, and Joint Standing Committee State Agriculture, Conservation and Forestry.

Brief discussion on next meeting date. Heather to send out a meeting poll for middle of February to discuss the forming of committees to discuss the ideas the Commission wants to pursue in the coming year.

Meeting ended at approximately 9:30 a.m.

DRAFT

APPENDIX

G

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.

Leavitt-Soni, Heather A

From: Ildikó Mizák [REDACTED]
Sent: Tuesday, January 14, 2025 7:53 AM
To: Leavitt-Soni, Heather A; [REDACTED]
Subject: Minimum road maintenance

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,

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 thought he could help maintain the road. When he wanted to fix something on the road two of our neighbors started to acting 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 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 believes. 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 to 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 road that emergency vehicle can safely use it when we needed, also not afraid what my neighbor will do if I need 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

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 robot and then you say no and then it spits you around and then I never get a con any kind of 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 you 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 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 .

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.

Margaret Cardoza
Public Comments at The Commission meeting of 4/10/2025
Youtube Transcript

Well, thank you uh Mr. chairman and

um yes uh the I'm glad what you're planning to do

for 928 um LD928

uh the that 15-year thing really threw me off. Um it's already chaotic trying

to figure out what's the 20 year for this and what's a 30 year for that. So

it is very distracting. Um and uh

my I don't know if anyone else was there as much as when I was listening uh to

this uh hearing uh public hearing the legislator uh a town counselor or

somebody was speaking up about the financial burden to the

municipality as well as the other individuals. Individuals who spoke in

favor was, you know, concerned about all their quote tax money going into legal

fees in dealing with these uh obstructions. Um thereby that statement

makes it very loud and clear that municipalities are struggling dealing

with any of these issues about the access on these public easements.

Um, and I um I'm very concerned that um

your representative of MMA um has been pretty holding the ground on

uh assuring municipalities not to have to pay a dime on repairing any of these

roads when in fact they're having to pay so much legal fees at dealing with

these cases um that there is a real significant conflict between what municipalities are
trying to say is a problem with these road

obstructions whereas um the association is stating uh the

opposite that uh they just don't want the uh municipalities to pay a

dime. They are paying a dime. So, I would hope that this commission would

dig in deeper for some kind of uh concession between the uh main

municipal association, municipalities in general as well as individuals on uh roads on these issues of obstruction. Uh, I heard that loud and clear and I would have hoped you all might have noticed that as well. Um, I'm uh I our road association has just um basically lost a court case because of road obstructions um that property owners have put in the road. Uh we've had car accidents. We've had plow trucks blowing out tires. Um and of course I'm from Windham, which means it's the town public town plow trucks that uh the tires are getting blown out because of these obstructions. Um the this this item of 7 um 7 uh 928 is a very serious issue and there's definitely a need to find some kind of compromise particularly if it's a public easement on resolving it. Whereas what's confusing um and how to how to address the issues where there are landlocks uh and it sounds like there was a landlock uh on this uh property uh where they couldn't get access to their hunting or fishing or whatever um situation. So, uh, I would hope the commission will take a look in the future about these obstructions because municipalities are struggling with it and so are we as an association that deals with the public to find some kind of compromise. And then finally, another option of consideration, if I may, is um and I know Roberta has brought this up on quite if not on occasions, that the judicial uh system um give a report uh if not to the commission, to the uh state and local uh government whatever their requirements or procedures on doing that. On this discussion about the confusions between this issue of public easements um for the sake of this commission alone might help resolve um a lot of the

problems. I really do think the judicial system really needs to provide uh some assistance in this so that maybe uh the commission might look forward to conclude because it's all resolved. Just dream on. Thank you.

November 6, 2025

To the Abandoned & Discontinued Roads Commission:

Thirteen separate colonies didn't work.

We changed that to One country with one lawmaking agency, Congress, all bound by one Constitution, which is the law of the land. Every State is bound by it, and if anything is contrary to that Constitution, it has no standing. We ceased being a common law system when we ratified the Constitution. The Court cannot make a law that applies to everyone - only Congress can do that.

In my case, you cannot make me a slave to maintain a public road. You cannot make me pay taxes when I cannot get out over your public road to pay them. You cannot force me to use my own private funds to maintain a public road, with no compensation whatever, nor allow public use in the absence of public maintenance to destroy my access, again without compensation.

Our town just took a referendum vote on whether to use 23 MRS section 3105-A to provide some maintenance for the road I live on. The referendum question was improper, as that statute requires a vote at town meeting, where everyone who comes to vote can hear any discussion about the article before they vote on it. Instead they had two poorly advertised hearings before the vote. Only a dozen or so people showed up at each, and they were told that the town's attorney said our road is a private road with a public easement. That road has not been private since 1791, when it was laid out as a county way. The referendum question used the term "private way" without any explanation of that term as being a public easement rather than a private road. The wording of the question put the final determination in the hands of the Selectmen, who all said they were against doing any maintenance on our road.

One of our Selectmen said at the two public hearings that he would never vote to maintain our road because he cannot forget Mr. Manter being ungrateful for the one time he sanded our road with his own personal truck. Yet he doesn't understand why I'm upset over the FIFTY FOUR YEARS that I've been forced to maintain the road for the public's unfettered use, without any gratitude from the town. That Selectman should not have allowed his personal grudge against me to make him to deny to my senior citizen neighbors the assurance that the NEXT time either of them needs an ambulance again, it will be able to get to them in time even if I have been unable to keep the road passable.

Any public easement of travel MUST be publicly maintained. There can be restrictions on use and on the amount of maintenance necessary to support that use, but residents need to be able to get to their homes. Not every road needs to be able to support 100,000 lb trucks. Farm roads may not even have to be smooth. But you cannot tell taxpayers that their money won't provide them with any services, or that the public road to their home will not be maintained by the public.

I get upset with the legal profession when they ignore the U.S. Constitution that I swore to uphold, and that the 57 soldiers I buried swore to uphold. Public roads with no public maintenance are UNCONSTITUTIONAL. This has to stop.

David Manter, Fayette

To the Members of the Abandoned and Discontinued Roads Commission:

There are two critical issues I want to bring before you. First, discontinued roads with public easements raise serious questions of Constitutionality. And second, landowners can not always be blamed for not knowing the legal status of a road.

In 1781 we agreed that the U.S. Constitution would be the supreme law of our land. Instead of having a bunch of individual states, each with its own laws, we would all have one overarching set of principles that would be consistent in every state. The Preamble begins, “We the people...” That means that instead of being ruled by a King, we the people are the sovereign. Article 1 Section 1 says that only Congress can make laws that apply to everyone in the country. Article 3 details what the federal court system can and cannot do. It mentions the Constitution, Laws made pursuant to it, and Treaties. It did not give the Court the authority to make law, or add to or subtract from i.e. change the law, because under Article 1 Section 1, only Congress can make laws.

Article 6 says that the Constitution and Laws made pursuant to it and Treaties are the supreme Law of the Land: and the Judges of every state shall be bound thereby, making law consistent and statutory throughout the whole country. If it's found that anything in the constitution or laws of a state are contrary to the law of the land, they have no standing. When the ME Supreme Court decided the case of Jordan v Canton, it cited Maine Constitution Article 1, Section 21 to say that private property cannot be taken for public use without just compensation. It should have cited the 5th Amendment to the U.S. Constitution first, as the supreme law of the land. It says that I cannot be found guilty of a crime without a trial, nor can my private property be taken from me without due process of law nor without just compensation. But they *did* take my property in Fayette v Manter. ME Constitution Article 1 section 21 says that private property cannot be taken without compensation, but there is no reference to a criminal offense. But the U.S. Constitution takes precedence. What crime did I commit that justified taking my property access under the U.S. Constitution? Or who justified compelling me to put my materials into the road for public use in order to preserve my own access? Does the U.S. Constitution allow slavery or involuntary servitude? The people of Maine made laws that create public roads with no public maintenance. The Court in Jordan said that was unconstitutional. Are the laws we now have consistent with the U.S. Constitution? The Courts must comply with federal law first. If we disagree with the Constitution we need to amend it, not ignore it.. Otherwise we'll have a kazillion different sources of laws.

Go into the record. Who actually wrote 23 MRS sections 2068 and 3028? And why? Jordan said the purpose of such laws was to avoid compensation:

***98** The statute is designed to permit a governmental entity to avoid the expense of maintaining and keeping certain designated roads open for travel and free from dangerous defects. Its responsibility for accident caused by such defects in a road so designated is removed. All this is accomplished without technical discontinuance of the public way and without terminating the public easement therein. No provision is made for compensation to abutting owners for the destruction of property rights.

(And how is this any different from a public easement?)

The Legislature cannot tell private individuals that they have to maintain public roads at private expense. That's unconstitutional. Jordan determined that a public easement of travel is meaningless without public maintenance. Without maintenance, property access will be destroyed. Access is a property right attached to the land, and destruction of that access requires just compensation.

There are many who assume that those who buy land on a discontinued road knew what they bought when they bought it, or at least could have known if they had done their due diligence before buying it. But is that fair to say? Maine Municipal Association has repeatedly resisted efforts to require towns to inventory their abandoned and discontinued roads, on the grounds that doing so would be a difficult and expensive proposition. They have said that often the records have been lost, and that even if they can be found, often it's unclear what the records mean, and finding out would require hiring an attorney or even going to court. So the information is not necessarily readily available to the buyer. To what lengths does the buyer have to go before buying a property? Or to what lengths does the seller have to go in order to make his property saleable?

In *Town of Fayette v Manter*, Judge Kermit Lipez said that the information was available to me at the time I purchased my property which, if understood or pursued, might have influenced my decision to purchase or develop the Young Road property. So, what information was available to me when I purchased the property in 1971? Here is a Chronology of my understanding of the road.

In 1971 I could have known:

1970 - Jordan v Canton said it's Unconstitutional to have a public road with no public maintenance.

1971 - When I bought my property, my deed said the Young Road was "discontinued." I assumed that meant it was no longer a public road. If I had gone to the Registry of deeds, I could have discovered that the word "discontinued" was inserted into my chain of title by the Town on Feb 1, 1947 when it had re-sold it to my predecessor-in-title after taking the property on a tax lien. I could also have found that there were other properties along Young Road which the town had taken on tax liens after 1945, and that on each one the town had inserted the word "discontinued" before "Young Road" on the deed when they re-sold it. None of the deeds mentioned the words "private way." If I had had access to early Maine statutes, I *could have known* that the law in 1945 made no provision for the county to retain any easement when discontinuing a county road. If I had had access to early Maine Supreme Court cases, I could have found that when a road was discontinued, it *ceased to exist* as a road.

I did not ask the town the status of the road until 1973, but I could have. When I did ask, this is what I found:

1973 - The town told me it had nothing to do with the road, and that it was discontinued in 1945. That was no surprise, as that was what it said in my deed, and it was the

Town that inserted the word “discontinued” into my chain of title. The town did not show me an actual copy of the discontinuance, only a newspaper article about it. The article did mention the words “private way subject to gates and bars,” which did not appear on my deed. I understood that to mean the road was now private and I could put up a gate. If I had had access to old Maine statutes and court cases, I could have learned that a private way was a road laid out at the request of an owner of improved land not yet connected to the public road system, and that it was therefore invariably a dead end, and that although the public could use it if they wished, the landowner had the right to gate it to exclude unwarranted nuisance traffic. I could also have learned that in 1945 the County Commissioners had no authority to create a private way except 1) on appeal 2) from an owner 3) of improved land 4) not yet connected to the public road system 5) after the town had refused to lay out the way and 6) if and only if the town’s refusal was unreasonable. Every one of those conditions had to be shown in order to give the Commissioners the jurisdiction to act. *None* of those conditions was fulfilled when Young Road was discontinued. The town did *not* make information available to me regarding the 1946 Town Report, put out for the March 1947 Annual Meeting, in which the Selectmen told the people that it had had certain roads “officially closed, but with the provision that the town of Fayette retains the right of way so that if, in the years to come, these roads should be re-opened, we will not have to purchase the right of way.” That language was different from what the County had actually granted them, which was that the roads were “closed, to be retained as a private way subject to gates and bars.” It was also different from the language the town had added to the deed in my chain of title. (What happened to equitable estoppel?)

In 1971 I could not have known:

- 1976 - How could I have known that the abandonment law would be passed five years after I bought my property?
- 1983 - I tried to use 23 MRS §3652 to appeal to the County Commissioners to force the town to maintain the road because public use was destroying it. The town claimed the road had ceased to exist in 1945, so the County ordered the road was not a street legally established, and therefore the town was not bound to maintain it. Then the town reversed its position, claiming the road was still public. (Where is Equitable Estoppel?)
- 1983 - On recommendation of the County Commissioners, I filed an appeal of their decision, seeking a determination of the effect of the 1945 discontinuance - did it extinguish the road, returning it to private property, or was it invalid because the County Commissioners acted outside their powers, and therefore it was still a town way which the town was obligated to repair?
- 1984 - Even though my appeal was filed first, the town counterclaimed with abandonment. The Court ordered the town’s abandonment case to be heard before my appeal,. The Court promised that my case would be heard after the town’s case had been decided.
- 1986 - The superior court excluded any examination of the 1945 discontinuance, and

ruled the road abandoned with a public easement retained.

- 1987 - The supreme court ruled abandonment cannot be used to reclaim a public easement on a road that was already discontinued without easement, but then ruled the County's 1945 order DID retain a public easement pursuant to 1976 laws. If a 1976 law can change the meaning of a 1945 law, then that is ex post facto law, or at least problematic retrospective law. (This is the first time it was declared that the County Commissioners had the authority to keep an easement when discontinuing a road. Previous decisions said the powers of the Commissioners were strictly limited to the powers they were granted.) By relying on the 1945 order instead of abandonment, the Court avoided my argument that Jordan called into question the constitutionality of *abandonment* keeping a public road with no public maintenance. Yet the 1987 decision in Fayette v Manter has a footnote that defines a public easement as a public road with no public maintenance.
- 1987 - I tried to continue my original appeal to examine 1945 discontinuance, including the constitutionality of a public easement of travel with no public maintenance, as per Jordan, but was told the result of the 1945 order had already been decided during the abandonment case (even though discussion of the 1945 order had been prohibited in Superior Court.)
- 1992 - In Lamb v New Sharon, the Supreme Court ruled that abandonment caused no unconstitutional taking because the public had already lost its rights in the road. In making that determination the Court failed to recognize that public use continues, and increases as soon as the abutter makes the road passable for his own use. This case has been cited to say the Supreme Court held up the constitutionality of the abandonment statute. But it failed to address the issue of continued public use, so that has yet to be addressed. (Warchalowski v Brown said private ways were constitutional, but then Brown v Warchalowski found they were unconstitutional where there was no finding of public exigency. This demonstrates that a Supreme Court case is not the final word on an issue it didn't examine.)

I bought my property in 1971. Abandonment with a public easement retained did not come into existence until 1976. The law did not provide for the retention of a public easement when discontinuing a county way until after July 29, 1976, when all county ways in organized townships became town ways. The Court decision in Fayette v Manter in 1987 set a brand new precedent retrospectively, saying the County Commissioners had the power to retain a public easement when discontinuing a road prior to 1976; however, the U.S. Constitution says that only Congress can make laws. It did not give the Courts the power to make laws. Prior to 1987, court decisions followed the principle that the powers of the Commissioners were strictly limited by statute, and that if they lacked even one of the items required to give them jurisdiction to act, that any action they took was not merely voidable but void from the outset, and of no force and effect. The 1987 decision gave the County Commissioners the power under an "alternative action" not only to choose between alternatives legally presented to them which were within their powers, but also to take an action which was alternative to the action that was legally presented them, and, moreover, which was alternative to the specific powers granted to them by law. If that were

true, there would be no limit on the powers of the Commissioners because they could always come up with an “alternative action.”

Equitable estoppel should have applied when the town first claimed the road had ceased to exist in 1945, and then reversed its position, saying the road remained a public easement.

Equitable estoppel and res judicata should have applied at the court level, i.e. after ruling it unconstitutional in Jordan to have a public road with no public maintenance, the Court should not have then determined in Fayette that the County Commissioners had the authority in 1945 to create a public road with no public maintenance. Furthermore the Court should not have been able to retroactively change the meaning of a 1945 County Commissioners’ order by granting them powers not granted in the law, and going against the years of Court decisions that said the Commissioners had only those powers specifically granted to them by law.

When I bought my property in 1971, my deed described the property as being “bounded on the east by the discontinued road, so-called.” The word discontinued was added into the description by the town, when it sold the property to my predecessor-in-title on Feb 1, 1947 on a tax lien. The law on discontinuance that applied at that time should have meant that the road had ceased to exist when it was discontinued in 1945; therefore I should have had the right to install locked gates at either end of my property. Even if what the County Commissioners actually granted in 1945 was a “private way,” pursuant to the laws of that day I should still have had the right to install (unlocked) gates and bars to discourage unwarranted nuisance traffic. In 1976, private ways were declared by law to be public easements. In 1991 the abandonment law was amended to allow the removal of gates and bars. But that was after the Court had said that the road was not abandoned but became a public easement in 1945 as a result of the discontinuance, so there still was no law prohibiting me from gating the road. In 2001, I was arrested for obstructing a public way. But when it was discovered that “public easements” were not included in the definition of “public way” because they are not maintained by the public, they instead found me guilty of violating a court order not to obstruct the way. Essentially, the Court made a “law” that applied only to me so that they could put me in jail for eight days, because there was no law making it a crime for me to obstruct a public easement. They found a way to make it a crime for me to do something that I would have been allowed to do under the law when I purchased my property because if it was discontinued it was no longer a road. That is the Court making ex post facto law, when under the U.S. Constitution only Congress can make law, and the Constitution prohibits ex post facto law. In 2017, 17-A MRS § 505 (which makes it a Class E crime to obstruct a public way) was amended to include “a way upon which the public has access as invitees or licensees.” That means it is now a crime to gate a public easement.

The Court could have ended the retention of public easements with no public maintenance in 1987 by following the precedent it set in 1970 in Jordan, i.e. that you cannot have a public road with no public maintenance. Instead, it set a new precedent that has resulted in people all over the state being compelled to maintain public roads at private expense for the last nearly 40 years.

David Manter, Fayette

David Manter
Public Testimony
Abandoned and Discontinued Roads Meeting
January 6, 2025
YouTube transcript

Yeah. I'm David. Uh the US Constitution

requires in article six that the constitution laws made pursuant to it and you know and treaties of the law of the land and that the judges of every state shall be bound thereby.

In short, the courts have to reference the federal level law first because we're all in the same country. Then it goes on to say that anything in the constitutional laws of every state to the contrary, notwithstanding. In other words, have no standing. So the judges still have to reference the US Constitution in relation to the laws. Now, why I say this is because when in *Jordan versus Canton*, the state referenced the state's constitutional law that said you can't, you know, that you cannot take private property for public purposes. That's consistent with the US Constitution. So, maybe it's a little irrelevant, but they should have made their reference to the US Constitution first.

Now when we have a public road under no matter what guise there is that isn't being maintained by the public and is held by the public it is blatantly unconstitutional can go into all the arguments for that to the gentleman who's working for the town you know representing the towns good points even in the town of Fayette in 1946 time because of that action they said to the towns people after they said to the purchaser of

my land that this road was discontinued. They said, "But the roads were legally closed with the provision the town of Fay retains the right of way so that if in the future they should be reopened, the town will not have to purchase the property." Well, where was that requirement in 1946? You know, I go through the legality of everything that was done in that should have been caught by the court and said no, it was unconstitutional and it should

revert everything back. This is a real

condemning factor for the towns. If you turn around and I'm getting ready to go to the federal district court, so this does become a federal issue because the state can't understand that the main principle of what's going on is unconstitutional. We should not have changed the terminology to public easement. We can have public easements that are sewers, power lines, etc. Are people allowed to drive on them? We have aqueducts in some places. We have canals. You can't drive on them. But what do we do? We make a law that says a public easement. And that was made 5 years after I purchased my property. And the state supreme court made it *expo facto* a requirement of what the county commissioners did in 1945.

It's ridiculous. This is why I go ballistic when I hear a person who's an attorney saying to me that we can ignore the US Constitution.

I buried 57 people for the United States Army.

And I'll tell you what, I learned what the Constitution said. I may not have totally understood it, but I really did. And I had to go to all those people crying tears, etc., and make them feel as though they were being treated properly. And damn it, I did too well. And it drives me nuts ever since.

So, I want you to respect the Constitution that I swore to uphold and anyone who isn't in agreement with it as we looked at it in the service. You're my enemy.

Well, I don't really think it's been three minutes, David. I just think you people need to take that and respect it.