

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

# *A Guide to Forming Road Associations*



January 2020

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 State House Station | Augusta, Maine 04330-0017  
[www.maine.gov/dep](http://www.maine.gov/dep) | (800) 452-1942

## ACKNOWLEDGEMENTS

The York County Soil and Water Conservation District (SWCD) created the original version of this manual in July 2004, with support from the Maine Department of Environmental Protection, Kennebec County SWCD, Cumberland County SWCD, Androscoggin Valley SWCD, the Maine Department of Transportation, FB Environmental Associates, and Dyer, Goodall & Denison Attorneys at Law. Revisions to reflect the amended private way fee assessment method (23 M.R.S. § 3103) were made March 2007. Major revisions were made in October 2009. Other revisions were also made in 2014 and 2019.

### October 2009 Revision:

*Project Coordinator:* Kristin Feindel – Maine Department of Environmental Protection  
*Legal Review:* Clifford H. Goodall – Dyer, Goodall and Denison, Augusta, Maine

*Great appreciation goes to the following for their dedicated guidance and assistance:*

Betsy Connor Bowen – Maine Alliance for Road Associations  
Bill Gannon – 13<sup>h</sup> Street Road Association, Acton  
Wendy Garland – Maine Department of Environmental Protection  
Maggie Shannon – Maine Congress of Lake Associations

### July 2014, October 2019, and January 2020 Revisions:

*Project Coordinators:* Kristin Feindel & Amanda Pratt – Maine Department of Environmental Protection

2013 and 2017 updates to the Private Ways Law were incorporated, additional legal disclaimers were added, and web links were updated.

Copies of this document can be obtained from your local Soil and Water Conservation District or the Maine Department of Environmental Protection, or online at <https://www.maine.gov/dep/land/watershed/roadassociation.html> (please see last page of this document for contact information).

### DISCLAIMER

**This handbook is produced as a general, informal guide, and does not constitute legal advice about particular legal questions. You should consult with an attorney if you have any legal questions about road associations.**



## Table of Contents

<b>INTRODUCTION.....</b>	<b>1</b>
I. Benefits of Forming a Road Association .....	1
II. Types of Road Associations .....	3
Informal/Ad hoc Road Associations .....	3
Formal Road Associations .....	4
Characteristics of the 3 Types of Road Associations.....	6
<b>HOW TO FORM A FORMAL ROAD ASSOCIATION .....</b>	<b>8</b>
I. How to Start: Convene a Steering Committee .....	8
II. Planning to Get a Road Association Up and Running: What the Steering Committee Needs to Do.....	8
1) Develop a Mission Statement .....	8
2) Develop a Maintenance Plan and Budget.....	9
3) Develop an Association Budget.....	9
4) Determine Maintenance Fees.....	10
5) Develop Bylaws .....	13
6) Develop Recommendations for the Road Commissioner or Board	13
7) Hold an Informational Meeting.....	14
III. The Organizational Meeting.....	16
Statutory Road Association Organizational Meeting .....	16
Nonprofit Corporation Road Association Organizational Meeting .....	17
IV. After the Organizational Meeting: What To Do Next.....	18
Notify All Owners .....	18
If You are a Statutory Road Association – Consider Joining MARA ...	18
If You are a Nonprofit Corporation – File Forms and Annual Report ..	18
Implement Your Maintenance Plan.....	19
Hold Annual Road Association Meetings.....	19
<b>RESOURCES .....</b>	<b>20</b>
Online Appendices.....	20
Resource Directory .....	21

# INTRODUCTION

This manual is intended to assist private road residents who would like to have a successful road maintenance program by forming a road association. Forming a road association can provide a way for road users to formally manage their roads in an organized and cost-effective manner. While the focus of the manual is on camp roads in lake and pond watersheds, most sections should be useful for all private roads.

## I. Benefits of Forming a Road Association

### 1) Improve road safety and drivability.

The primary benefit is that having a maintenance program ensures the road is maintained so that the road will be free of potholes, ruts, and other problems that make the road dangerous and difficult to travel on.

### 2) Reduce maintenance costs over time.

Another major benefit is as Yankee thrift advises: an ounce of prevention is worth a pound of cure. In the long run, having and using a preventative road maintenance program really is less expensive than

\$1 spent in routine maintenance will save \$15 in capital repairs.

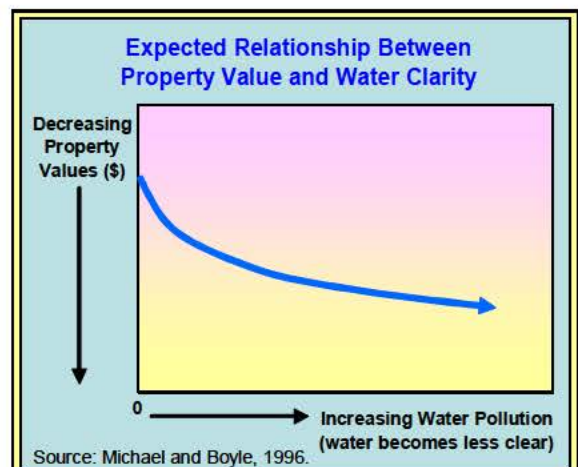
-Camp Road Maintenance Manual

paying to fix a road once it has developed significant problems - and this process can be undertaken with much less effort when fellow road users join together.

### 3) Provide liability protection for association members.

Without a formal road association, whoever makes road maintenance decisions could be liable if anyone gets injured using the road. A formal road association provides limited immunity from civil liability for the association decision makers and an association can purchase liability insurance for the protection of the road commissioner, board of directors, and members. (23 M.R.S. § 1301(7), (9) )

- ### 4) Sustain the clarity and quality of your lake's water.
- An effective camp road maintenance program will also help protect your lake or pond from the negative impacts of soil erosion from your road. Many camp roads were either not properly constructed, or not properly maintained, or both. Because of this, rain and melting snow runoff erode the road. Soil erosion is actually the single largest pollutant source (by volume) to Maine lakes, and much of this is from camp roads. See the next page for more discussion of this connection.



### 5) Protect the value of your lakefront property investment.

Another consideration is the potential decrease of property values as a result of

For every 3 foot decline in water clarity, shorefront property values can decline as much as 10-20%.

- University of Maine Study

declining lake water quality. Due to soil erosion's impact on lake water quality, poor maintenance of your road could actually result in lowered value of your property. This is a strong financial incentive to join together with fellow road users to protect your individual and collective investments. Having a road association can also help to protect property values and marketability since many banks and the secondary mortgage market may deny construction and mortgage loans for properties on private roads that do not have road associations.

**6) Establishing a road association can also:**

- help open the lines of communication among community members
- provide a framework for centralized decision-making
- improve planning for and implementation of road maintenance
- legitimize the collection of road dues
- set up an impartial and efficient means for managing money
- establish legal authority
- allow possible use of town funds and equipment for road repair

### **The Impact of Camp Road Erosion on Lakes**

#### *How Do Camp Roads Impact Water Quality?*

Camp roads frequently change natural stormwater drainage patterns. These changes can increase the potential for soil erosion by:

- reducing the ability of water to soak into the ground by stripping away the protective vegetative cover
- creating highly erodible pathways of exposed soils
- collecting drainage on the road and in ditches, increasing the overall flow, speed and volume of the runoff

#### *How Does This Affect the Lake?*

The nutrients attached to camp road sediment particles can be bad news for lakes. Phosphorus, a nutrient that is common on land, is a primary food for all plants, including algae. In natural conditions, the scarcity of phosphorus in a lake limits algal growth. However, when a lake receives extra phosphorus in the form of camp road sediment particles, algal growth increases dramatically. Sometimes this growth causes choking algal blooms, but more often it results in small, negative changes in water quality that, over time, damage the health and aesthetics of the lake.

When you see the water turn brown, sediment has been eroded into the lake. This suspended sediment can:

- irritate the gills of fish, making them prone to disease
- smother fish spawning and feeding grounds
- gradually fill in near shore, resulting in the loss of desirable shoreline (due to encroaching weeds, for instance)
- cause algal blooms, resulting from the attached phosphorus
- reduce levels of dissolved oxygen, resulting in fewer cold-water fish (i.e., salmon and trout)
- diminish recreational and aesthetic values of the lake



*Improperly constructed and/or maintained shore-side roads can result in sedimentation to lakes and ponds.*

## II. Types of Road Associations

Road associations can be loosely formed or highly organized. Generally, the more organized the association, the easier it is to maintain the road and share the cost. Following are the basic types of organizations that are available for formation of a road association for an existing private road in Maine.

### **3 Types of Road Associations:**

- \* Informal or Ad hoc
- \* Statutory
- \* Nonprofit Corporation

*Note: A road association can also be both a statutory and nonprofit corporation.*

## **Informal/Ad hoc Road Associations**

### Informal Organization by Consent

Many private roads are maintained by a few individuals who take the initiative to oversee the maintenance and attempt to collect the costs from all the people that use the road. Most frequently, this is the result of a simple consensual arrangement when there are a few individuals that take the initiative and most, if not all, of the users voluntarily reimburse the maintenance expenses. These *ad hoc* arrangements work in many circumstances, but have a number of legal and liability problems. To begin with, the individuals who make the maintenance decisions can be held liable for injuries suffered by road users. Because of the informality of the arrangement, it may be very difficult to get insurance coverage and a property owner's insurance policy probably does not provide liability coverage for the entire length of the road. (For more information about liability, see Online Appendix K.)

There is also no legal mechanism for collecting maintenance costs from all of the other users if such costs aren't voluntarily paid. In addition, banks and secondary mortgage markets are reluctant to provide construction loans and mortgages for property on a private road with such an informal arrangement. This could mean that anyone wishing to sell his or her lakeside property may find that potential buyers are denied financing until a formal road association has been created.

### Informal Organization by Signed Agreement

Another type of voluntary road association which is a little bit less informal is created by a written agreement similar to the Sample Road Maintenance Agreement that is in Online Appendix G. Entering into such an agreement, however, is purely voluntary and can be cancelled at any time. It does not have durability, and there is no way to require that all users of the road sign such an agreement. In addition, every time a property has new owners, a new agreement would be necessary. It may be possible to have liability insurance coverage for the officers and members. Collection of assessments can only be against those people who have an agreement in effect, and its enforcement would be based upon legal contract theory. Basically, this agreement is a contract for services.



## Formal Road Associations

### Statutory Road Association

Maine, for many years, has had what is commonly referred to as the “Camp Road” law. It is now formally entitled the “Private Ways” statute. (23 M.R.S. §§ 3101-3106). The statute should be reviewed periodically to see if it has been revised.

#### ***What are some of the requirements of the Private Ways law?***

This law provides that when a private road is used by owners of four or more parcels of land, three of the owners can make written application to a notary public to call a meeting of all of the owners on the road. The meeting of owners is conducted just like a Town Meeting and includes voting on a budget, election of officers and any other decisions concerning the road. It is different from a Town Meeting in that absentee and proxy votes are possible as provided for in the statute. The law provides for the election of a commissioner or board of directors who will administer the road association for 12 months. The association does not have to re-form each year and continues to be in existence until dissolved by a majority vote of its members. For more details about the required actions to start up a statutory road association, refer to the Organizational Meeting section (page 15) in this guide and to the Maine Alliance for Road Associations Leadership Manual ([www.maineroads.org](http://www.maineroads.org)). If you have any legal questions, you should consult an attorney.

#### ***What are some of the benefits of this type of road association?***

The advantages are that it is a legal entity created by statute; the courts recognize its legitimacy, and it has the power to collect and enforce its assessments. It can buy liability insurance for its officers and members and it has been successfully used for many years on various lakes throughout Maine. Creating such an association also can be accomplished in as little as two months’ time and is relatively inexpensive to set up. It does not need any agreement signed by any of the owners. It does not need to be incorporated; it doesn’t pay taxes, and it doesn’t have to have any property interest conveyed to it in the form of road ownership or easement. It may also negotiate easements for the installation of a ditch, drain, culvert or other storm water management infrastructure.

If the road is in a lake watershed with threatened water quality and is contributing to the degradation of the lake’s water quality, a municipality may use public funds to repair the road for the purpose of protecting or restoring the lake water quality. In order to qualify for municipal assistance, the road must have either a statutory or nonprofit corporation road association and meet other qualifications noted in the Private Ways statute.

#### ***What about liability for this type of road association?***

Unlike nonprofit corporations, statutory road associations do not have the civil liability protection that may be available to a corporation. As a result, the association should buy liability insurance to protect its officers and members against liability lawsuits. The settlement of some court cases has included the cost of insurance as “maintenance

#### **Private Ways Law**

Title 23, M.R.S. §§3101- §3106. This statute was revised in 1997 and amended in 1999, 2005, 2007, 2009, 2013 and 2017. The statute is available at [www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html](http://www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html). This publication has been updated based on amendments made in 2017.

cost.” A recent amendment to the Private Ways Statute does provide officers and directors of a statutory road association with limited immunity from civil prosecution by owners or lessees of other lots for activities carried out in performance of their duties, such as determining repairs and maintenance to be undertaken, materials furnished, collection of money, and awarding of contracts. Associations formed under the statute should be careful to hire contractors who carry their own liability insurance so that the association will not be held liable for damages caused by defects in work done on the road. Volunteers working on the road are not immune from lawsuits resulting from personal injury or property damage due to road work performed. Also, statutory road associations are not immune from enforcement actions for violations of environmental laws under the jurisdiction of the DEP or a municipality. (See Online Appendix K for more information about liability.) If you have any questions about possible liability, you should consult with an attorney.

### Nonprofit Corporation Road Association

This is the most formal legal organization for private road maintenance. The corporation is created through the Maine Secretary of State’s office, per the Maine Nonprofit Corporation Act. It requires the adoption of bylaws, the voluntary burdening of all of the lots using the road and

#### **Nonprofit Corporation Act**

Title 13-B. Available at:  
[www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html](http://www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html)

usually the deeding to the new corporation road ownership or an easement for the road from all of the abutting owners and users of the road. This type of association is often set up with the creation of new residential subdivisions with deed restrictions and covenants.

#### ***Is this the same as a 501(C)(3) nonprofit corporation?***

No. This nonprofit corporation is legally also known as a “mutual benefit” nonprofit corporation, since it benefits only the owners of property using the road. It is not a charitable corporation. It is not eligible for tax exemption and cannot get charitable postage status.

#### ***What are some of its distinctive characteristics?***

There are two distinctive characteristics of the nonprofit corporation road association. The first is that it has indefinite duration as a corporation which is a separate and distinct legal entity from all of its members. The second distinctive characteristic is that it generally has some type of ownership interest in the road by the abutting landowners deeding the road ownership to the corporation while retaining a right to pass over it or by conveying an easement across the owner’s land for the road.

#### ***What type of road would this be good for?***

This is a viable alternative for short private roads, when there are a limited number of owners on the road, or if a new residential subdivision is being created. For longer roads with multiple owners, it is still a good alternative, but the process for setting up such a corporation becomes more complicated. When there are multiple owners, there may need to be a Board of Directors created as well as the corporate officers, instead of simply having it managed by all of the members. In Rome, Maine, a nonprofit corporation was created in 2004 for over 30 different lots on a road almost five miles long. It took two years and significant effort to achieve total participation and it had the

leverage of a relocated road which owners could not use if they didn't join the corporation. In the long run though, such an effort may be worthwhile.

***What are some of the benefits of this type of road association?***

Because there is a conveying of property interest to a corporation with unlimited duration, the authority to assess maintenance fees runs with the land and goes on forever regardless of who owns the land and whether or not it has been conveyed to new owners. This type of corporation is eligible to buy insurance for its officers, members and directors.

If the road is in a lake watershed with threatened water quality and is contributing to the degradation of the lake's water quality, a municipality may use public funds to repair the road for the purpose of protecting or restoring the lake water quality. In order to qualify for municipal assistance, the association must be either a statutory or nonprofit corporation association and meet other qualifications noted in the Private Ways statute.

***What about liability for this type of road association?***

Nonprofit corporation road associations have the liability protections of a corporation. This means that individuals such as directors and officers acting for the corporation are not personally liable if their actions were undertaken in good faith at the behest of the Board. However, these individuals are not granted charitable limited immunity from prosecution for things they may have done in carrying out their responsibilities. Because of this, the association should buy liability insurance to protect its officers and members if they are sued by someone who may be injured using the road. Associations should be careful to hire contractors who carry their own liability insurance so that the association will not be liable for damages caused by defects in work done on the road. Volunteers working on the road are not immune from lawsuits resulting from personal injury or property damage due to road work performed. Also, nonprofit corporation road associations are not immune from enforcement actions for violations of environmental laws under the jurisdiction of the DEP or a municipality. (For more information about liability, see Online Appendix K.) Again, if you have questions about potential liability, you should consult with an attorney.

***What are some of the negatives of this type of road association?***

In addition to its complexity, one shortcoming of this type of organization is the fact that it is voluntary. There is no way to legally force all of the owners on an existing private road to burden their land to a nonprofit corporation which takes over the ownership and control of their road. If an owner does not sign on, then the assessment of maintenance fees against that owner may be unenforceable.



<b>Characteristics of the 3 Types of Road Associations</b>			
<b>Characteristic</b>	<b>Informal or Ad hoc</b>	<b>Statutory Road Association</b>	<b>Nonprofit Corporation Road Association</b>

	<b>Road Association</b>		
Legal Framework	None, or legal contract theory	Private Way Law: Title 23 §3101-3106	Maine Nonprofit Corporation Act: Title 13-B
Formation time, complexity, and cost	Short, simple, inexpensive	Approx. 2 months, relatively simple, inexpensive	Long, complex, moderately expensive
Landowner participation	Voluntary	Not voluntary	Voluntary until agreement is signed
Needs agreement signed by all owners	No	No	Yes
Power to collect from all owners whether sign on or not	No	Yes	No
Assessment fee holds when property changes hands	No	Yes	Yes
Association duration	Can be cancelled at any time	Until dissolved by a majority vote	Indefinite
Liability coverage	Individuals liable; difficult to buy insurance	Board members, owners or commissioners may have civil liability immunity for association decisions; association able to buy insurance for officers and members	Individuals can be indemnified by corporation; association able to buy insurance for officers and members
Association has ownership interest in road	No	No	Yes
Need to file tax forms/pay taxes	No	Not usually	Yes
How banks regard	Mixed	Positively	Positively
Municipality may use public funds to assist with repairs	No	If work contributes to the protection or restoration of a great pond	If work contributes to the protection or restoration of a great pond
Must have annual meeting to adopt annual budget and hold election	No	Yes	Yes Check bylaws
Operates with bylaws	No	Optional	Yes

# HOW TO FORM A FORMAL ROAD ASSOCIATION

## I. How to Start: Convene a Steering Committee

Once you have determined a formal road association might be a good option for your road, you will want to convene a steering committee of fair-minded and diverse folks to get the association off the ground. This group will help with tasks that need to get done, plan to get the road association up and running, and generally provide support for the formation process. If you would like, use the “Forming a Road Association Worksheet – Start the Process” (Online Appendix R) to help start to plan for the process.

### **Basic Steps to Forming a Road Association:**

1. Convene a Steering Committee
2. Plan to Get Up and Running
3. Hold an Informational Meeting
4. Hold an Organizational Meeting

When you meet with the steering committee, appoint a leader that will help guide the formation process. You will also want to appoint a database manager who will create and maintain the list of road association member names and contact information. Have just one person be responsible for keeping the membership list up-to-date.

*Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.*

- Margaret Mead

## II. Planning to Get a Road Association Up and Running: What the Steering Committee Needs to Do

While the following topics are those that will be discussed at the informational and organizational meetings, the steering committee should review the options and develop some recommendations in preparation so meeting attendees can be informed when they decide whether they want to form a road association or not, and what that means. Also, being prepared to answer questions and concerns makes a meeting go much smoother and is more likely to result in a positive vote.

### **Basic Planning Steps:**

#### Develop:

1. Mission Statement
2. Road Maintenance Plan
3. Association Budget
4. Maintenance Fee Formula
5. Bylaws
6. Board
7. Informational Meeting

### **1) Develop a Mission Statement**

A very important first step of forming a road association is developing a mission statement. Having a mission statement reminds association members what the purpose of the association is and helps guide your maintenance plan, and therefore budget. A good way to develop a mission statement is to start by listing everyone’s road concerns and then write the mission statement to address them. This draft mission statement can be presented at the informational meeting and then modified to address additional concerns of the group. As an example, the mission of 13<sup>th</sup> Street Road Association is “to facilitate the maintenance of our road to the benefit of all its members.”

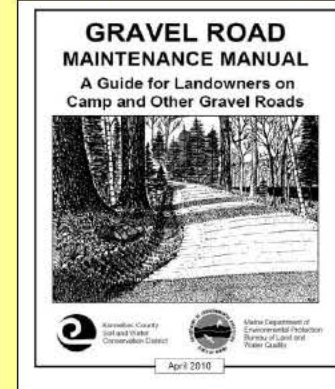
## 2) Develop a Maintenance Plan and Budget

Vigilant monitoring and maintenance are the keys to having a quality road for the least expense. Your maintenance plan should establish a schedule for surveying the road, grading and ditching, cleaning out structures such as culverts and detention basins, and for replacing culverts. The maintenance plan (and budget) should also include some provision for addressing unforeseen problems in a timely manner. If you are not familiar with proper road maintenance techniques, contact your local Soil and Water Conservation District or local contractor for assistance.

### Steps to Develop a Maintenance Plan:

1. **Inventory the roads.** Determine the size and geographic extent of the road network as best you can.
2. **Assess the condition of the roads.** Each year, assess the condition of your road using the Camp Road Maintenance Manual (available at the camp roads maintenance website). Maintain a continuing record of the assessed condition of each road or road segment so that changes in condition can be noted easily and quickly.
3. **Determine specific road repairs.** Consult with your local Soil and Water Conservation District and/or contractor to select the most appropriate treatment to repair the road and get bids or estimates for the needed work. For a list of contractors certified by the DEP in erosion and sedimentation control, see the camp roads maintenance website ([www.maine.gov/dep/land/watershed/camp/road/](http://www.maine.gov/dep/land/watershed/camp/road/)).
4. **Determine overall costs.** Add up the costs of each repair job to get a total estimate. When road surface problems are extensive, it is often necessary to select priorities and phase the project over a number of years.
5. **Establish priorities.** Determine criteria to use for selecting priorities and clearly state them in the maintenance plan. Assessment criteria could include the potential of the problem site to impact water quality, safety concerns, property value concerns, and nuisance factors, etc. You should plan to keep good roads in good shape (preventive maintenance) and establish a separate budget (or request a temporary increase) to reconstruct roads in poor condition. The amount and type of use a road receives will determine how often grading should be done. The maintenance plan should consist of the established priorities and a timeline, including any recommendations for phasing.

*An excellent publication to help develop your maintenance plan:*



*Available at:*

[www.maine.gov/dep/land/watershed/camp/road/gravel\\_road\\_manual.pdf](http://www.maine.gov/dep/land/watershed/camp/road/gravel_road_manual.pdf)

*For gravel roads, the #1 solution to erosion is **proper routine grading** to restore the crown before it has broken down.*

## 3) Develop an Association Budget

A budget is simply a plan that identifies the financial resources required to properly maintain your road system. Once constructed, this plan assists in managing your road association's activities throughout the year. Establishing a schedule of key action and

decision points in this process allows adequate time for information gathering and decision making. Typically, the budgeting process should begin at least four months before the end of the fiscal year to ensure the budget is approved by the Board and general membership before the start of the new year.

The proposed budget needs to be communicated to the members along with the maintenance plan priorities and timelines for the next year. The members will also need to review actual income and expenses compared to the budget on a yearly basis and update and revise the budget to reflect changes during the year.

**Keys to a Successful Budgeting Process**

- Clearly identify maintenance and repair objectives.
- Establish a schedule of key action and decision points.
- Determine the financial resources needed and available to achieve objectives.
- Involve road residents in the process to improve accuracy of information and commitment to the plan.
- Document! Don't rely on memory. Write down assumptions. This will be very important in managing the budget throughout the year.

<b>SAMPLE ROAD ASSOCIATION BUDGET</b>	
PROPOSED 2009/2010 BUDGET FOR OWNERS OF PROPERTY ON LAKE DRIVE July 10, 2009	
BUDGET ITEM	
<i>Road maintenance:</i>	
Summer Maintenance (2 x grading and gravel)	\$3,000.00
Culvert thaw out	\$ 75.00
Winter Maintenance (plowing & sanding)	<u>\$2,565.00</u>
	<u>\$5,640.00</u>
<i>Operations:</i>	
Post Office, supplies (stamps, envelopes, etc.)	\$ 80.00
Liability Insurance	\$ 500.00 EST.
Attorney Fees	<u>\$ 600.00</u>
	<u>\$1,180.00</u>
<i>Contingency:</i>	\$2,000.00
Total to be assessed	<u><u>\$8,820.00</u></u>

See Online Appendix M for sample budget calculations for road maintenance and repair.

**4) Determine Maintenance Fees**

Maintenance Fee Creation

When creating fee assessments, one legal requirement for statutory and nonprofit road associations is that all property owners similarly situated must be similarly assessed. For the voluntary road association, since the fees are not enforceable anyway, the fee doesn't necessarily have to be fair because if someone doesn't want to pay it, they don't have to.

- Some factors that are often used when creating a fee formula:**
- Tax assessment value
  - Year round usage or not
  - Lot development or not
  - Number of dwelling units
  - Lot location
  - Length of road used
  - No differences – all lots the same

For statutory road associations, the statute states that the determination of fees must be fair and equitable and based upon a formula in the bylaws or approved at the annual road association meeting.

Creating the maintenance fee formula obviously can be a contentious issue. No two roads are the same and road associations have considered various factors in determining the formula. See the box above for some factors that are often used by road associations.

“To determine the most fair and acceptable maintenance fee, you must **put yourself in the position of each road user** and see the formula from all sides.”  
*– Bill Gannon, 13<sup>th</sup> Street Road Association*

If an annual maintenance assessment goes to court for enforcement, the Court will look to see if the road association has the proper authority, was properly created, has an assessment formula that treats everyone similarly situated similarly and fairly, and whether the fees were actually being assessed for road maintenance. Maintenance is understood to include: plowing, sanding, ice removal, grading, graveling, ditching, drainage control, culvert cleaning and replacement, brush cutting, etc. within the road right of way. Courts have allowed insurance and operating costs to be included in the maintenance fee.

If the organization is strictly a road association, it can only make assessments for road maintenance (and insurance and administration). However, if it is a nonprofit corporation with broader purposes such as maintaining a beach or a water supply system, etc., it can require the payment of dues and the assessments can be for more than just road maintenance as long as the purposes, uses and formula are clearly spelled out in the corporate bylaws.

<b>Road Association Type</b>	<b>Fee Formula Change Requirements</b>
Statutory	Majority vote at annual meeting
Incorporated	Bylaws amendment
Voluntary – with contract	Amend contract
Voluntary – without contract	No conditions

Maintenance Fee Collection

Another area to consider is how the association will go about collecting maintenance fees.

**Associations do not have to collect.** Collections are ultimately a discretionary act. No association is absolutely required to collect all of its assessments. Like any other creditor it can simply forgive a debt. That may be the neighborly thing to do from time to time when an owner, because of sickness, employment, age, etc., simply can't pay that year.



**Associations have collections options.**

- *Recording a Notice of Claim* - Statutory road associations can record a notice of claim in the Registry of Deeds if assessments are more than 90 days delinquent. The recording cost may be added to the claim. A nonprofit corporation association can also record in the registry a notice of non-payment of assessments, but only in compliance with 23 M.R.S. §3104. A notice of claim filed in the registry of deeds expires 18 months from the date of recording, unless extended prior to the expiration by recording of a notice of extension of the notice of claim. A sample Registry Notice of Nonpayment is available in Online Appendix E.
- *Small Claims Court* - A number of statutory road associations and nonprofit corporation associations have successfully collected fees using Small Claims Court in Maine. The Maine Supreme Judicial Court case in Tisdale v. Rawson, 2003 ME 68, 822 A.2d 1136 reinforces the rights of a road association to collect assessments. The private ways statute authorizes the court to order the owner to pay the statutory road association's collection costs and attorney fees.
- For statutory road associations, before recording a notice of claim or beginning a civil action process, the commissioner or board must notify the delinquent owner in writing of the intended action if the debt is not paid within 20 days of the written notice. This notice must be sent at least 30 days before the intended action.

**Associations can determine collection methods.** Association members can limit the association by restricting how maintenance fees are collected.

- *Statutory Road Associations*
  - Fee collection restrictions should be put in the bylaws, or if there are none, should be voted on at the annual meeting. The sample minutes of the statutory road association in Online Appendix C has a provision "that there would be no court cases to collect unpaid assessments and/or there would be no recording of delinquent assessment payments in the Registry of Deeds without a two-thirds vote of the members present and voting at an Annual Meeting".
  - Statutory road associations can also collect interest on unpaid maintenance fees if so voted at their Annual Meeting or in their bylaws.
- *Incorporated Associations*
  - Bylaws for nonprofit corporation road associations should make provision for how the assessments will be collected. Bylaws can also provide for the collection of interest on unpaid maintenance fees and require the lot owner to pay the association's cost of collection, including its attorney fees.

## 5) Develop Bylaws

While bylaws are not required for statutory road associations, they are highly recommended as a way to record what the road association can or cannot do. Bylaws are required for nonprofit corporations. Bylaws should include such items as:

- A purpose statement, including the location of your road and that you have formed for the purpose of maintaining the road
- Who is eligible to be a member and vote
- What the dues are to be used for and how they will be collected
- Election of officers and duties
- When meetings will generally be held and how they will be called
- How absentee voting will be dealt with



Sample bylaws for a statutory road association are in Online Appendix D and for an incorporated road association in Online Appendix H.

## 6) Develop Recommendations for the Road Commissioner or Board

The steering committee should develop a list of recommended name(s) and roles for the road commissioner and/or road association board. Nonprofit corporation road associations are required by law to have a board of directors. Statutory road associations may have a road commissioner or board. While having only a road commissioner is legally sufficient for statutory road associations, most have chosen to have a board of at least three directors to help spread the work and the decision making.

The road commissioner or association board will manage the overall process of road maintenance. This will involve:

- seeking guidance on the specific maintenance needs of your gravel road
- getting estimates from and setting deadlines for contractors
- developing a budget
- collecting maintenance assessments
- serving as a contact for addressing road related issues

When selecting road association board members:

- Seek fair and balanced representation from all sections and interest groups on the road.
- Tap into the skills of road residents such as experience with road maintenance, running meetings and leading groups, and bookkeeping.
- Select one person to serve as the “road commissioner/president.” This person will serve as the primary contact for contractors to establish road repair and upkeep work.

## 7) Hold an Informational Meeting

While an Informational Meeting is not required, having this sort of kickoff meeting has worked well for larger road networks. The Informational Meeting provides a forum for road residents to talk through the issues on their road. The meeting can also serve as an opportunity to gain support for the formation of a road association.



### Prepare for the Informational Meeting

Along with considering some of the topics mentioned above, there are a few other items that need to be done in preparation for the Informational Meeting. Choose a convenient place and time for the meeting, so most road owners can attend. Appoint someone from the steering committee to create and send out written invitations. Be sure to invite all property owners served by the private way to attend. Names and addresses of property owners can be obtained from property tax maps and information at the town office and for some towns may be available on the town's website.

### Nonprofit Corporations

**Draft Articles of Incorporation.** If you are planning to form a nonprofit corporation road association, you should complete an Articles of Incorporation application so it can be voted on at the informational meeting. The application must include the name of the organization, purposes of the organization (can be the same as the mission statement), registered agent, whether the organization will have members, and board of directors. For more information and a link to the application, see Online Appendix F.

**Get Sample Legal Forms.** Assemble samples of legal forms you will likely want road association members to sign so they can get a better idea of what "signing on" will entail. A sample road maintenance agreement is in Online Appendix G, a sample of a Quit Claim Deed is in Online Appendix I and a Drainage Easement Deed is in Online Appendix J. These are legal documents, so you must consult with an attorney before finalizing these documents.

## Promote the Formation of Your Road Association

The promotion of forming a road association needs to be a process that is suited to the number and nature of the people on your road. Keep in mind that people respond best to personal contact. However, it may take one or more promotion options to provide road residents with the needed background information and to encourage them to attend the Informational Meeting. Having some basic written information is good to have on hand during this promotion.

### ***Promotion Options Include:***

- door-to-door visits
- phone calls
- mailings or email
- articles in the lake association newsletter or local newspapers



## At the Informational Meeting

At the meeting, set a pleasant tone by providing a friendly setting and refreshments. Encourage participation by asking for folks to identify concerns in a group discussion and list concerns for all to see. You will also want to remember to do the following:

- Circulate a sign-in sheet to collect all names & contact information including email addresses and any second home information
- Have someone take minutes
- In handout form, present suggestions on governance, fees, and maintenance and discuss various concerns and options
- When the time is ripe, take an unofficial vote on forming a road association. If yes,
  - Hammer out any remaining issues regarding governance, fees, maintenance, and implementation.
  - If you have decided to form a statutory road association:
    - Decide the time and place of the Organizational Meeting (be sure to allow for enough time to comply with the law concerning notice of meeting)
  - If you have decided to form a nonprofit corporation:
    - Complete and approve the Articles of Incorporation Application
    - Decide the time and place of the Organizational Meeting
- Thank everyone for participating

After the meeting, send the meeting minutes out promptly to everyone with property accessing the road, whether they were present or not.

For some guidelines for running effective meetings, see Online Appendix P. For descriptions of the various ways for groups to make decisions, including pros and cons of each and when to use each method, check out “Group Decision Making” in Online Appendix Q.

### **III. The Organizational Meeting**

The Organizational Meeting is the official meeting where the road association is formed. Because of this, you must make sure you follow the specific requirements of the type of road association you are forming. If you are forming an informal road association, there are no requirements for an organizational meeting, but you could use the statutory requirements as a guide.



### **Statutory Road Association Organizational Meeting**

The following describes the overall process for a statutory road association as it must occur per the Private Way Law at the time of this publication. This information is general information and should not be relied upon as legal advice. Be sure to consult with a lawyer and check the current statute since revisions have been common and you want to ensure you are meeting the requirements of the Private Way Law on the date of your meeting.

#### **Proper Call of Meeting for Statutory Road Associations**

The formation meeting must be called as required by the law and any errors in calling or conducting the meeting can result in the assessment being uncollectible. Three or more owners must call the meeting of all owners by having a notice of meeting warrant issued by a notary. At least 30 days prior to the meeting, the notice of meeting warrant must be distributed to all owners of parcels benefited by the private road. The notice must be sent, as a minimum, by U.S. mail to the addresses used by the town's tax collector. The warrant must include the time, place, purpose of the meeting, agenda, and items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner. Procedures for proxy voting by one owner for another and/or absentee voting should be stated in the notice of the meeting and forms for that purpose should be sent with the notice. A sample warrant and application for issuance of the warrant are in Online Appendix B and A, respectively.

#### **Meeting Procedure for Statutory Road Associations**

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through each section of the warrant and vote on each, using majority vote (required by the private way law) which can be done by a show of hands. Be sure to include any proxy and/or absentee votes as well. The statute requires the allowance of written proxy and absentee votes regarding repairs and maintenance needed and the amount of money to be paid by each owner for costs. If you have bylaws, use majority vote to vote on those as well. Be sure to discuss any sections that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending. Sample meeting minutes are available in Online Appendix C.

## Nonprofit Corporation Road Association Organizational Meeting

This information is provided as general information and should not be relied upon as legal advice. If you are forming a nonprofit corporation road association, you are encouraged to retain the services of a qualified attorney to help with your specific situation. While the following describes the overall process for a nonprofit corporation road association as it must occur per the Maine Nonprofit Corporation Act at the time of this publication, be sure to check the current statute, and to consult with an attorney if you have any questions.



### Prior to the Meeting – for Nonprofit Corporation Road Associations

Prior to or after the Organizational Meeting, you should file the Articles of Incorporation application with the Secretary of State. You will also need to gather information about getting a corporate bank account.

### Proper Call of Meeting for Nonprofit Corporation Road Associations

The Maine Nonprofit Corporation Act requires that the organizational meeting must be held by a call of a majority of the incorporators or board of directors. Those calling the meeting must give the other incorporators or board members at least three days' written notice and the notice must state the time, place and purposes of the meeting. Of course, assuming the goal is to have all road users sign on to the road association, it is highly recommended to notify all road users about the meeting and give more notice than just three days.

### Meeting Requirements for Nonprofit Corporation Road Associations

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through the bylaws and vote on each one, using majority vote (or a greater percentage vote if this is in your bylaws) which can be done by a show of hands. At this organizational meeting you must:

- Adopt bylaws.
- Decide if the organization will be run by members or a Board of Directors.
- Elect Officers.
- Authorize a corporate bank account.
- Authorize the payment of organizing expenses and filing fees.
- Authorize the establishment of a ledger and appropriate corporate records.
- Adopt a fiscal year for the corporation.
- Designate Chairpersons or members of committees.

You will also want to have any legal documents, such as any maintenance agreements, quitclaim deed, or drainage easements, signed by members at this meeting. Be sure to discuss any topics that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending.

## **IV. After the Organizational Meeting: What To Do Next**

### **Notify All Owners**

After the Organizational Meeting, be sure to notify all owners of parcels benefiting from the road about the meeting outcome and send them the meeting minutes.



### **If You are a Statutory Road Association – Consider Joining MARA**

The Maine Alliance for Road Associations (MARA) is an unaffiliated online community and information resource for road associations forming under the Maine Private Ways statute. There are no requirements to become a member of MARA, but by joining as indicated on the website, you can share problems and solutions with the MARA online community, access publications, receive email notification of private way statute changes and updates on road association events and concerns.

### **If You are a Nonprofit Corporation – File Forms and Annual Report**

This information is provided for educational purposes only and is not to be relied upon as legal advice. Check with your attorney, online resources, and the current Maine Nonprofit Corporation Act (Title 13-B).

#### **Record Bylaws – for Nonprofit Corporation Road Associations**

For nonprofit corporation road associations, the signed bylaws or a memorandum of the bylaws need to be recorded in the Registry of Deeds. This document needs to list each owner and the Book and Page for each owner's deed.

#### **Annual Report– for Nonprofit Corporation Road Associations**

All nonprofit corporations must file an Annual Report by June 1 of each year (although the Secretary of State requests filings by April 1). There is a filing fee, as well as a late fee for filings received after June 1. You may download a form or file online at <https://www.maine.gov/sos/cec/corp/annual.html>

#### **Federal Requirements and Forms– for Nonprofit Corporation Road Associations**

As a nonprofit corporation, you will need to obtain a federal Employer Identification Number (EIN). This is simply a means of identifying the organization for tax and other purposes. You will also have to file IRS tax forms. See Online Appendix F for some general guidance and resources.

## **Implement Your Maintenance Plan**

Now that you have a maintenance plan and, more importantly, the necessary funding - it's time to get to work. For statutory road associations, the commissioner or board may address road maintenance and repair as authorized at the annual road association meeting.

### **Be Aware of Regulatory and Permitting Requirements**

Your road commissioner or board should be aware of the regulatory and permitting requirements that may apply to your road maintenance work, and make sure the chosen contractor is aware of them and in compliance. For a summary of regulatory considerations, see Online Appendix L.

### **Choose a Contractor and Begin Work**

Your road commissioner or board will need to contact local contractors to update bids or solicit proposals for the work that needs to be done. Using the obtained "not to exceed quote" or updated bid and your detailed maintenance plan, choose a contractor, sign a contract, and work can begin on your road. For some tips on choosing a contractor and requesting estimates, see Online Appendix N. There is also a sample gravel road maintenance agreement in Online Appendix O.



If possible, the road commissioner (or another representative from the road association) should be present during construction to answer any questions that the contractor may have and to make sure the contractor is meeting your road association's expectations. The road commissioner should inspect the work before the contractor takes their equipment to another job. This will save both the contractor and the road association money if more needs to be done (for whatever reason).

## **Hold Annual Road Association Meetings**

For both statutory and nonprofit corporation road associations, you will need to have an annual meeting every year, since your officers, maintenance plan, budget, and assessment fee need to be voted on every year. Nonprofit corporation road associations must call the meeting using the same procedure as described in the Organizational Meeting section. Statutory road associations may use the same method as used to call their first Organizational Meeting, or may have the commissioner or board call the meeting, mailing notice of the meeting to each owner at least 30 days prior to the meeting. During the meeting, both types of road associations must follow the procedures described in the Organizational Meeting section.

You may also need to hold emergency meetings if road issues come up between annual meetings. Special assessments for emergency repairs and maintenance may be made at a duly held meeting called for that purpose.



# RESOURCES

## **Online Appendices**

Available at: <http://www.maine.gov/dep/land/watershed/roadassociation.html>

## **Statutory Road Associations**

Maine's Private Way Law: [www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html](http://www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html)  
(see Private Ways, Subchapter 2)

- A) Sample Application to Notary
- B) Sample Notice of Meeting Warrant
- C) Sample Meeting Minutes
- D) Sample Statutory Road Association Bylaws
- E) Sample Registry Notice of Non-Payment of Road Association Assessment

## **Nonprofit Corporation Road Associations**

Maine Nonprofit Corporation Act: [www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html](http://www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html)

- F) Maine's Requirements for Incorporating a Nonprofit Corporation  
(including links to EIN and Articles of Incorporation forms)
- G) Sample Road Maintenance Agreement
- H) Sample Nonprofit Corporation Road Association Bylaws
- I) Sample Quitclaim Deed with Covenant
- J) Sample Drainage Easement



## **General**

- K) Liability Exposure Generally for All Private Roads
- L) Regulatory Considerations
- M) Forming a Budget
- N) Choosing a Contractor and Requesting an Estimate
- O) Sample Gravel Road Maintenance Agreement for Contractors
- P) Guidelines for Running Effective Meetings
- Q) Group Decision Making
- R) Forming a Road Association Worksheet – Start the Process

# **Resource Directory**

## **MAINE SOIL & WATER CONSERVATION DISTRICT OFFICES**

- Education and training on a variety of lake related issues - including camp roads.
- Grant project planning and development.
- Site evaluations to assess erosion and/or drainage concerns.
- Best Management Practice design.

<http://maineconservationdistricts.com>

Androscoggin Valley	241-5377
Central Aroostook County	764-4153
Cumberland County	892-4700
Franklin County	778-4279
Hancock County	667-8663
Kennebec County	622-7847 x 3
Knox-Lincoln County	596-2040
Oxford County	743-5789 x 3
Penobscot County	990-3676 x 3
Piscataquis County	564-2321 x 3
Somerset County	474-8323
Southern Aroostook County	254-4126
St. John Valley	834-3311 x 3
Waldo County	218-5311
Washington County	255-4659
York County	324-0888 x214

## **MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)**

[www.maine.gov/dep](http://www.maine.gov/dep)

1-800-452-1942 (in state only)  
207-287-7688

**Land Bureau** – licensing, enforcement, water classification, shoreland zoning, and field services

**Bureau of Water Quality** – water classification and monitoring

### **DEP Offices:**

Augusta	287-7688 (main office)
Bangor	941-4570
Portland	822-6300
Presque Isle	764-0477

---

## **OTHER RESOURCES**

**Maine Alliance for Road Associations** – online resource for statutory road associations  
[www.maineroads.org](http://www.maineroads.org)

**Lake Stewards of Maine**  
783-7733  
<https://www.lakestewardsofmaine.org/>

**Maine Lakes Society** – lake association contact information, lake protection resources and information  
495-2301 <http://mainelakessociety.org/>

**Nonprofit Corporation Resources**  
<https://www.maine.gov/sos/cec/corp/nonprofit.html>

This publication, associated online appendices, and other related materials are available at the **camp roads website:**

<http://www.maine.gov/dep/land/watershed/camp/road/index.html>



# A Guide to Forming Road Associations

## - APPENDICES -

### Statutory Road Associations

- A) [Sample Application to Notary](#)
- B) [Sample Notice of Meeting Warrant](#)
- C) [Sample Meeting Minutes](#)
- D) [Sample Statutory Road Association Bylaws](#)
- E) [Sample Registry Notice of Non-Payment of Road Association Assessment](#)

### Nonprofit Corporation Road Associations

- F) [Maine's Requirements for Incorporating a Nonprofit Corporation](#)  
*(including links to EIN and Articles of Incorporation forms)*
- G) [Sample Road Maintenance Agreement](#)
- H) [Sample Nonprofit Corporation Road Association Bylaws](#)
- I) [Sample Quitclaim Deed with Covenant](#)
- J) [Sample Drainage Easement](#)

### General

- K) [Liability Exposure Generally for All Private Roads](#)
- L) [Regulatory Considerations](#)
- M) [Forming a Budget](#)
- N) [Choosing a Contractor and Requesting an Estimate](#)
- O) [Sample Gravel Road Maintenance Agreement for Contractors](#)
- P) [Guidelines for Running Effective Meetings](#)
- Q) [Group Decision Making](#)
- R) [Forming a Road Association Worksheet – Start the Process](#)

# Statutory Road Associations

## Appendix A: Sample Application to Notary Public

**APPLICATION  
TO  
NOTARY PUBLIC  
TO CALL A MEETING OF THE  
OWNERS OF LAKE DRIVE, NOWHERE, MAINE  
A PRIVATE WAY**

The following three (3) owners request that you call a meeting to be held July 10, 2009 at the home of John and Mary Doe on Lake Drive at 10:30 a.m. for the purpose of calling a meeting of the owners of parcels of land benefited by Lake Drive and to use the attached Notice of Meeting and Warrant to call the meeting pursuant to 23 M.R.S.A. §3101 to 3106.

Dated: June 1, 2009

By \_\_\_\_\_  
Print Name:  
Owner of \_\_\_\_\_ Lake Drive

Dated: June 1, 2009

By \_\_\_\_\_  
Print Name:  
Owner of \_\_\_\_\_ Lake Drive

Dated: June 1, 2009

By \_\_\_\_\_  
Print Name:  
Owner of \_\_\_\_\_ Lake Drive

## **Appendix B: Sample Notice of Meeting Warrant**

### **LAKE DRIVE ASSOCIATION NOTICE OF MEETING WARRANT**

TO: Property owners and occupants Lake Drive, Nowhere, Kennebec County, Maine

Greetings,

You are hereby notified by the undersigned notary pursuant to 23 M.R.S.A. §3101 to 3106 that there will be a meeting in John and Mary Doe's home on Lake Drive on Saturday, July 10, 2009 at 10:30 a.m. to act on the following articles for the maintenance of Lake Drive for the twelve month period from August 1, 2009 to July 31, 2009.

#### **Article 1:**

To elect a moderator for the meeting and see what rules of procedure the owners will choose to conduct the meeting.

#### **Article 2:**

To see if the owners will elect a Road Commissioner/President for a one (1) year term whose duties shall be: to determine what repairs and maintenance are needed for the upkeep of said roads, to make recommendations to the owners and Board of Directors, and to perform such maintenance and duties as the owners' or Board of Directors directs and/or as authorized by 23 M.R.S.A. §3101 to 3106, and to serve on the Board of Directors.

#### **Article 3:**

To see if the owners will elect a Secretary/Treasurer for a one (1) year term whose duties shall be: to record and maintain the administrative and financial records of said organization, and to perform such duties as are determined by the owners or Board of Directors, and to serve on the Board of Directors.

#### **Article 4:**

To see if the owners will elect a Director for a one (1) year term whose duties will be to serve on the Board of Directors with the Road Commissioner/President and Secretary/Treasurer which shall manage the affairs of the Association in accordance with the policies approved by the owners and to respond to emergencies as they occur.

#### **Article 5:**

To see if the owners will approve and accept the proposed budget which is attached hereto, including the assessment structure, for the fiscal year of August 1, 2009 to July 31, 2009.

#### **Article 6:**

To see if the owners will approve September 30, 2009 as the deadline for the collection of the assessments for the 2009-2010 fiscal year and approve a late payment interest penalty of eight percent (8%) per annum on all assessments not paid by November 30, 2009.

**Article 7:**

To see if the owners will authorize a contract for making repairs and maintaining the road.

**Article 8:**

To see if the owners will determine the manner of calling future meetings.

**Article 9:**

To nominate candidates from the floor and to elect, by written ballot, a Road Commissioner/President, a Secretary/Treasurer and a Director to serve for the next fiscal year beginning August 1, 2009 and to be the Board of Directors.

Dated: June 3, 2009

By: \_\_\_\_\_  
Commissioner/President

**Note:**

*For the first meeting this needs to be signed by a Notary. The Road Commissioner/President can sign it for all future meetings.*

*This notice must provide instruction for voting by proxy or by absentee ballot.*

*If bylaws are to be adopted there will need to be an article for that purpose and the proposed bylaws must be sent with the notice.*

## Appendix C: Sample Meeting Minutes

### LAKE DRIVE ASSOCIATION MINUTES OF ANNUAL MEETING JULY 10, 2009

The meeting of the Lake Drive Association was called pursuant to Title 23, Maine Revised Statutes Annotated, §3101 to §3106 by a Notice including a Warrant with the Articles to be voted upon, a copy of which is attached.

The meeting was Called to Order at approximately 10:40 a.m. on July 10, 2009 by Mr. John Doe.

After an explanation by Mr. John Doe of how a road association works and what the law for road associations in Maine is, a Motion was made to elect Mr. Doe Moderator and to accept the rules of procedure which was a hand-out. A copy is attached. The Motion was seconded and was **passed by a vote by a show of hands.**

The Moderator then read **Article 2**, and a Motion was made and seconded to accept Article 2 as it is written. After discussion and questions, the Moderator called for a vote by a show of hands and **declared that Article 2 passed.**

The Moderator then read **Article 3**, and a Motion was made and seconded to accept Article 3 as it is written. After discussion and questions, the Moderator called for a vote by a show of hands and **declared that Article 3 passed.**

The Moderator then read **Article 4**, and a Motion was made and seconded to accept Article 4 as it is written. After discussion and questions, the Moderator called for a vote by a show of hands and **declared that Article 4 passed.**

The Moderator read **Article 5** and a Motion was made and seconded to adopt an annual budget for \$9,120.00. After discussion, the Moderator called for a vote and declared that the **Motion passed by a vote by a show of hands.** A copy of the budget is attached. A motion was also made and seconded that the assessment for 2009/2010 would be \$216.23 for each dwelling unit, \$100.00 for each lot that does not have any dwelling units on it. After discussion, the **Motion passed unanimously by a vote by a show of hands.**

The Moderator read **Article 6** and a Motion was made and seconded to accept Article 6 as it is written, but to change the dates to March 1, 2010 for the collection of assessments and April 1, 2010 for the beginning of interest for late payments. After discussion, the Moderator called for a vote by a show of hands and declared that the **Article passed with the changed dates.**

The Moderator read **Article 7** and a Motion was made and seconded to authorize the proposed contract with John Smith. After discussion the **Motion passed by a vote by a show of hands.**

The Moderator read **Article 8** and a Motion was made and seconded that all future meetings of the Lake Drive Association would be called with a 30-day written notice by regular mail to include an Agenda and proposed budget. After discussion, the **Motion passed by a vote by a show of hands.**

A Motion was then made that Annual Meetings of the Association would be held on the third Saturday in July. After discussion, that **Motion passed by a vote by a show of hands.**

After discussion concerning the collection of late payments, a Motion was made and seconded that there would be no court cases to collect unpaid assessments and/or there would be no recording of delinquent assessment payments in the Registry of Deeds without a two-thirds vote of the members present and voting at an Annual Meeting. After discussion of the motion, the



**Motion passed by a vote by a show of hands.**

The Moderator read **Article 9** for the election of a road commissioner/president, a secretary/treasurer, and a director to serve until August 1, 2010 and to constitute the Board of Directors. After nominations, **John Doe was elected road commissioner/president; Mary Doe was elected secretary/treasurer, and Bob Smith was elected director.**

There being no further business to conduct on the Warrant, the meeting was adjourned.

Respectfully submitted,

Moderator

71009 Minutes

## Appendix D: Sample Statutory Road Association Bylaws

*Note: These bylaws are only a sample. If you have questions about bylaws, you should consult with an attorney.*

### BYLAWS OF THE SAMPLE ROAD ASSOCIATION

ADOPTED 30 August 2009

The name of the Association shall be **Sample Road Association**, and said Association shall be located in **Nowhere, Maine**, and is being formed as a Statutory Road Association under Maine Law.

The following provisions shall constitute the Bylaws of this Association, established hereby, to wit:

#### **Section 1. Composition, Powers and Duties of the Board of Directors.**

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by this document may not be delegated to the Board of Directors by the property owners. A property owner is defined as a person who, or entity that, owns property that is accessed via a private way in **Nowhere, Maine** known as **Sample Road** (hereinafter called the Common Element).

The Board of Directors shall be composed of # Officers and # Directors. The Officers shall be a President, Vice President, Secretary, Treasurer, Road Commissioner/president, and Assistant Road Commissioner. The powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

1. Operation, care, upkeep, and maintenance of the Common Element.
2. Determination of the common expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the Association.
3. Collection of the assessed charges from the property owners.
4. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common elements.
5. Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
6. Obtaining insurance for the Association, pursuant to the provisions hereof.
7. The Board of Directors shall have the power to enforce obligations of property owners; to allocate income and expenses; and to do anything and everything else necessary and proper for the sound management of the Association.
8. Enter into contracts for the maintenance, upkeep, and repair of the Common Element.
9. Posting the road to ensure the safety of property owners and their guests.

#### **Section 2. Expenses, Profits and Funds.**

- A. Each property owner shall be liable for expenses of the Association according to his respective assessment which assessment may not exceed 1% of an individual's property assessment in any calendar year. The Board of Directors may, to such extent as they have been directed by vote of the majority of the property owners attending any meeting, set aside funds of the Association as reserve or contingent funds and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Section 4, for repair, rebuilding or restoration of the Association roadways, or for improvements thereto.
- B. At least thirty (30) days prior to each annual anniversary of the adoption date of these Bylaws, the Board of Directors shall estimate the expenses expected to be incurred during the next fiscal year, together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed funds from prior years, shall determine the assessment to be made for such fiscal year. If after a meeting of the property owners, it is voted to continue the Association for an additional year, and an assessment is approved, then the Board of Directors shall promptly render statements to the property owners for

their respective shares of such assessment. Said assessment shall be paid to the Association no later than 30 September immediately following the annual meeting. Assessments not paid within thirty (30) days of 30 September will be delinquent. In the event of default by any property owner in paying the annual assessment, such charge shall be collected pursuant to Maine law, but only after a majority vote of the Board of Directors.

In the event that the Board of Directors shall determine during the year that the assessment so made is less than the expenses actually incurred, or in the reasonable opinion of the Board of Directors, likely to be incurred, the Board of Directors shall make a supplemental assessment or assessments and render statements therefore in the manner aforesaid, and shall call a special meeting of the property owners to vote upon the same, pursuant to the terms of these Bylaws. Upon obtaining a majority vote of the attending property owners in favor of the same, such statements shall be payable and take effect as aforesaid.

- C. The Board of Directors shall expend funds only for Association expenses.

### **Section 3. Insurance.**

- A. The Board of Directors shall obtain and maintain, to the extent available, a policy of liability insurance for the benefit and protection of the Association Officers, Directors and of all the property owners, naming this Association as the insured. This policy shall protect the Officers, Directors and property owners from liability arising from the usage of the roads of the Association by any person or persons, but said policy will not insure for the protection of any property owner for any liabilities incurred upon their property as to which it shall be the separate responsibility of the property owners to insure. Such insurance shall, unless the same is not obtainable, be maintained in the amount equal to one million dollars (\$1,000,000).
- B. Any liability policy shall, unless the same is not obtainable, provide:
  - 1. that such policy may not be canceled, terminated or substantially modified without at least thirty (30) days notice to the Association;
  - 2. for waiver of subrogation as to any claims against the Association, the Officers, Directors, agents, employees, the property owners and their respective employees, agents and guests;
  - 3. for waivers of any defense based upon the conduct of any insured; and
  - 4. in substance and effect that the insurer shall not be entitled to contribution as against any casualty insurance, which may be purchased separately by property owners.
- C. The cost of all such insurance obtained and maintained by the Board of Directors pursuant to the provisions of this Section 3 shall be an Association expense.
- D. The members of the Board of Directors shall not be liable to the property owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The property owners comprising the association shall indemnify and hold harmless each of the Officers and Directors against all contractual liability to others arising out of contracts made by members of the Board of Directors on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provision of these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

### **Section 4. Rebuilding and Restoration; Improvements.**

- A. In the event of any casualty loss to the Common Element, the Board of Directors shall proceed, without notice to the property owners, with the necessary repairs, rebuilding, or restoration.
- B. A vote by the majority of the property owners present at any meeting of the Association properly called under these Bylaws may agree to make an improvement to the Common Elements and assess the cost thereof to all property owners as a common expense.

## **Section 5. Meetings.**

- A. The Board of Directors shall meet annually on the date of (and immediately following) the annual meeting of the property owners. Other meetings may be called by and in such other manner as any member of the Board of Directors may establish, provided that written notice of each meeting stating the place, day and hour thereof, shall be given at least two (2) weeks before such meeting to each member of the Board of Directors. One half (1/2) of the number of members of the Board of Directors shall constitute a quorum at all meetings, and such meetings shall be conducted in accordance with Roberts Rules.
- B. That commencing with the calendar year 2009, there shall be an annual meeting of the property owners on the third Saturday in August in each year, at 10 A.M., at the Association premises or at such other reasonable place and time as designated by the Board of Directors by written notice given to the property owners at least thirty (30) days prior to the date so designated. Special meetings of the property owners may be called by the Board of Directors or by the property owners upon the written request of thirty-three percent (33%) of the property owners of the Association. Written notice of any such meeting designating the place, day, hour thereof shall be given by the Board of Directors to the property owners at least thirty (30) days prior to the date so designated. The Board of Directors shall appoint a person to act as moderator for the annual meeting of property owners. At the annual meeting of the property owners, the Board of Directors shall submit written reports of the management and finances of the Association. At any meeting at which the Board of Directors proposes to submit to the property owners any matter with respect to which approval of or action by the property owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.
- C. At the annual meeting to vote for a continued Association, the property owners shall have one vote for each property, and a majority of the property owners present at such a meeting shall prevail. They shall vote for officers and directors. These individuals must be property owners within the Association area, and shall all be considered members of the Board of Directors.
- D. The duties of the President, and in the absence of the president, the Vice President, shall include the management of the Association as approved by the property owners at the annual meeting and within the guidelines of these Bylaws.
- E. The duties of the Secretary shall be to record and maintain the records of the Association and to perform such duties as are determined by the property owners at the annual meeting, or by the Board of Directors.
- F. The duties of the Treasurer shall be to record and maintain the financial records of the Association, and to perform such duties as are determined by the property owners at the annual meeting, or by the Board of Directors.
- G. The duties of the Road Commissioner/President shall be: to determine what repairs and maintenance are needed for upkeep of the Common Element, and to make recommendations to the Board of Directors and the property owners, and to perform such maintenance and repairs as the property owners or the Board of Directors directs and/or as authorized by 23 M.R.S.A. Sections 3101 to 3106, and to collect unpaid assessments on behalf of the association as set forth in Section 3103.
- H. The duties of the Assistant Road Commissioner shall be to assist the Road Commissioner/President in his duties, and to act as Road Commissioner/President during prolonged absence or unavailability of the Road Commissioner/President.
- I. The duties of the Directors are to assist the Officers and the Board of Directors in carrying out their duties and as directed by the property owners at the annual meeting.

Any vacancy of any of the positions of the Board of Directors shall be filled by a vote of the remaining members of said committee, and this (these) appointment(s) shall be valid for the remainder of the term for said position.

The property owners may vote on any other matter of the Association including but not limited to: (1) the level of maintenance requested, (2) the level of repairs to be made, and (3) any capital improvements made to the roadways.

**Section 6. Notices to Property Owners.**

Every notice to any property owner required under the provisions hereof, or which may be deemed by the Board of Directors necessary or desirable in connection with the execution of the Association created hereby, or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the members of the Board of Directors to such property owner at his address as it appears upon the tax records of the Town, at least thirty (30) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, or such longer period of time as may be required by the specific terms of this instrument. Property owners may waive notice by duly executing an appropriate waiver of notice.

**Section 7. Inspection of Books; Reports to Property Owners.**

Books, accounts and records of the Association shall be open to inspection to any one or more of the members of the Board of Directors, or any property owner(s) at all reasonable times. The Board of Directors at the annual meeting shall submit to property owners a report of the operations of the Board of Directors for the previous fiscal year, which shall include financial statements in such summary form and in such detail as the Board of Directors deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to any member of the Board of Directors, given by registered or certified mail within a period of one (1) month of the date of receipt of such report, shall be deemed to have assented thereto.

**Section 8. Checks, Notes, Drafts and Other Instruments.**

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Board of Directors or of the association may be signed by any one of two (2) members of the Board of Directors, or by any person or persons (who may be one of the Board of Directors) to whom such power may at any time or from time to time be designated by not less than a majority of the Board of Directors.

**Section 9. Fiscal Year.**

The fiscal year of the Association shall be from 1 September through 31 August of the succeeding year.

**Section 10. Proxy and/or Absentee Voting.**

The Board of Directors shall establish proxy and/or absentee voting for any forthcoming Association meeting, and shall establish parameters for said proxy and/or absentee voting, including but not limited to, appointment of voting member for any property, method of proxy and/or absentee voting, and time frame for said proxy and/or absentee vote. In any event, the proxy and/or absentee vote shall be held to the same standards as stated within these Bylaws.

**Appendix E: Sample Registry Notice of Non-payment of Road Association Assessment**

NOTICE OF NON-PAYMENT OF ROAD ASSOCIATION ASSESSMENT

NOW COMES \_\_\_\_\_, Road Commissioner of the \_\_\_\_\_ Association of \_\_\_\_\_, Maine and after being duly sworn and under oath, states that the following is true based upon his own personal knowledge and the records of the Association.

1. I am Road Commissioner of the \_\_\_\_\_ Association of \_\_\_\_\_, Maine.
2. The \_\_\_\_\_ Association is a road association created and existing pursuant to Maine law at 23 M.R.S.A. §3101 to 3106 and an annual meeting was properly called and held \_\_\_\_\_, 200\_\_ for a twelve-month period from \_\_\_\_\_, 200\_\_ to \_\_\_\_\_, 200\_\_ for the purposes of maintaining \_\_\_\_\_ and \_\_\_\_\_ in \_\_\_\_\_, Maine and the assessment of maintenance fees on the property owners on said roads as provided for in said State law.
3. \_\_\_\_\_ and \_\_\_\_\_ are owners of land on \_\_\_\_\_ pursuant to a Deed to them dated \_\_\_\_\_ and which is recorded in the \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.
4. Said owners have refused, and continue to refuse, to pay the assessments of \$\_\_\_\_\_ for the year beginning \_\_\_\_\_, 200\_\_ and ending \_\_\_\_\_, 200\_\_, which was due to be paid by \_\_\_\_\_, 200\_\_.
5. Said owners were given written notice on \_\_\_\_\_, 200\_\_ of the intention to record this notice of claim if the debt was not paid within 20 days of the date of the written notice. This written notice to cure was sent at least 30 days before the recording of this notice of claim.
6. The \_\_\_\_\_ Association, pursuant to 23 M.R.S.A. §3101(5), has the authority and standing to enforce the payment of and to collect the assessment.
7. Notice is hereby given that the said current owners and any new owners of the lot, if said assessment, interest and costs are not paid are subject to the rights of the Association to seek full payment of the unpaid assessments, interest and costs, which is a debt that runs with the land.
8. Anyone interested in obtaining additional information or a release of this notice of nonpayment may contact \_\_\_\_\_, Road Commissioner, \_\_\_\_\_ Association, \_\_\_\_\_, Maine \_\_\_\_\_. Telephone Number (207) \_\_\_\_\_; e-mail: \_\_\_\_\_.

Dated: \_\_\_\_\_, 200\_\_ \_\_\_\_\_

\_\_\_\_\_  
Road Commissioner

State of Maine  
County of \_\_\_\_\_

\_\_\_\_\_, 200\_\_

Personally appeared the above named \_\_\_\_\_ and made oath that the foregoing Affidavit is based upon his personal knowledge and is true and correct and that to the extent it is based on information and belief that he believes it to be true.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# Nonprofit Corporation Road Associations

## **Appendix F: Maine's Requirements for Incorporating a Nonprofit Corporation**

Disclaimer: This information is provided for educational purposes only and is not to be relied upon as legal advice. Readers are strongly encouraged to retain the services of a qualified attorney to help them with their specific situation.

### **State Requirements and Forms**

**Articles of Incorporation** – Your nonprofit corporation must establish Articles of Incorporation and file them with the Secretary of State. The Articles of Incorporation application (Form MNPCA-6) is available at [www.maine.gov/sos/cec/corp/formsnew/mnpca6.pdf](http://www.maine.gov/sos/cec/corp/formsnew/mnpca6.pdf). Among other items, the Articles of Incorporation must include the following information:

- **Name of Organization** – You must choose a name that is not identical or deceptively similar to an already existing nonprofit or for-profit corporation in Maine. The names of already existing nonprofit corporations can be found online at [www.informe.org/icrs/ICRS](http://www.informe.org/icrs/ICRS).
- **Purposes of the Organization** – The purposes may be identical to the mission statement, or may be as broad as the law allows. A road association will always be a mutual benefit corporation and not a charitable corporation. It cannot be tax exempt.
- **Registered Agent (aka Clerk)** – All nonprofit corporations must appoint a registered agent. Any change of the registered agent must be filed with the Secretary of State within 30 days of the change.
- **Whether the Organization Will Have Members** – An organization may or may not have members. That is a decision the incorporators need to make from the outset.
- **Board of Directors** – If the organization has a board, it must be comprised of at least three individuals.

**Bylaws** – A nonprofit corporation must establish a set of Bylaws.

**Organizational Meeting** – After the incorporators have filed the Articles of Corporation, it is time to hold the Organizational Meeting. At this meeting, the following key measures should be taken:

- Adopt bylaws.
- Decide if the organization will be run by members or a Board of Directors.
- Elect Officers.
- Authorize a corporate bank account.
- Authorize the payment of organizing expenses and filing fees.
- Authorize the establishment of a ledger and appropriate corporate records.
- Adopt a fiscal year for the corporation.
- Designate Chairpersons and members of committees.

**Annual Report** – All nonprofit corporations must file an Annual Report by June 1 of



each year (although the Secretary of State requests filings by April 1). There is a \$35 filing fee, as well as a late fee for filings received after June 1. You may download a form or file online at [www.maine.gov/sos/cec/corp/formsnew/formspec.htm#mnpca13](http://www.maine.gov/sos/cec/corp/formsnew/formspec.htm#mnpca13).

**Workers Compensation** – A corporation with one or more employees generally must obtain workers compensation insurance.

## **Federal Requirements and Forms**

**Obtain an EIN** – Every nonprofit corporation must obtain a federal Employer Identification Number (EIN). This is simply a means of identifying the organization for tax and other purposes. You can request an EIN by phone, mail, or online. For details, visit [www.irs.gov/businesses/small/article/0,,id=97860,00.html](http://www.irs.gov/businesses/small/article/0,,id=97860,00.html).

**IRS Form 990** – Annual information return for exempt organizations. If your organization has more than \$25,000 in income during your tax year, it must file Form 990. You might also qualify to file Form 990-EZ, which is a simplified version generally used by organizations with gross receipts normally less than \$100,000 and assets under \$250,000. If your organization is a private foundation, you should file Form 990-PF. All of these forms can be downloaded from [www.irs.gov](http://www.irs.gov).

**IRS Form 1099-MISC** – An organization must file an IRS 1099-MISC whenever it pays a person \$600 or more in a fiscal year for: (1) rents; (2) royalties; (3) commissions, fees and other compensation (nonemployees only); (4) prizes and awards (nonemployees); and (5) other income.

**Federal Payroll Tax Documents** – A corporation with one or more employees must pay certain federal payroll taxes and make federal and state withholdings on employees' wages. Among the necessary forms are the W-2/W-3 and the quarterly IRS Form 941.

## Appendix G: Sample Road Maintenance Agreement

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ by the property owners (see attached list) hereto and their successors and assigns with respect to real estate located in the Town of \_\_\_\_\_, \_\_\_\_\_ County, Maine.

1. Property. This Agreement shall apply to the real property (the "Lots") held by the Owners identified in Appendix A adjoining Fire Road No. \_\_\_\_ (the "Road") in the Town of \_\_\_\_\_, \_\_\_\_\_ County, Maine.
2. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot who has signed this Agreement, and the heirs, successors, assigns and personal representatives of said Owners, but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title by foreclosure or any proceeding in lieu of foreclosure.
3. Road. The purpose of this Agreement is to provide for the maintenance and upkeep of the Road which services the Lots for the use and benefit of all Owners, and shall be binding upon all Owners.
4. Association. \_\_\_\_\_ has caused to be incorporated under Maine law a nonprofit corporation, the \_\_\_\_\_ Fire Road No. \_\_\_\_ Association (the "Association"), for purposes of complying with the requirements of this Agreement.
5. Member. Every Owner shall be a Member of the Association. When more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members. A person or entity who holds a fee or undivided fee interest merely as security for the performance of an obligation, however, shall not be a Member.
6. Voting. All Members of the Association shall be voting Members and the Association shall have one (1) class of voting membership. For purposes of any meeting, a quorum shall consist of Owners of at least one-half (1/2) the Lots being present and voting. Each Lot shall represent one (1) indivisible vote. When more than one Member holds an ownership interest in a Lot, the vote for that Lot shall be exercised as such Members among themselves may determine by majority vote. In no event, however, shall the voting rights for a Lot be divided, nor shall more than one (1) vote be cast with respect to any one Lot. If Members who are Owners of a Lot are unable to agree in any instance as to how their vote shall be cast, in any instance, then the vote shall not be counted.
7. Expenses. Each Owner shall be assessed a sum equal to the Road maintenance and upkeep expenses for the ensuing year multiplied by a fraction of which the numerator shall be the number of Lots owned by the Owner and the denominator shall be the total number of all the Lots. Road maintenance and upkeep shall be limited to that required [to remove snow], to repair and prevent erosion and to repair ordinary wear to the surface of the Road unless otherwise agreed by a unanimous vote of all Owners, but shall include the cost of maintaining the Association as a nonprofit corporation in good standing under the laws of Maine, the cost of enforcing any provision of this Agreement and other costs and expenses necessary and proper for the effective and efficient functioning of the Association. All maintenance and upkeep [including snow removal], will be by competitive bid unless a non-competitive price is accepted by vote of a majority of the Owners present at a meeting duly called for the purpose of voting on the budget of the Association.
8. Lien. Each Owner, by signing this Agreement, does covenant and agree to pay to the Association, within sixty (60) days after the date of notice of an assessment, all assessments made by the Association. Each assessment, together with interest in amounts or at rates specified by the Association and together with costs of collection, shall be a lien and charge upon the Lot against which each such assessment is made which lien shall continue until the assessment is paid and shall be the personal obligation of the Owner. The personal obligation of the Owner to pay such assessments, however, shall remain the personal obligation of the person who was the Owner when the assessment was first due and shall not pass to successors in title unless expressly assumed by such successors.
9. Enforcement. The Association may bring a civil action against the Owner personally obligated to pay an assessment in order to enforce payment of the delinquent assessment or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment due all costs of collection. In the event a judgment is obtained, such judgment shall include interest on the assessment, together with all the Association's attorney's fees and expenses and costs of the action.
10. Subordination. The lien of the assessments provided for shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots. Such subordination, however, shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot pursuant to any allowable method of foreclosure, or any other proceeding in lieu of foreclosure. Upon request by an Owner of a mortgagee of a Lot, the Association shall issue such certificates as are necessary to indicate the status of the assessments. Such sale or transfer shall not discharge the lien of the Association of any assessment thereafter becoming due after the date of any such sale or transfer. The lien of the assessments also shall be subordinate

to all utility easements which may be placed upon any Lot.

- 11. Severability. Invalidation of any one provision of this Agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.
- 12. Amendment. This Agreement may be amended by a written instrument executed in recordable form and signed by Members entitled to cast at least 75% of the votes allocated to the Lots.

IN WITNESS WHEREOF, the undersigned have executed the Agreement as of the date first above written:

WITNESS

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

STATE OF MAINE  
COUNTY OF \_\_\_\_\_, SS.

The foregoing Road Maintenance Agreement was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(NOTARY SEAL)

Notary Public of Maine  
My Commission Expires: \_\_\_\_\_

## Appendix H: Sample Nonprofit Corporation Road Association Bylaws

Note: These bylaws are only a sample. If you have questions about bylaws, you should consult with an attorney.

### BYLAWS OF LAKE DRIVE IN NOWHERE OWNERS ASSOCIATION

#### ARTICLE I

The name of the corporation shall be Lake Drive in Nowhere Owners Association.

#### ARTICLE II

The purpose for which the corporation is organized is the owning, improving and maintaining the deeded common areas and/or facilities, storm water control facilities, Lake Drive in Nowhere, Maine and engaging in such other activities as may be to the mutual benefit of the Members. It shall be a limited nonprofit private mutual benefit corporation pursuant to the laws of the State of Maine in Title 13-B. The common areas and/or facilities, storm water facilities, and Lake Drive are described in the Boundary Survey of Lake Drive, Nowhere, Maine recorded in the Kennebec County Registry of Deeds in Plan File # \_\_\_\_\_, Sheet \_\_\_\_\_.

#### ARTICLE III

The Members of the corporation shall be limited initially to the owners, their heirs and assigns, of six (6) Lots abutting said Lake Drive as shown on said Plan consisting of:

\_\_\_\_\_ and \_\_\_\_\_, Lot 1, whose deed is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry;

\_\_\_\_\_, Lot 2 whose deed is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry;

\_\_\_\_\_ and \_\_\_\_\_, Lot 3, whose deed is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry;

\_\_\_\_\_ and \_\_\_\_\_, Lot 4, whose deed is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry;

\_\_\_\_\_, Lot 5, whose deed is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry; and

\_\_\_\_\_ and \_\_\_\_\_, Lot 6, whose deeds are recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ and Book \_\_\_\_\_, Page \_\_\_\_\_.

The land of \_\_\_\_\_ shown on said Plan as Lot 7 shall not have membership and rights and obligations in this Association until such time as that land and/or a portion of that land has located thereon a dwelling and/or a new lot which uses \_\_\_\_\_ Drive as its primary access. If and when such a dwelling and/or lot is created, its record owner will become a member of the Association and the number of Members will be increased to seven (7).

The holder or owner of a security interest only, such as a mortgagee, shall not be qualified to be a Member.

#### ARTICLE IV

**The corporation shall have perpetual existence.**

#### ARTICLE V

The affairs of the Association shall be managed by the Members at membership

meetings. Members shall elect a President, Secretary and a Treasurer annually who shall serve as Directors between membership meetings on such matters as delegated by the Members. The duties of the officers shall be as prescribed by these bylaws.

ARTICLE VI

The names of the officers who are to serve until the first election under these Bylaws shall be:

\_\_\_\_\_ President  
\_\_\_\_\_ Secretary  
\_\_\_\_\_ Treasurer

Said officers shall serve until August 1, 2009, before which the officers shall call with not less than fifteen (15) days notice a meeting of the Members to conduct the first election of officers who shall serve until the annual meeting in October, 2009.

ARTICLE VII

The Association shall hold an annual meeting in October of each year to elect officers and conduct business and shall hold other meetings as necessary.

ARTICLE VIII

At all meetings and elections, all the Members may cast only one vote for each residential dwelling owned and all such units owned by tenants in common or joint tenants may cast only one vote as a group for each lots owned. For any vote to be effective on any issue, there must be a vote in favor of the decision of at least two-thirds (2/3) of the Members.

ARTICLE IX

The bylaws of the corporation may be amended, altered or rescinded only by two-thirds (2/3) of the Members at an annual meeting.

All amendments shall not become effective until recorded in the Kennebec County Registry of Deeds.

Amendments may be proposed by any Member.

ARTICLE X

Officers

Section 1. Officers. The officers of the Association shall be a President and a Secretary/Treasurer. They shall take office immediately after election.

Section 2. The President. The President shall be the chief executive officer of the Association, and shall perform such other duties as from time-to-time may be assigned to him by the Members. The President shall be ex officio a Member of all committees.

Section 3. The Secretary and Treasurer. The Secretary shall keep the minutes of all the Members' and Officers' meetings and the Treasurer shall have the custody of all the receipts, disbursements, funds, and securities of the Association. They shall perform all duties incident to the office of Secretary or Treasurer and shall perform such other duties as may from time-to-time be assigned by the Members or the President.

Section 4. Registered Agent. The Members shall appoint a Registered Agent for the Association who shall serve until replaced and who need not be a Member, but who must be a Maine resident, and whose duties shall be limited to those provided by Maine law.

ARTICLE XI

Meetings of Members

Section 1. Annual Meetings. There shall be an annual meeting of the Members of the Association each October at such place as may be designated in Readfield, Maine of each year. Notice for such meeting shall be given three (3) weeks in advance.

Section 2. Special Meetings. Special meetings of the Members shall be held whenever called by the President or by at least four (4) Members. Three (3) weeks notices shall be given

to all Members.

Section 3. Proxy. Votes by Members may be cast in person or by written proxy by any Member, with only one vote for each lot owned as provided for in Article VIII.

Section 4. Quorum. A quorum shall consist of at least four (4) Members either in person or by proxy, and it shall take two-thirds (2/3) vote of the Members to decide any question that may come before the meeting.

#### ARTICLE XII

Section 1. Qualifications. Only persons qualified to be Members under Article III shall be Members.

Section 2. Members. A Member shall have no vested right, interest, or privilege of, in, or to the assets, functions, affairs, or facilities of the Association, or any right, interest, or privilege which may be transferable or inheritable, or which shall continue after Membership ceases.

#### ARTICLE XIII

Section 1. The Association shall have the right and power to subject the property of its Members to an annual subdivision maintenance fee and charge.

Commencing November 15, 2009, and on the same day of each year thereafter, each owner of a lot with a substantially complete residence, shall pay in advance, the maintenance fee and charges and such payments shall be used by the Association to create and continue a Maintenance Fund to be used by the Association as hereinafter stated. The Association may vote to access the maintenance fee and charges in installments and to set the due date for such installments. The charges will be delinquent when not paid within thirty (30) days after they become due.

The annual maintenance charge may be adjusted from year-to-year by the Members as the common area, storm water management facilities and road maintenance needs in its judgment may require and shall be asserted equally and for the same amount for each residential dwelling unit.

Section 2. The maintenance charge shall be used for improving and maintaining the said common areas, road, drainage and storm water management facilities and the sight distances on the curves and intersections of the roads. It shall also be used for providing liability insurance coverage for the Association, its Members and Officers and the costs of consultants.

#### ARTICLE XIV

The Association shall have the power and authority to enforce and collect said maintenance fees by any action including actions at law and equity, and including attachment of Members' property. Members who are in default of their fees shall also be liable to the Association of reasonable interest and late charges set in advance by the Association and for the Association's reasonable costs of collection, including but not limited to, attorney's fees and costs. The maintenance fees shall constitute a lien upon the land of the Members and shall run with the land.

#### ARTICLE XV

##### Insurance

The Association shall maintain in full force and effect a general liability insurance policy for the benefit and protection of the Association, its officers and Members. It shall cover all land, common areas, facilities, equipment, and activities owned, operated and/or maintained by the Association as well as personal property and all acts performed for the Association. It shall have a face amount which shall be determined from time to time by the Membership. Costs of insurance shall be a part of the maintenance fee.

#### ARTICLE XVI

##### **Indemnification of Officers and Members**

Each officer, member and employee of The Corporation shall be indemnified by The Corporation to the extent of insurance coverage against expenses, including attorneys' fees,

judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of The Corporation), by the reason of the fact that such person is or was an officer, member or employee of The Corporation, if such person acted in good faith and in a manner reasonably believed to be in the best interests of The Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not of itself, create a presumption that the person did not act in good faith and in a manner which is reasonably believed to be in the best interests of The Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Expenses incurred in defending a civil or criminal action, suit or proceeding, may be paid by The Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Members in the manner provided by the applicable statutes of the State of Maine concerning indemnification by nonprofit corporations currently contained in 13-B M.R.S.A. § 714, sub-§ 3 (or the corresponding provision of future Maine law), upon the receipt of an undertaking by or on behalf of the officer, member or employee to repay such amount, unless it shall be ultimately determined that such person is entitled to be indemnified as provided herein.

In the event that such action or proceeding be by or in the right of The Corporation, The Corporation shall have the same power to indemnify and insure any such director, officer or employee, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such duty, unless the court wherein the action or proceeding is tried shall specifically find that despite the adjudication of liability, but in view of all the circumstances of the case, such a person is fairly and reasonably entitled to indemnity.

The indemnification provided by these bylaws shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute or regulation of the State of Maine.

As used in this provision, the terms "officer", "member", "employee" include the respective heirs, executors and administrators of persons holding such offices in The Corporation.

#### Consent and Agreement

We, for ourselves and our heirs, successors and assigns, consent and agree to be bound and our land described herein to be subject to the terms and conditions of these Bylaws, and as amended hereafter, which shall run with the land.

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

Dated: May \_\_\_\_\_, 2009 \_\_\_\_\_

State of Maine  
County of \_\_\_\_\_, 20\_\_\_\_

Then personally appeared the above named \_\_\_\_\_ and  
acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
.  
.  
.

State of Maine  
County of \_\_\_\_\_, 20\_\_\_\_

Then personally appeared the above named \_\_\_\_\_ and acknowledged  
the foregoing instrument to be her free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**Appendix I: Sample Quitclaim Deed with Covenant**

**This sample is offered for educational purposes. A quitclaim deed is a legal document. You should consult with an attorney before finalizing any quitclaim deed.**

**QUITCLAIM DEED WITH COVENANT**

\_\_\_\_\_ of Nowhere, County of Kennebec and State of Maine, for consideration paid, grant, convey and forever quitclaim to the **LAKE DRIVE IN NOWHERE OWNERS ASSOCIATION**, a Maine not-for-profit mutual benefit corporation of Nowhere, County of Kennebec and State of Maine, whose mailing address is 4 Lake Drive, Nowhere, Maine 04000, with quitclaim covenant, a certain lot or parcel of land situated in the Town of Nowhere, County of Kennebec and State of Maine, more particularly bounded and described as follows, to wit:

The Lake Drive being a residential private road in Nowhere, Kennebec County, State of Maine, as shown and fully described on the Boundary Survey of Lake Drive recorded in the Kennebec County Registry of Deeds in Plan File # \_\_\_\_\_, Sheet \_\_\_\_\_.

Being a portion of the land of the Grantor described in a deed recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in said Registry.

IN WITNESS WHEREOF, the said \_\_\_\_\_ has caused this instrument to be sealed as her free act and deed this \_\_\_\_ day of May, 2009.

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_

STATE OF MAINE  
COUNTY OF KENNEBEC

May \_\_\_\_, 2009

Personally appeared before me the above-named \_\_\_\_\_ of \_\_\_\_\_, Maine and acknowledged the above-instrument to be her free act and deed.

\_\_\_\_\_  
Notary Public/Attorney-at-Law

**Appendix J: Sample Drainage Easement**

**This sample is offered for educational purposes. A drainage easement is a legal document. You should consult with an attorney before finalizing any easement.**

Know all those by these presents, that (I / We) \_\_\_\_\_, (Grantors) of the Town of \_\_\_\_\_ County of \_\_\_\_\_ and the State of \_\_\_\_\_, for considerations paid, grant unto said Grantee(s) located at the address of \_\_\_\_\_, and (its / their) successors and assignments, the following described drainage easement being located on \_\_\_\_\_ (Road), in the Town of \_\_\_\_\_, County of \_\_\_\_\_. Said Drainage Easement to be recorded in the \_\_\_\_\_ Registry of Deeds.

**“DRAINAGE EASEMENT”**

Granting to the said Grantee(s) the perpetual right to enter upon land outside of and adjoining the right of way limits of said road in said Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Maine, for all purposes necessary to construct and maintain ditches and sheet flow; to convey water to or from a road culvert / road ditch over and across adjoining land in the direction specified, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The herein described easement being over land of the said Grantor(s) that (he / she / they) acquired from \_\_\_\_\_ By (warranty / Quit / Claim / Release) or (Foreclosure) deed, dated (signed) \_\_\_\_\_ and recorded at the \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_ on Page \_\_\_\_\_.

Witness their hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(GRANTOR)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(GRANTOR)

State of Maine  
County of \_\_\_\_\_ ss \_\_\_\_\_ 20\_\_\_\_

Personally appeared the above named \_\_\_\_\_ and acknowledged the forgoing instrument to be their free act and deed.

Before me, \_\_\_\_\_ Notary Public - My term expires, \_\_\_\_\_

## General

### **Appendix K: Liability Exposure Generally for All Private Roads**

The law governing liability exposure, known as Tort Law, is arcane, very complex, and is driven primarily by the facts of each separate incident in which someone is injured or suffers property damage. As a result, any general discussion of liability exposure for road associations and private road owners is necessary, but has limited utility.

The bottom line is that anyone having an ownership or maintenance and repair relationship or uses a private way to access their private property needs to have protection of liability insurance. Without it, one's property and financial security is continuously at risk. Even in those circumstances where there is statutory immunity, the cost of defending against a frivolous case can be substantial and liability insurance not only provides for protection against a judgment, but it also provides for the cost of defense. Given the relatively low cost of liability insurance for road associations, no association or member of an association should be without it and no owner should expose themselves to liability by being active in a road association which does not carry liability insurance. If you have any questions about liability, you should consult with an attorney.

*This section was excerpted from a discussion provided by Clifford H. Goodall, Esq. of Dyer, Goodall & Denison, P.A.*

## Appendix L: Regulatory Considerations

### REGULATORY ASPECTS AND PERMITTING

There are three laws that may apply to camp road maintenance: the Erosion and Sedimentation Control Law, the Natural Resource Protection Act, and the Mandatory Shoreland Zoning Act (with associated local ordinances). All of these laws require a permit to do some kinds of road work so that state and local officials can ensure that our lakes, streams, coastal areas, and wetlands are protected. Read this section, then contact the municipality in which the project is located and the Maine DEP to find out if a permit is necessary, and if so, how to obtain one.

**The Erosion and Sedimentation Control Law** requires that erosion control devices be installed before any activity begins that will disturb the soil to prevent offsite transport into a water body, and that the devices be maintained until the site is permanently stabilized. The law also requires that **existing areas eroding** into a lake, stream, river or wetland be **stabilized by July 1, 2010**. If the eroding area is in a watershed of a **water body “most at risk”** (contact the Maine DEP or your local Soil & Water Conservation District for an updated list), it must be **stabilized by July 1, 2005**. This means you must follow erosion control procedures when your camp road maintenance or construction disturbs the soil, and you must ensure that the disturbed area is permanently stabilized.

**The Natural Resources Protection Act (NRPA)** regulates activities in, on, over, or within **75 feet** of lakes, ponds, rivers, streams, brooks, and wetlands. Regulated activities include filling, disturbing the soil, building permanent structures, removing, or displacing vegetation, dredging, or draining. A permit is required from the DEP before starting any of these activities. Two types of permits are available: a Permit-by-Rule (PBR), and a full permit. A Permit-by-Rule only requires that you file notice and follow a set of prescribed standards; a full permit involves a formal project review by the DEP. Most camp road-related activities can be done under the Permit-by-Rule program. Replacing existing culverts does not require a permit, provided the culvert is no longer than 75 feet or no more than 25% longer than the original culvert. Replacing existing bridges is also exempt from the permitting process, provided the new bridge has the same dimensions, does not block fish passage, and does not intrude any further into the water body or wetland than the old bridge.

**The Mandatory Shoreland Zoning Act** (and associated municipal ordinances) regulates development along the immediate shoreline of lakes, rivers, tidal areas, wetlands, and some streams. The law requires towns to zone all areas within **250 feet** of these resources with the exception of streams, where the zoned area need only be 75 feet. Each town's ordinance may be different, but the ordinance must be at least as stringent as the state's minimum guidelines. As a camp road owner, you must check with the Town's Code Enforcement Officer to determine if the work you plan for your camp road requires a permit from the town. Generally, maintenance activity on existing roads does not require a permit. However, if you plan to fill, disturb soil material, or widen the road, a permit may be required.

**Effective January 1, 2013**, excavation **contractors** conducting excavation activity in a **shoreland area must be certified** in erosion control practices by the Maine DEP. Excavation activity includes the disturbance of soil, including grading, filling and removal of more than one cubic yard of earth material.

In addition to the above laws, construction of **new** camp roads may require permits under either the **Stormwater Management Law** or the **Site Location of Development Law**. Contact the DEP if your project involves 20,000 square feet or more of road construction or will disturb more than 1 acre of land. There may also be local ordinances or land use codes and road standards for both new and expanded private roads. The local Code Enforcement Officer will be able to provide this information.

## Appendix M: Forming a Budget

How much do you need to spend on your road? For many roads the answer to this question is- "more." If a gravel road is not maintained at a level that allows it to hold up to the forces of vehicle traffic and weather the road will degrade to the point where fixing it properly will be very expensive. Akin to the maintenance of an automobile there are two options; 1) spend a little money periodically to repair your "old beater" and run it into the ground, or 2) spend a moderate amount of money periodically on a car payment for a car that will be cheaper to maintain. Option one may be cheaper but you don't have as nice a car as in option two. Now in this car scenario both options have their benefits, but in the case of your road the "old beater" approach results in a dangerous, rough, road that is polluting our environment. Maintenance to your road needs to be done every year. This means that a moderate amount of money needs to be spent every year.

How do you figure out what the "moderate" amount of money is for you road?

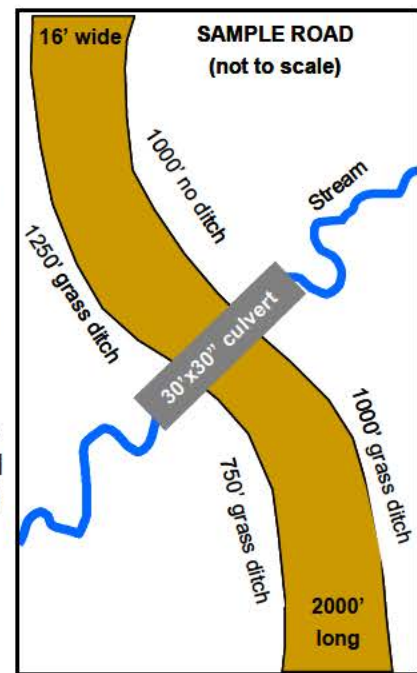
Here's an example:

### Sample road:

- Is 2000' long and 16' wide
- Has a total of 3000' of ditches
- One 30"x30" culvert
- Is a year-round gravel road

To determine yearly maintenance cost we need to look at the different components of gravel road maintenance: road surface, ditches, culverts, and snow removal.

Road Surface Maintenance: You may have noticed that your gravel road surface is not static. Its shape is constantly changing due to a variety of forces: vehicle traffic, erosion, snowplows, dusting, etc. Gravel road surfaces change shape due to the "loss of material." Essentially road surface material is lost in one of four ways: through dusting, by sinking into the ground, by raveling (material is kicked off of the road by vehicles), or through erosion. As a result the road surface needs to be reshaped periodically in order for it to efficiently shed water into the road ditches; this is accomplished using some sort of road grading equipment to recover some of the material that has been "lost" to the road shoulder.



Unfortunately, this can only recover a portion of the road surface material that has been lost. This means that every year you are losing a certain amount of road surface material. Therefore to maintain the road surface you not only need to reshape the road surface periodically to recover as much "lost" material as possible, you need to periodically add road surface material. For a year round road, grading should be done twice per year – preferably once after the snow melt and before the spring rains and once before the fall rains. Adding road surface material should be done when there is not enough material to form a sufficient crown.

### Sample road

**Grading:** Road grader at \$65/hr for 6 hrs: **\$390.00**

**Surface Material:** Let's assume this road needs about 6" of gravel every four

years. Rather than wait four years and add gravel to the entire road, add gravel to a different 500' section every year.

500' long x 16' wide x 0.5' gravel/27= about 150 cu.yds.

150 cu.yds x \$17/cu.yd for surface gravel delivered= **\$2550.00**

**Annual Total: \$2940.00**

Ditches: Ditches need to be maintained or cleaned out periodically because "lost" road surface material often ends up in the ditch. Periodic road surface grading will help minimize the filling of the ditches but the ditches still need to be "cleaned out" on occasion. There are many factors that influence the frequency that ditches need to be cleaned out including; the size of the original ditch, the frequency that the road surface is graded, and soil type to name a few.

**Sample road**

***Ditching:*** Let's assume that the ditches need to be cleaned out every 7 years.

The contractor has given a quote of \$2000.00 for a day's worth of ditching, and figures that he or she can do about 1000 feet.

\$6000.00 worth of ditching every ten years

**Annual Total: \$600.00**

Culvert(s): Culverts need to be replaced when they deteriorate, have been damaged or wash away. Depending on the type of material, they will last anywhere from 15 to 50 years (some times even longer). Corrugated metal pipe deteriorates most quickly while concrete and plastic pipes tend to last much longer.

**Sample road**

***Culvert:*** Assume the culvert will need to be replaced every 25 years

30' x 30" Plastic Culvert = \$725.00 \*

Installation costs: \$ 750.00

Total cost: \$1475.00 / 25 years

**Annual Total: \$59.00**

*\* Culvert diameter may change as the developed area changes. More development may result in increased surface water runoff which in turn will require a larger culvert to accommodate this additional flow.*

Snow removal: This includes snow removal and sanding.

**Sample road**

***Snow removal:***

**Annual Total: \$1500.00**

**Sample Road Annual Expenses:**

Road Surface:	\$2940.00
Ditches:	\$600.00
Culverts:	\$59.00
Snow Removal:	\$1500.00
<b>Grand Total:</b>	<b>\$5099.00 / year</b>

Maintenance for your road may be more or less than this example. Keep in mind this budget only includes maintenance and assumes that your road is in decent shape to begin with. It is possible that a considerable expense is necessary to get your road to the point where the above maintenance budget example would apply.

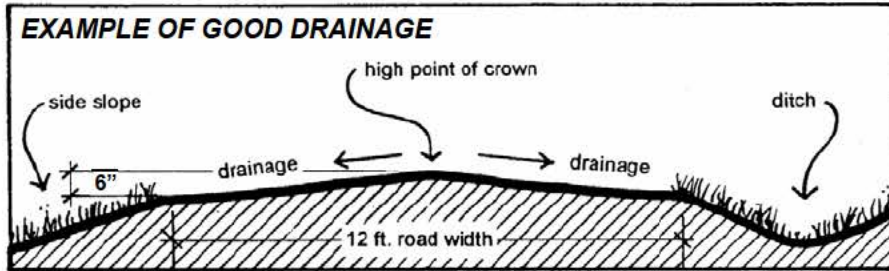
*This section was provided by the Kennebec County Soil and Water Conservation District, 2009.*

## Appendix N: Choosing a Contractor and Requesting an Estimate

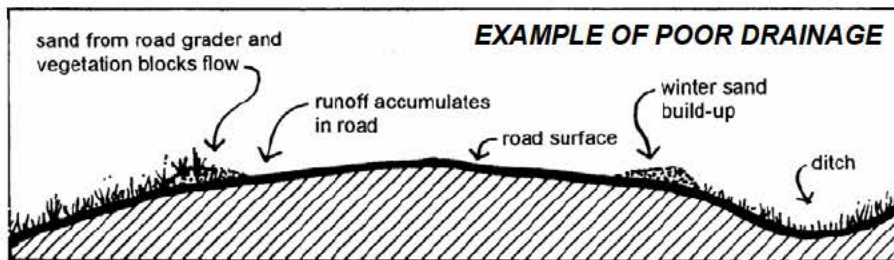
### Contact Local Contractors:

Ask to see other gravel roads which the contractor has worked on. This will give you a good idea of what you can expect for your project and whether the contractor uses proper road maintenance techniques. Some key things to look for include:

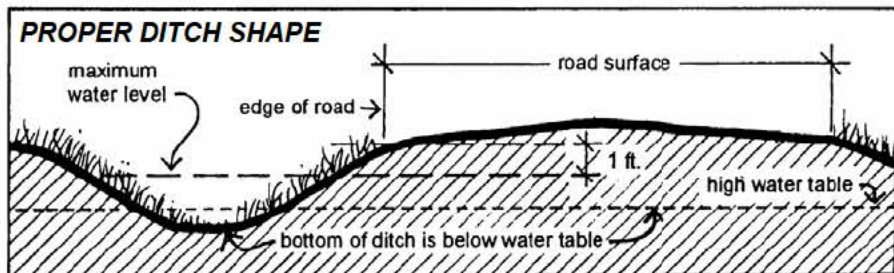
**Presence of a crown:** road should have a noticeable pitch towards the ditch/shoulder. The pitch of the crown on a gravel road should be about 8%, or ½ inch of crown per foot of road width.



**Presence of grader berm:** the transition (laterally) from road surface to shoulder to ditch should be free of obstruction. Below is an example of a road profile where material is trapping water on the roadway, and is what you do not want to see on the gravel road. This will result in the erosion of road surface material and possibly increase the incidence of potholes.



**Ditch shape:** the shape of the ditch should be a rounded-V. The side slopes of the ditch should not be steeper than a 1.5:1 slope.



**Soil stabilization:** after construction all areas of exposed soil (except for the travel way) should be stabilized using vegetation, rock, or erosion control mulch.





Consider hiring a "certified contractor." The Maine Department of Environmental Protection has developed an incentive program to recognize contractors who make an ongoing effort to learn about erosion control practices. This program, called the Voluntary Contractor Certification Program, provides contractors with training in environmental laws and erosion control practices that relate to working near sensitive natural resources. A certified contractor is not necessarily more qualified to work on private roads, but does have more training in erosion control measures and understands the relationship between eroded soil and lake water quality. See DEP's Nonpoint Source Training and Resource Center website at [www.state.me.us/dep/blwq/training](http://www.state.me.us/dep/blwq/training) or call Bill Laflamme at 287-7726 for a list of certified contractors.

#### Request an Estimate:

- Request estimates from more than one contractor.
- Provide contractors with a detailed description of the work you want done and request itemized estimates in return. (See Appendix N).
- Ask for a "not to exceed quote" to ensure that the job stays within your budget.
- Ditch by the day. If your road needs to be ditched, plan on at least a day's worth of ditching at a time because of equipment transportation costs. It is easy for a contractor to quote you for a day's worth of ditching. You will still want to prioritize which sections of road you will want to ditch first.
- Plan ahead! Available contractors can be very hard to find as the construction season approaches.



Camp road undergoing reconstruction. Road has been regraded to direct runoff to rip rap drainage ditch / detention structure along road side and new grass strip has been installed for soil stabilization.



Same section of camp road several months after reconstruction.

## Appendix O: Sample Gravel Road Maintenance Agreement for Contractors

**DIRT AND GRAVEL ROAD MAINTENANCE PROJECT  
AGREEMENT BETWEEN  
\_\_\_\_\_ ROAD ASSOCIATION  
AND  
\_\_\_\_\_**

Now, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the \_\_\_\_\_ Road Association ("Association") and \_\_\_\_\_, known herein as the "project participant", agree as follows:

(1) \_\_\_\_\_ will conduct, or cause to be conducted, a road maintenance project on specified portions of \_\_\_\_\_, in accordance the Application and Work Plan attached hereto.

(2) This project will be conducted in accordance with standards that prohibit the use of materials or practices that are environmentally harmful and in accordance with the application and work plan attached hereto and incorporated herein. Any changes or modifications to the work plan will be performed to the satisfaction of the Association.

(3) This project will be conducted in accordance with the "General Contract Conditions" required by the Commission, the "Dirt and Gravel Road Maintenance Program Statement of Policy" as adopted by the Commission and as may be amended from time to time, and the environmental standards approved by the Quality Assurance Board, which are attached hereto and incorporated herein.

(4) The project participant agrees to provide timely documentation to the Association that all required federal, state, or local permits have been obtained, and further agrees to comply with all such permits as a condition of performing this agreement.

(5) The project participant shall ensure that this contract and all other arrangements entered into pursuant to the implementation of this contract are in conformance with all applicable local, state, and federal laws, rules, and regulations.

(6) The Association agrees to fund the eligible costs for this project in an amount up to, but not exceeding \$ \_\_\_\_\_.

(7) The project funds will be disbursed by the Association to \_\_\_\_\_ in accordance with the attached schedule of payments.

(8) A project participant shall maintain a separate accounting of funds received under the program.

(9) Records must be kept for three years.

(10) The Association will have access to all relevant program documents during that time.

(11) The Association shall not be held responsible for any loss of life, personal injury, or property damages of any kind incurred in performing or completing the work or duties under this contract.

(12) The project participant agrees to provide the Association with a completed copy of the Project Performance Report when the project is completed.

(13) The project participant shall complete the project no later than \_\_\_\_\_, unless an extension of time is approved by the Association.

(14) This document and the attachments hereto constitute the entire agreement between parties.

WHEREFORE, the parties have set their hands on the date indicated, intending to be bound hereby.

FOR THE ASSOCIATION: FOR: \_\_\_\_\_

\_\_\_\_\_  
(Signed) (Date) (Signed) (Date)

\_\_\_\_\_  
(Print Name) (Print Name)

\_\_\_\_\_  
(Title) (Title)

List of Attachments:

Attachment A - Grant Application

Attachment B - Work Plan

Attachment C - General Contract Provisions

Attachment D - Dirt and Gravel Road Maintenance Program Statement of Policy

Attachment E - Quality Assurance Board Standards

Attachment F - Schedule of Payments

Attachment G - Project Performance Report

*From Penn State Materials Research Institute ([www.mri.psu.edu/centers/cdgrs/Downloads/contract.pdf](http://www.mri.psu.edu/centers/cdgrs/Downloads/contract.pdf))*

## **Appendix P: Guidelines for Running Effective Meetings**

### **Conducting the Meeting**

The facilitator has primary responsibility for moving people through the agenda in the time available and involving as many people as possible in the process. He/she helps the group make decisions at the appropriate time, and encourages everyone to take a responsible part in the meeting. A facilitator plays no role in substantive, issue-oriented discussions.

Here are a few recommendations to help a facilitator:

- start the meeting promptly
- review the agenda and summarize major points
- keep the discussion focused and ask if people are ready to make a decision
- try to involve everyone in the discussion
- avoid making judgments
- keep people from interrupting each other
- help the group make decisions by noting points of agreement
- avoid letting one or two people dominate the meeting

### **Ending the Meeting**

It is important to close a meeting with a sense of accomplishment and direction. Before people leave:

- review all of the decisions that were made;
- determine who is taking responsibility for carrying them out, and by what date
- set a time and place for the next meeting
- encourage everyone to participate in cleaning up the room

*Adapted from University of Massachusetts, Citizen Action Fact Sheet No. 2, prepared by Michael Kane, Cooperative Extension, Amherst, Massachusetts, 1982. <http://crs.uvm.edu/gopher/nerl/group/a/k.html>*

## Appendix Q: Group Decision Making

Group decision making can be complicated. There are different ways to reach a decision and which method to use varies for each situation. Before calling for a vote, answer the following questions, to choose the most appropriate strategy:

*Who needs to be included in this decision? Who are the important players that can help or hinder our success? Do we have all of the information to make this decision? When does the decision need to be made? Should we postpone a decision until we have more research or group members?*

### **MAJORITY VOTE:**

**Description:** Everyone gets one vote, the largest number of votes prevails.

**Pros:** Majority vote is fast and easy and can give you a general idea on how the group feels about an issue.

**Cons:** It creates winners and losers, and the losers don't necessarily like or support the majority's decision. Some rely on majority vote too frequently rather than the group working through issues to achieve a win/win solution.

**When to use:** Majority vote should be used when limited time is available to make the decision and when the decision does not need the full support of the membership to be successful. It may also be used to take a poll of the group before spending a lot of time on an issue that most of the group is against.

**Tip:** Ask everyone to state their experiences, opinions and feelings about the subject. By allowing everyone's input, people feel less rushed and have more information before voting.

### **DESIGNATED GROUP DECISION:**

**Description:** A subgroup such as the board, a committee or task force is given the authority to make the decision for the whole group.

**Pros:** A smaller group may have the expertise or can research an issue before deciding the best course of action. Small groups may work quicker than the larger membership.

**Cons:** Minority vote may result in a disagreement between the decision-makers and the membership. The smaller group may think they have all the answers without considering all sides, and may leave out important facts or opinions.

**When to Use:** When the whole group does not have the time or expertise to consider all of the information around an issue. When the decision does not require the full support of the whole organization to be successful. It also can be used as an escape clause when a group is unable to reach consensus. (More about escape clauses later.)

### **LEADER DECIDES:**

**Description:** The leader decides without a vote, or consensus of the group. They may or may not have requested input.

**Pros:** Leaders are in their positions because they have been hired or elected because of their knowledge and/or experience. Leaders should have full authority to make certain decisions. The leader can make quick decisions and it allows the larger group to focus on major issues and allow the leader to guide the organization on a daily basis.

**Cons:** This does not allow members of the group to have a voice in the organization. The leader may make decisions that do not reflect the group they lead or they may not have all of the information to make the best decision for the organization.

**When to use:** When the leader has specific information or authority to make a decision. The leader may not have time to bring the decision to the group or does not need input or support. The key is making sure everyone understands when the leader decides and when the group decides.

### **CONSENSUS:**

**Description:** Consensus is a process where every member of the decision making group participates in the discussion and decision. Members express their ideas, opinions, experience, feelings and position on a specific issue. Each member's job is to listen to the ideas, opinions, experience, feelings and positions of all other members. The goal of consensus is to reach a carefully examined, thoughtfully considered decision that each member can support. Consensus does not always mean everyone thinks the solution is optimal, but is workable.

**Consensus includes:** pooling opinions, effective listening, discussing ideas and differences and agreement to the point that everyone can support a decision.

**Consensus does not include:** voting, majority rule, minority rule, leader rules or bargaining.

**Pros:** Allows all people to participate in the decision. Creates ownership and support from the group, which means a greater chance for success. Because everyone participates, more information and points of view are shared, decisions tend to be better. Members are more informed and may stay more connected to the organization.

**Cons:** Consensus is very time consuming and can be difficult to reach. It can be misused, overused, or used inappropriately. Can be a source of conflict if not used correctly.

**When to Use:** Use for those decisions when you want and need the whole group's support or for major issues that define the future of the organization. Consensus is a time-consuming process and should not be hurried.

**Tips:** Define deadlines for making the decision up front. Decide on an escape clause, or backup method if the group cannot reach consensus. The group may choose to revert to majority vote with a certain percentage of agreement (usually 85-90%) needed for the decision. The escape clause could include turning over the decision to a subgroup representing all perspectives--either to get additional information or to decide for the group.

*Adapted from Neighborhood Resource Center of Colorado's Tip Sheet No. 6.*

**Appendix R: Forming a Road Association Worksheet -  
Start the Process**

<b>Road Association Name</b>	
<b>Type of Road Association</b>	
<b>Possible Steering Committee Members</b>	
<b>Possible Association Goal</b>  <i>(can list road concerns then make mission statement to address)</i>	

**Plan for Next Steps:**

- Contact steering committee candidates - by \_\_\_\_\_ (date)
- Walk the road - by \_\_\_\_\_ (date)
- Contact technical help - contact \_\_\_\_\_ (who)  
- by \_\_\_\_\_ (date)
- Develop maintenance plan - by \_\_\_\_\_ (date)
- Develop association budget - by \_\_\_\_\_ (date)
- Determine maintenance fee - by \_\_\_\_\_ (date)
- Develop bylaws - by \_\_\_\_\_ (date)
- Recommend board - by \_\_\_\_\_ (date)
- Hold informational meeting - by \_\_\_\_\_ (date)
- Send out meeting notification - by \_\_\_\_\_ (date)
- Hold organizational meeting - by \_\_\_\_\_ (date)