

Caswell, Lynne

From: Albert Calve <calveab@yahoo.com>
Sent: Wednesday, August 28, 2019 7:04 PM
To: Caswell, Lynne
Subject: Road abandonment in Perham

Thank you, We received the notification of the subcommittee mtgs scheduled for this month. Being CT residents, we strongly ask that this subcommittee hear and consider our plight as non resident property owners in Perham, ME. We understand that we are powerless to have our concerns regarding snow plowing taken into consideration at the local level. Even the local residents at this end of town are now being discriminated against as the town has "voted" to cease plowing the end section of High Meadow Rd. past the intersection of Beaver Brook Rd. to "save money". Note there are two full time taxpaying residents currently living on this short section of High Meadow Rd..

We own 40 acres of land and have built a retirement home with our life's savings on Maggie Drive which is accessed solely by the end of High Meadow Rd.. Two other homes are also on Maggie drive, one is a beautiful log home now vacant and for sale, the other is used by another elderly (disabled) family as a camp. We have formed an association to have our private road, Maggie Drive plowed, but now the plow wont be able to reach Maggie Drive anymore, and we feel that enough is enough. The town has overstepped its boundaries and should not be able to vote to discriminate against residents that have invested \$\$\$\$ in developing their properties placing them at risk in the winter. We had contracted our heating company to install monitors in our home and gave them a key to access it in the event something happens to our heating system. They will no longer be able to do so now. We cant believe a town that collects taxes from people could simply vote to exclude winter access to its taxpayers.

Again, Ms. Caswell, we ask that the subcommittee hears this complaint and acts on it before the snow flies and snows us out and others in.

Thank you.

Doreen and Albert Calve

Sent from Yahoo Mail for iPhone

Caswell, Lynne

From: Herb Fremin <h.fremin@verizon.net>
Sent: Thursday, September 12, 2019 2:46 PM
To: Caswell, Lynne
Cc: Roberta Manter
Subject: Abandoned & Discontinued Roads - Maine

September 12, 2019

Ms. Lynne Caswell
Legislative Analyst

Dear Ms. Caswell

My name is Herb Fremin and I am the owner of landlocked property on Curtis Road in Arundel Maine. I purchased the property in 1988 and as of today - 31 years later - I have no legal means of accessing or developing my property.

The rationale for this lack of access was a discontinuance of Curtis Road in 1954 - a discontinuance that was never highlighted at the time of my purchase. No one, not the seller, the realtor, town officials, nor attorneys providing the title insurance conveyed the restrictive status of the property. Since my purchase, Arundel town officials have done nothing to help me resolve the problem. In fact they have only added additional roadblocks should I manage to resolve the matter myself.

Given my circumstances, I am writing in support of recommendations submitted to the members of the Subcommittee on Abandoned and Discontinued Roads from Roberta Manter who has offered insightful remedies to longstanding abandoned road issues in Maine.

The issue of abandoned and discontinued roads in Maine presents hardships for many people in the State of Maine. It is time to address those problems and propose solutions that unfairly burden the many tax-paying abutters who live along these roads.

I appreciate any effort you can take to resolve these current unfair practices.

Sincerely,

Herb Fremin
10 Concord Sq #1
Boston, MA 02118

Caswell, Lynne

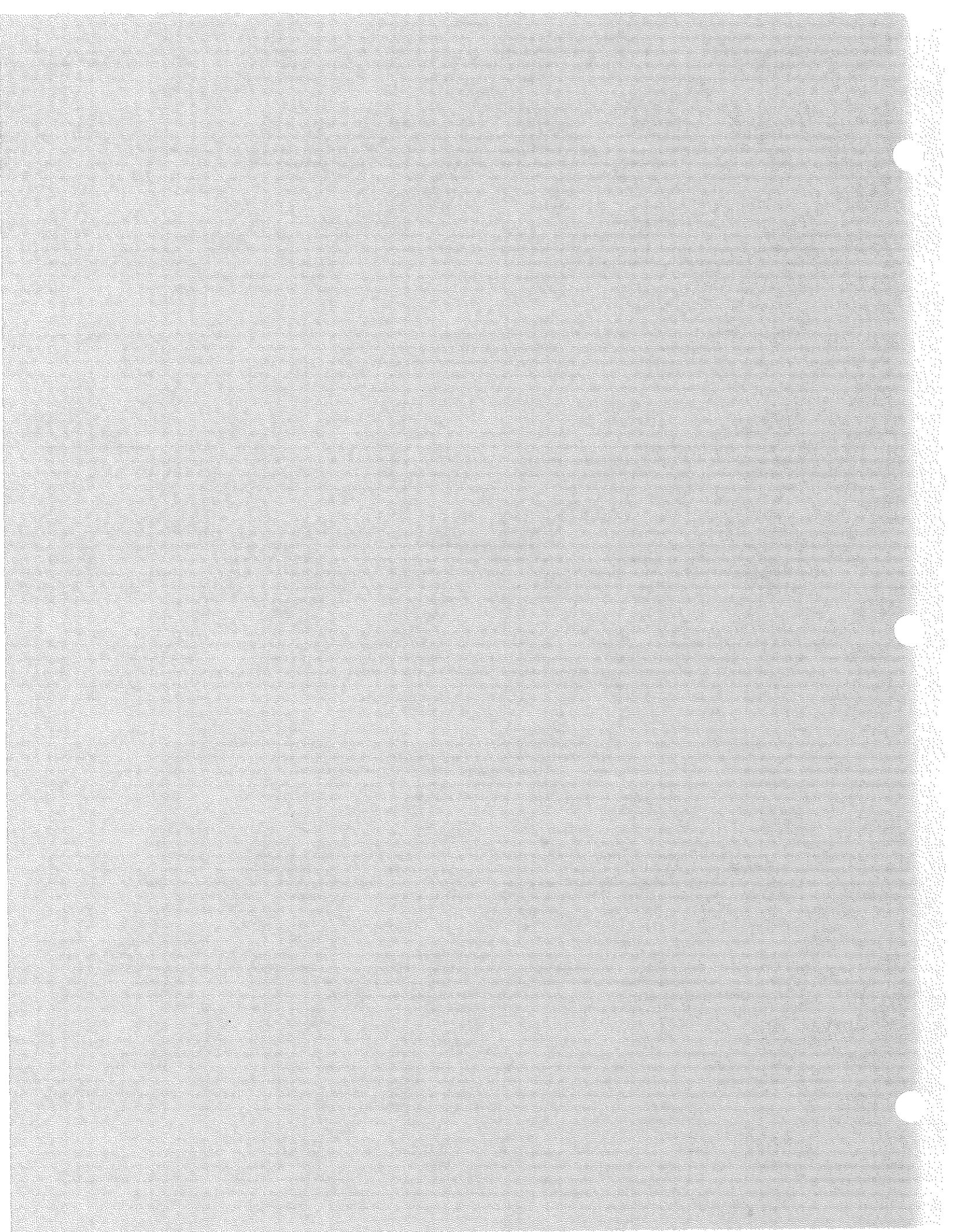
From: Brenda Stickney <moosemountain@rocketmail.com>
Sent: Thursday, September 12, 2019 11:17 AM
To: Caswell, Lynne
Subject: Abandoned roads

Hello Lynne; Roberta Manter suggested that I contact you in regards to our road. We have been living here off grid on Skyline Drive for 17 years. We have two miles of road to maintain, one mile of which was apparently abandoned sometime between the 1920s and the 1970s. The other mile is a new road that was approved by the Andover Planning Board in the late 1980s. The status of Sawyer Notch Road was recently addressed in a court case and is now apparently a public easement.

Andover recently had a revaluation completed, and the assessors valued our land as the highest value in all of Andover, at \$45,000 per acre, vs. \$12,000 per acre in the village. This is a serious injustice, and I am currently appealing the valuation to Superior Court. If you'd like, I can share with you all of the challenges we face as full time residents on this dirt road, as stated in my appeal. It is valued higher than all of the other mountain view lots in the entire town, including those with power, utilities and public maintenance.

If you have any questions, feel free to email me. Thank you,

Brenda Stickney, Owner
Skyline Ridge Vacation Rentals
www.skylinridgevacationrentals.com
moosemountain@rocketmail.com
Andover, Maine
207-357-7004



Caswell, Lynne

From: Neil Lanteigne <nlanteigne@hotmail.com>
Sent: Thursday, September 05, 2019 11:22 PM
To: Caswell, Lynne
Subject: Neil Lanteigne letter for Abandoned and Discontinued Roads Subcommittee

Dear Members of the Subcommittee on Abandoned and Discontinued Roads,

My Name is Neil Lanteigne, I am a landowner in Paris along an old Maine Road,

The road in Paris is known as Dean Road and in West Paris is known as Finn Road. The Paris side of the road was discontinued to the Dean Homestead (My Property) in 1931 without easement. The West Paris side of the road was voted "Closed" in march, 1965 to the Paris / West Paris town line. It is worth noting, in 1773 Rangeways were established by the Proprietors of Township # 4 (Paris and West Paris) that exist forever. I believe these Rangeways wee established in order to prevent landlocking and segregation. My Survey has been recorded in the Oxford County Registry Of Deeds (East) Plan # 5361 and show the old road and the Rangeways that crosses through my property for your review and consideration.

On 9/25/17 the town of West Paris filed a Notice of Determination of Presumption of Abandonment in the Oxford County Registry of Deeds, Book 5369 Page 459. The notice states: "This determination is based on research by the Town's attorney and by oral comments from long time highway department employees and citizens from West Paris." I submitted both oral and written statements to the Town of West Paris on numerous occasions and my statements were conveniently ignored because my land is in Paris, not West Paris. In this decision, the town of West Paris determined Finn Road is now abandoned and was a public / town way for at least 30 years from April 15, 1985 until April 15, 2015. Under MSRA Title 23 Section 3028, "A way that has been abandoned under this section shall be regulated to the same status as it would have had under a discontinuance pursuant to Section 3026". Under Section 3026, a Discontinued Road "Unless otherwise stated in the order, a public easement shall, in the case of town ways, be retained." I have a legal right to use the road because the Town declared it Abandoned under Section 3028 which means it remains a public easement.

In 2015 I was severely beaten and threatened to be killed by my neighbors for walking my dog along the road. I suffered 6 broken ribs, a broken eye socket, a broken vertebra in my back, crippling me, a concussion and a traumatic brain injury resulting in cognitive and memory issues. I cannot be lawfully excluded from a public road, yet I have been threatened, tormented, harassed, and arrested on multiple occasions for allegedly trespassing in 2015, 2016, and most recently in 2019. I have been before the legislature on numerous occasions, in hopes of ending the nightmare and living hell of bullying, landlocking and segregation I have experienced by my neighbors and the town of West Paris.

The 1965 Closing of the road by the town of West Paris was illegal. The closing also leaves a public portion of Dean Road that still exists in the town of Paris (approximately 400 feet) from the Dean Homestead to the Paris / West Paris town line that has never been discontinued. I believe a public road in the town of Paris that is now effectively landlocked and segregated by our neighbors along the road and the town of West Paris.

I encourage the Subcommittee to consider all of the abutting landowners along our old Maine roads. **While the interest to the road might be deemed to pass to the "Center-Line" of the road, properties further down along the road (or at the end of the road) who would otherwise be landlocked or segregated should also be deemed to abut this "Center-Line", and should therefore also be considered abutting**

properties along, and have rights to, our old Maine roads. Unfortunately there is always going to be an "Odd man out" or an "Outcast", someone who is "Different." from their peers. In order to remove a public easement, and promote unity, deeded private easements for all landowners along our old Maine roads must be in place to ensure against landlocking and segregation in our community.

Section 3026-A uses the term "abutting property" fifteen times. Under that wording, if the Town of West Paris Discontinued Finn Road now, they would have no obligation to even notify me that my land in Paris was about to become land locked because my property is on the other side of the town line. The Legislature can do better than what was done to me. The law needs to be changed to include any property that depends on the road for access, any property that abuts the "Center-Line" even properties further down along the road or at the end of the road.

My property is on the other side of the town line from a road that was discontinued, and as a result I was wrongly deprived of access. The law needs to consider properties that depend on the road for access, whether or not they have any frontage on the road in the town that is discontinuing the road. The term "abutting property" doesn't work in situations like mine because the road crosses a town line and I am at the end of the road with multiple parcels blocking my access. **Likewise, even if properties have "Alternative Access", it should not matter, if the property abuts the "Center-Line" of the road either along or at the end of the road, the landowners should all have access to the road. Terms like "Sole Access" and "Alternative Access" should be avoided in order to prevent landlocking and segregation along our Old Maine Roads.**

It is worth noting, none of the deeds of my neighbors indicate they own the road. Upon examination of the deeds of my neighbors, they do not own the road as claimed. Both of my neighbors Backlots (and Houselots) indicate they only own to the edge of the road. One of my neighbors Houselot deed indicates he owns across to the other side of the road, however, my neighbors deed states: "Subject to possible rights of others to that portion of discontinued or abandoned Finn Road which crosses the westerly portion of the premises." I was not trespassing as alleged. I believe my neighbors are trying to claim something that is not theirs. Actually, my neighbors houselot survey indicates he only owns to the stonewall on the side of the road. My Neighbors backlot deed indicates he owns to the west side of the road. My other neighbors backlot deed indicates he owns to the east side of the road. Neither of my neighbors own the road according to their deeds. I believe the gates are in place illegally. The deed for my neighbor's properties references the road. It defines the properties as ending on the "edge of the County Road." If your boundary ends at the edge of the road, or your property was conveyed subject to possible rights of others (to the road), then you don't own the road. It is a public road.

I believe any of our old Maine roads that was voted "Closed" in the past by a town should retain a public easement by Maine Statute for the greater good. Routinely towns do not even know what happened in the past and a closing is not a discontinuance or abandonment. It is neither, it is a closing. According to statute, Closing is always a temporary action, and one would have the expectation the road would be reopened at some point in the near future.

Our system is broken! To prevent landlocking and segregation in our community, we need a clear public process for clarity and fairness. If a municipality wishes to remove a public easement, or otherwise dispose of any public road or town Way, deeded private easements must be put in place to ensure against landlocking and segregation along any of our old Maine roads. **To help ease the burden placed upon landowners (and the courts)**

there needs to be an appeals process readily and easily available to the county commissioners if a landowner

does-not agree with a towns decision, both now and in the past, town decisions years ago.

The truth is not even the towns really know what happened in the past or what to do with any of our old Maine roads. I believe it is a land grab by my neighbors and our county. Without an effective appeals provision or

policy in place at the town (or county) level, how can we even ensure an equal, fair and balanced process for landowners along any of our old Maine roads? Without an appeals process, neighbors can and will landlock and segregate others along our public roads!

I believe many other roads in Maine that have been illegally voted "Closed" by the towns in the past resulting in landlocking and segregation. I am hopeful the legislature will consider adding protections and an appeals process at the town and county level for landowners for roads that were voted "Closed". I believe Young Road in Fayette is an example of a road that has been illegally voted "Closed" by the town and is now a public easement for the greater good. There have been numerous instances of our Old Maine Roads that have been voted "Closed". According to my research, Towns Routinely voted Roads "Closed" due to property rights of access. The towns wanted to discontinue the road, but retain an easement for all abutting landowners along the road. The status of a closed road was recently decided in Superior Court. *Miner v. the Town of Benton, Kennebunk County (2008)*. In 1949 the town decided to close a road because the Selectmen had found it difficult to discontinue the road due to issues of property rights. The Court ultimately determined that it was only Closed. Because the town did not maintain their closed road from 1949 to 1979, the Court decided it was now Abandoned under 23 M.R.S.A. § 3028 with a public easement retained.

I wish to say thank you to the Subcommittee members and my friends David and Roberta Manter of Maine Roadways and all the other landowners along our old Maine roads who support unity as opposed to segregation and landlocking.

Thank you for listening and I encourage your response.

Neil Lanteigne
18 Ellingwood Road
West Paris, Maine 04289
Phone: 207-370-4727
Ham Radio: NB9D
Email: 4pcs@hotmail.com

Caswell, Lynne

From: roadways@juno.com
Sent: Thursday, September 05, 2019 3:26 PM
To: Caswell, Lynne
Cc: Harrison, Arlene
Subject: Abandoned Rds Subcommittee
Attachments: ROADWays Abandoned and Discontinued Roads Subcommittee.pdf; ROADWays Stakeholders' Report.pdf

Lynne -

I've really struggled with your instruction to submit a brief statement of two or three issues! With ROADWays contacts well into the 200's with a diversity of issues, I didn't feel I could pick and choose which of the major issues to represent. I have picked out the four issues I hear most often and most urgently, in the hope that the Committee will understand how many people need these four issues addressed.

I'm also tacking onto the end of it a more detailed explanation of one of the issues, which I wrote previously in answer to a question on the MARA (Maine Alliance for Road Associations) forum.

By the way, is the Committee aware of the Abandoned and Discontinued Roads Report of the Stakeholder Group that was formed on this same subject in 2013? I'll attach that as pdf as well, for your reference.

Thank you!

Roberta Manter

To the Members of the Subcommittee on Abandoned and Discontinued Roads,
From Roberta Manter, founder of Maine ROADWays (Residents & Owners on Abandoned & Discontinued Ways.) You are addressing a subject that has been dear to my heart for 38 years. I will TRY to make this concise, but I represent over 200 ROADWays contacts!

Issue 1: Constitutionality of retaining a public easement upon abandonment. Jordan v Canton, 265 A.2d 96 (1970) determined that a public road with no public maintenance will inevitably be destroyed, resulting in the destruction of property access and therefore requiring due process and just compensation. Abandonment was supposed to cause no harm because it was only affirming the status quo of a road that had not been needed for 30 years. But often these roads are still needed by owners of abutting property. The retention of the public easement means that if an abutter repairs the road so as to have access to his own property, the public then has a right to use it without restriction (public road with no public maintenance + no due process or compensation = unconstitutional). Brown v Warchalowski, 471 A.2d 1026 (1984) determined that it's unconstitutional to lay out a public easement in the absence of an actual public need for the road. Yet abandonment creates a public easement upon proof that there has supposedly been no public need for the road for thirty years. Once an abutter repairs the road for his own use, the public WILL use it because they can. If there was a public need, (even a need to provide properties with access so as not to have to compensate them for access loss,) the road should not be abandoned, but if there is no public need, there should be no public easement.
Suggested Solution: Incorporate the option that was added to 3026-A, allowing abutters to voluntarily form a private easement in common. Not a perfect solution, but an improvement. Better yet, repeal abandonment and require formal discontinuance with its protections.

Issue 2: Constitutionality of lack of due process. Currently section 3028 does not even require notice or hearing before the Selectmen make their determination. Because of the lack of due process and the difficulty of appeal, towns can often get away with applying abandonment to roads that should not properly qualify. The only allowable forum for appeal is a declaratory action. This Superior Court action can be more costly than an abutting property is worth. It has been argued that due process is unnecessary because if no one has complained to get the town to maintain the road in 30 years, then no one suffers damage due to abandonment. Unfortunately, there are towns that ignore all requests for maintenance, neglecting a road for years until they can claim the road abandoned. They can then leave it open to public use, resulting in continuing damage to any maintenance the abutters may attempt. In these cases there most certainly is damage or a "taking" of property rights, requiring due process and just compensation. There needs to be an impartial and affordable review to look at the facts.

Suggested solution 1: Require notice to all owners of "affected property" (see Issue 3), and full hearing before the Selectmen can make a determination of abandonment. Then put in place a similar chain of events as for tax abatement review, i.e. Planning Board, then County Commissioners, possibly mediation, and only then proceed to Superior Court. Facts to be considered should include (but not be limited to) whether the town has collected LRAP funding based on the road's mileage, whether abutters have indeed complained about the condition of the road, whether there has been more than "isolated acts of maintenance" done on the road, whether there are seasonal or year-round residences on the road, whether maintenance of the road is of public benefit for fire access or watershed protection, whether there is evidence of a clear intent by the municipality and the public to consider or use the way as if it were a public way, etc. (On

this last note, see Gay v Dube, 39 A.3d 52, in which the Court said that where a public road was laid out for the purpose of property access, use by the abutters constituted public use. Since the abutters have no private access rights, their only right to access their property is as members of the public over the public way. The town considers the properties still have access; therefore both the town and the public are considering the way a public way, precluding abandonment.)

Suggested Solution 2: Allow the creation of "Minimum Maintenance Roads" as exist in some other states. This would greatly reduce the cost for the municipality but preserve basic property access. (Note - in other states, a road cannot be reduced to minimum maintenance if anyone lives on it. In Maine, we can abandon ALL maintenance even if people live on the road. Is this just?)

Issue 3: Properties with no frontage on a road they depend on for access. There are a number of possible scenarios here, and Maine ROADWays has seen examples of each. Where a road crosses a town line, currently there is no mechanism by which one town must (or even may) notify land owners in another town or compensate them for loss of access. Some roads snake back and forth across a town line. Or a second road may tee off of a road that runs close to a town line, so that abutters on the second road in the other town are not considered. Even within one town, if a road or private right of way tees off of a road being considered for discontinuance, currently there is no requirement for any notice or compensation to anyone who has no actual frontage on the road they depend on for access.

Suggested solution: Change the wording of section 3026-A so that instead of requiring "notice to all *abutting* property owners," it requires "notice to owners of all properties that depend on the road for sole access, even if the property is in another town." (To save changing the wording every time it appears in the statute, use that wording to define a term such as "affected property," and use that term throughout the statute (i.e. replace "abutting property" with "affected property" fifteen times.) Also come up with a structure requiring that where properties in two towns are affected, the other municipality must participate in the discontinuance process.

Issue 4: Tax evaluations of properties on abandoned or discontinued roads. Some towns assess properties at a reduced rate if they are accessed by means of an abandoned or discontinued road. Others do not, and may even give the highest assessments in town to properties with poor access. What good is a mansion if you cannot get to it? What return does a land owner get for his tax dollar if he cannot get out from his property to avail himself of any town services or facilities? (See attached response to a question on this topic on the Maine Alliance for Road Associations forum.)

Suggested Solution: Require that tax assessments take into consideration the ability to access a property, the cost to the abutter of maintaining the road without municipal assistance, and the value of services that property can actually receive in return for tax payment if the road is not passable year round. Perhaps deduct road association dues payments from the tax payment? Or reduce the tax payment by a percentage equal to the percentage of taxes dedicated to town road maintenance?

MARA Forum Question:

If property taxes pay for road maintenance and if I can show that I am taxed at the same rate as

my neighbors, but I have to pay to maintain my road and my neighbors taxes pay for that same maintenance, isn't that unequal taxation?

Response:

As founder of Maine ROADWays, (Residents & Owners on Abandoned & Discontinued Ways,) I see this complaint all the time, so this may be a more lengthy response than you bargained for!

People on roads that are not maintained by the public effectively get taxed twice - once in municipal taxes, which largely go towards maintaining all the other roads in town, and a second time for maintaining the road they live on. It's bad enough when it's a private road, where the owners can restrict public traffic, but abandoned and discontinued roads often remain "public easements," making them open to unrestricted public traffic as well.

There are some towns that do take the status of road frontage into account in their assessments, and place a lower value on properties where the access is not maintained by the public. But many towns do not consider this a factor. I even know of two towns that assessed properties on discontinued roads as being among the highest value in town. Sure, they were nice properties, but what good is that if you can't get there because the road is so bad? Or if you have to spend a huge percentage of your income trying to keep the road passable?

The rationale many use is that even those who live on privately maintained roads get the same benefit of use of the public roads in town that everyone else does. Or they argue that it's like paying your taxes to help support the public schools, even if you have no school aged children. Everyone benefits from having an educated public. But there's a flaw in this argument. If you have no school aged children, you are not also spending money to educate children at home. (Double taxing for schools - we hear this similar complaint from people who homeschool their children. They pay taxes to support the local school, then must pay again to buy their own curriculum and pay other expenses related to homeschooling. If it's a benefit to the public to have every child educated, why doesn't the public pay education expenses for the homeschooled child?)

The problem is magnified on discontinued roads that remain public easements. There, the land owner not only pays to keep the road passable for their own use, but for the public's use as well. Since these are often through roads, public use can become a huge burden. Returning to the school analogy, this would be like requiring the homeschooling family to build and supply a school of their own and allow the general public to attend it for free, while also supporting the local public school.

In any case, whether the road is private or a public easement, there remains the question of what you are getting in return for your tax dollar. The U.S. and Maine Constitutions state that private property cannot be taken for public use without just compensation. On public easements, it's easy to see that the public use "takes" the land owner's gravel without compensation. As for tax dollars, that gets a bit more subtle. If you are turning over your money to the public, you should be able to expect something in return, just as when you walk into a store and pay the cashier, you expect to leave with merchandise. Yes, paying taxes gives you the right to use the town's public roads, school, library, or any other public facility or service your tax dollar supports. But if your

tax payment uses up the dollars you would otherwise have spent maintaining your road, and as a result the road becomes impassable, you lose the only possible means of getting from your home to the nearest public road. How can you then receive any return for your tax dollar, if you cannot get to where the services you've paid for are offered??

You pay tax dollars out. You have a Constitutional right to expect equal value in return. You should not have to pay an extra fee (in road maintenance) in order to get what you paid for - especially when others in town do not have to do the same. In fact, your tax dollar is going to maintain their roads so that they can access town services without paying an extra fee.

So why do towns do this? We call it "mining taxes." Wherever there is a road in town that costs the town nothing to maintain, the town can get "free" tax dollars to use elsewhere in town. If it comes down to a town vote on policy, those on publicly maintained roads will likely have the majority of votes. And since they don't live on a privately maintained road, they don't understand what a struggle it can be. They don't have to cope with mud season, or worry about how emergency vehicles will reach them during a snow storm or towards the end of winter when the snowbanks have narrowed the road to the width of one car. They will say, "You knew what you bought when you bought it." Or, "You get lake frontage. You should expect to pay more for it." Or they will use the argument about childless couples supporting the public school.

While there may be some truth in each of those arguments, there are also less obvious truths that can only be fully appreciated by those who have actually lived on one of these roads. Maine ROADWays has been fighting for years to get legislative reform regarding abandoned and discontinued roads. In recent years we have begun to make small progress. Real estate agents must now disclose to the buyer if the access to a property is not maintained at public expense. Hopefully that will mean that the buyer really will know what they are buying - although the full impact of "private road" status may not hit until later.

The question of property tax evaluation on privately maintained roads has yet to be addressed by the legislature, although the question has come up during discussion of other bills. When and if a bill ever does come before the legislature on this subject, I'll be sure to post it on the MARA forum. Meanwhile, you can try requesting a tax abatement, but depending on which town you are in, you may or may not get any reduction.



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

To: Senator Claxton and Representatives Head, Pebworth, Tuell, and Verow
From: Garrett Corbin, Legislative Advocate, MMA State and Federal Relations
Re: Request for comment regarding Abandoned and Discontinued Roads Law
Date: September 9, 2019

On August 27, MMA was invited by Analyst Caswell to submit a brief written statement to the State and Local Government Committee's Subcommittee on Abandoned and Discontinued Roads regarding two or three issues of concern and specific statutory changes that will solve the identified problems, if known. Accordingly, please find below some opening comments of the Association, which represents every town and city in Maine.

Proponents of enacting additional major changes to Maine's road laws often contend that municipal officials do not know the status of roads in their community. The Association has heard this claim for at least five years running and is disappointed the proponents have not responded to MMA's repeated requests to provide documentation as to which roads are seemingly mysterious, and in which municipalities. Because there are two sides to every story, and in the case of road disputes often as many sides to the story as there are abutters, the Association believes it would be helpful to all stakeholders to be able to investigate the details of each claim in order to understand context on a case by case basis, just as courts do with property disputes. We believe this is the only way to reliably ascertain whether a legislative proposal is likely to address the issue at hand.

In the instances where the town has in fact been identified in testimony before the 127th, 128th, and 129th Legislatures, the Association's research has not uncovered a single instance of ignorance of the law or the road status. Rather, controversies seem to result from differences of opinion with respect to interpreting prior actions of the state, county, local governments, and/or private landowners. The most recent example would be the confusion regarding who is responsible for maintaining Ohio Street Extension in the Town of Glenburn.

Testimony was delivered earlier this year that residents were unaware their road was private rather than public, until an unusually high degree of mud prompted calls for emergency town maintenance. Attached to this comment for your reference is a copy of Glenburn's Building Permit, which includes a waiver form that I am informed has been required for new building constructions on the street in question. The top of the waiver, which applicants must sign in order to receive their permit, begins, "I hereby acknowledge that the permit requested... is for a

structure to be erected on a lot located on a *non-town maintained private road*.” Also attached are the minutes of the Glenburn Select Board’s May 16 meeting that you may find to be a helpful illustration of how municipalities and their attorneys attempt to problem-solve situations like this. In the case of Glenburn, and in numerous other instances, the common solution is for abutters on the private road in question to form an association responsible for collecting and expending fees for the purpose of road maintenance and related improvements.

It is important to recall that Private and Special Acts of the Legislature are enacted to respond to isolated issues, and Public Laws are enacted for the purpose of addressing issues of a more widespread nature. Since signing on to the amendments to law made in 2016, the Association’s Legislative Policy Committee has not yet been convinced that there are remaining statewide issues which will be remedied by the new municipal maintenance mandates proposed in the 128th and 129th Legislatures. In our view, the first order of business ought to be identifying the problem in need of a solution, rather than the other way around. Examining the details of specific allegations, in order to identify issues with precision, is critical to ensuring the efficacy and appropriateness of any proposed new policy.

MMA’s second point reiterates the Association’s testimony on LD 1415; statutory abandonment is an important part of the toolkit available to communities to deal with long forgotten roads only recently brought to the attention of municipal officials. Towns and cities should not be required to engage in the formal discontinuance process anytime someone uncovers an overgrown road that may (or may not) have been public in a bygone era.

Our final point highlights our impression that, after enacting at least three new laws in as many years to address abandonment and discontinuance, the remaining issues have more to do with confusion or disagreements regarding public easements over private property, and less to do with issues inherent to abandonment or discontinuance law, per se. As far as MMA can tell, in the mid-20th Century the State of Maine changed the law to encourage rather than discourage easements for public “egress and ingress” travel, in order to promote access to the wilderness and curtail the landlocked parcel issues that were plaguing the courts at the time. The public policy balance struck opened property to public use, without necessarily requiring public upkeep. Like all compromises this balance involves both benefits and drawbacks. Understandably, many abutters would prefer for their roads to be gated or otherwise closed to the public rather than open to all users. On the other hand, sportspeople, environmentalists, loggers, and a host of other parties including abutters who might otherwise be landlocked, have tended to support public easements.

The issue of whether to encourage or discourage public easements is a policy call for the state to make, and it is unfortunate that municipal officials continue to be blamed for carrying out their duties in accordance with the state laws that have long encouraged the retention of public easements upon discontinuation or abandonment. That said, the Association acknowledges a fair degree of sympathy in the municipal community for abutters who are doing their best to maintain their own property, including the roads crossing that property, only to find their maintenance efforts torn asunder by a reckless off-road vehicle operator or weighty logging truck, for instance. There was hope that criminalizing damage to public easements, as was done by the 127th Legislature’s Criminal Justice and Public Safety Committee, would address this issue.

Additional thought might be given to exempting abutters of public easements which exist over private roads from liability for making good-faith improvements to the easement, and to creating a state fund to reimburse these abutters for the costs of their maintenance when that maintenance serves the public interest in minimizing land-locked parcels or accessing public properties. While such funds may constitute an objectionably significant percentage of a town's budget, the impact on the state's more sizeable general fund would likely be very modest.

Although I regret being unable to make the Subcommittee's first meeting, I stand willing to offer my assistance when able, and appreciate your consideration of this memorandum as well as MMA's testimony on LD's 1415 and 1536, which is also attached for your reference.

APPENDIX A



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

Testimony of the Maine Municipal Association

In Opposition To LD 1415

An Act To Improve the Laws Regarding Discontinued and Abandoned Roads

April 10, 2019

Senator Claxton, Representative Martin and members of the State and Local Government Committee, my name is Garrett Corbin and I am providing testimony in opposition to LD 1415 on behalf of the Maine Municipal Association at the direction of MMA's 70-member Legislative Policy Committee.

Rather than "improving" the laws as the title implies, this legislation amends the processes which govern the continuation or discontinuation of public roads by completely eliminating after this year the longstanding legal concept of abandonment.

Statutory abandonment is one of the relief mechanisms offered by the state to municipalities for the mandate of caring for roads, many of which were "turned back" or "gifted" to municipalities by the state and the counties. Eliminating abandonment will create new burdens for municipal officials each time a long-forgotten road is re-discovered.

Road Termination Law. When a public "town way" remains active, municipalities are obligated by statute to maintain them. Yet the law provides a relief valve to municipalities that allows local residents some manner of control over which roads must be continually maintained utilizing their tax dollars.

The relief from this mandate to maintain town ways is achieved through either of two avenues: (1) a governmental process by which the municipality's legislative body (i.e., the town meeting in most towns) ultimately votes to discontinue a road to public maintenance and pay damages for this discontinuation to abutters, or (2) by road abandonment, which occurs after a roadway has gone un-maintained by the town for a period of thirty or more years.

Under the process of discontinuation, the municipality chooses whether or not to discontinue the public easement which coexists with the road, along with the discontinuation of the road itself.

Under the abandonment process, statute provides that the public easement remains even after thirty years without public maintenance. For over fifty years, state policy has encouraged municipal retention of public easements, for reasons explained below.

Recent Efforts To Amend Maine's Road Termination Law. Throughout 2015 and 2016, the Association worked with the Maine Woodland Owners (formerly SWOAM) in good faith to reach a compromise on their previous proposal to eliminate the abandonment statute. That compromise addressed various citizens' concerns with public easement damage. As a result of the months of effort put in just three years ago, Public Law 2015, chapter 464 was enacted.

This law creates a right of action in statute for abutters of public easements to seek recovery from anyone who significantly damages the public easement, and clarifies the steps required of municipal officials throughout the road discontinuation process. Another law enacted by the same Legislature, Public Law 2015, chapter 258, made damage to public easements a crime.

On top of these amendments in the 127th Legislature, last year, in the 128th Legislature, this Committee supported the enactment of LD 1588, now Public Law 2018, chapter 345, which made four changes to Maine's road termination law, as well as a change to required property disclosure notices on non-residential properties that this Committee has recently been asked to re-examine through separate legislation.

The changes to road termination law enacted last year include: (1) Adding to the required municipal notice of a proposed discontinuance of roads with properties not otherwise accessible by another public road information regarding the potential municipal retention of a public easement following discontinuance, maintenance obligations and access implications, and the abutters' right to negotiate private maintenance and access easements amongst themselves; (2) Prohibiting municipalities for one year from proceeding with a proposed discontinuance; (3) Requiring municipalities to retain the public easement when the underlying road is discontinued to public maintenance if all abutters have not filed private access easements in the relevant registry of deeds in the year prior to discontinuance; and (4) Requiring the final order of discontinuance in municipalities where the legislative body is the town meeting to be adopted at the annual town meeting rather than at any special town meeting.

The ink is barely dry on these significant updates to Maine's public easement law.

LD 1415 - Abandonment. The bill before you does away with the careful balancing of public and private interests addressed by the Legislature's unanimously-approved 2016 compromise bill.

The abandonment statute has for decades provided much-needed certainty about the legal status of little used and long forgotten town ways, many of which, through neglect, have become

practically impassable. But for this law, municipalities would regularly be in litigation over their alleged legal obligation to reconstruct or repair and maintain these long abandoned ways.

From the municipal perspective, the preservation of the abandonment law is just as essential now as it was when the state dumped hundreds of miles of abandoned roads on the towns and cities in the early 1980's. In 1981 the Legislature formally reclassified state highways. The reclassification, often referred to locally as "road turnbacks," shifted additional road maintenance responsibilities onto most communities.

As enacted by the members of 110th Legislature, the definition of town ways that municipalities are responsible to maintain and repair includes "all town or county ways not discontinued or abandoned before July 29, 1976". As a result, municipalities became responsible for either: (1) maintaining these county roads "gifted" to the towns by the Legislature; or (2) answering abutter challenges regarding the status of an abandoned or discontinued county road.

In exchange for the additional local responsibility for maintained roads, the law explicitly exempted municipalities from having to maintain roads that had received no government maintenance for several decades. Currently, any local road which has not been publicly maintained for thirty consecutive years is presumed to be abandoned.

The premise of the statutory abandonment presumption found in Title 23, section 3028, is centuries-old case law that allows property to be determined abandoned by a court upon a showing that the road has not been used for twenty years. Section 3028 is in place in order to allow municipalities and courts to presume a local road has been abandoned when the road has not been maintained by the town for a period of ten years longer than the common law period of abandonment. This statute is responsible for saving significant government resources.

Municipal officials are concerned that this bill will resurrect the legal uncertainties surrounding the status of unused ways, renewing the incentive for abutters to litigate and claim damages. The commensurate legal and insurance costs would be borne by the property taxpayers.

The current statute provides a great deal of legal clarity in itself, is the foundation of much of the case law on this topic of abandonment, and should not be jettisoned.

APPENDIX B



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.mernun.org

Testimony of the Maine Municipal Association

In Opposition To LD 1536

An Act To Require Municipalities To Maintain Access on Public Rights-of-way

April 24, 2019

Senator Claxton, Representative Martin and members of the State and Local Government Committee, my name is Garrett Corbin and I am providing testimony in opposition to LD 1536 on behalf of the Maine Municipal Association.

This legislation substantially amends the processes which govern the continuation or discontinuation of public roads.

Overview of Road Termination Law. When a public “town way” remains active, municipalities are obligated by statute to maintain them. Yet the law provides a relief valve to municipalities that allows local residents some manner of control over which roads must be continually maintained utilizing property tax dollars.

The relief from this mandate to maintain town ways is achieved through either of two avenues: a governmental process by which the municipality’s legislative body (i.e., the town meeting in most towns) ultimately votes to discontinue a road to public maintenance and pay damages for this discontinuation to abutters, or by road abandonment which occurs after a roadway has gone un-maintained by the town for a period of thirty or more years.

Under the process of discontinuation, the municipality chooses whether or not to discontinue the public easement which coexists with the road, along with the discontinuation of the road itself. Under abandonment law, statute provides that the public easement remains even after thirty years without public maintenance. For over fifty years, state policy has encouraged municipal retention of public easements, for reasons explained below.

Recent Amendments to Maine's Road Termination Law. Throughout 2015 and 2016, the Association worked with the Maine Woodland Owners to reach a compromise on their previous proposal to eliminate the abandonment statute. That compromise addressed various citizens' concerns with public easement damage. As a result of the months of effort put in just three years ago, Public Law 2015, chapter 464 was enacted.

This law creates a right of action in statute for abutters of public easements to seek recovery from anyone who significantly damages the public easement, and clarifies the steps required of municipal officials throughout the road discontinuation process. Another law enacted by the same Legislature, Public Law 2015, chapter 258, made damage to public easements a crime.

On top of these amendments in the 127th Legislature, last year, in the 128th Legislature, this Committee supported the enactment of LD 1588, now Public Law 2018, chapter 345, which made four changes to Maine's road termination law, as well as a change to required property disclosure notices on non-residential properties that this Committee has recently been asked to re-examine through separate legislation.

The changes to road termination law enacted last year include: (1) Adding to the required municipal notice of a proposed discontinuance of roads with properties not otherwise accessible by another public road information regarding the potential municipal retention of a public easement following discontinuance, maintenance obligations and access implications, and the abutters' right to negotiate private maintenance and access easements amongst themselves; (2) Prohibiting municipalities for one year from proceeding with a proposed discontinuance; (3) Requiring municipalities to retain the public easement when the underlying road is discontinued to public maintenance if all abutters have not filed private access easements in the relevant registry of deeds in the year prior to discontinuance; and (4) Requiring the final order of discontinuance in municipalities where the legislative body is the town meeting to be adopted at the annual town meeting rather than at any special town meeting.

The ink is barely dry on these significant updates to Maine's public easement law.

LD 1536. The bill before you runs counter to the careful balancing of public and private interests addressed by the Legislature to date. LD 1536 makes four significant and costly changes to the laws governing the abandonment and discontinuation of town ways, then adds a fifth proposal to add insult to injury.

Section 1 – Public Easement Mandate

The first section of LD 1536 removes the discretion the previous Legislature saw fit to leave for municipalities regarding public easement retention. Under the terms of subsection 1, public easements would have to be terminated upon discontinuance of the road whenever abutters are able to negotiate private easements. Municipalities that wish to allow for some level of continued access for the public would no longer be able to do so.

On the other side of that coin, if abutters were not able to negotiate their own private easements, municipal officials would not only no longer be allowed to terminate a public easement upon discontinuance, they would also be required to designate the type of use for which the easement is reserved, providing sufficient public maintenance to allow for the specified use. Not only does this provision strike municipal officials as restrictive and inflexible, there is also a concern that the easement retention designation would be unconstitutional.

It is unclear under the law whether a public place may be permanently restricted to only certain public uses. In order to counter potential discrimination allegations by stakeholders who may be interested in a heavy vehicular use of the easement rather than pedestrian use, for instance, the municipality may be forced by legal concerns and the "sufficient public maintenance" requirement in the bill to maintain easements to the same standard as the public way that is being discontinued.

The Association believes section 1, subsection B(2) of the bill could result in the forced maintenance of public easements to the same standard that caused the municipality to consider discontinuance in the first place. This outcome would be at odds with the whole premise of discontinuance, placing a chilling effect on the ability of municipalities to terminate public ways in their jurisdiction.

Section 2 – Abandonment

The abandonment statute has for decades provided much-needed certainty about the legal status of little used and long forgotten town ways, many of which, through neglect, have become practically impassable. But for this law, municipalities would regularly be in litigation over their alleged legal obligation to reconstruct or repair and maintain these long abandoned ways.

The three proposed changes to Maine's abandonment law would, at a minimum, create new legal uncertainty by establishing a host of new standards of review that undercut the premise of abandonment's status as a rebuttable presumption. With respect to the first proposal, in subsection A, members of the public may already use evidence of state assistance to rebut the presumption of abandonment.

The basis for the second proposal, in subsection B, is unclear. The Association believes the proponents ought to be required to provide evidence of municipal officials intentionally ceasing to maintain a public way for the purpose of "creating" a presumption of abandonment before this apparent solution in search of a problem is enacted into state law. The existing statutory process, which provides for an entire decade's worth of notice beyond common law abandonment, seems fair to the Association. If, over the course of three whole decades, no one objects to the ceasing of municipal maintenance, that ought to say plenty about the public interest in the continued expenditure of limited local public resources on the maintenance of that particular road.

The third proposal, in subsection C, would lead to municipalities having to formally discontinue an untold number of roads that have been abandoned for well over fifty years. Even ascertaining whether or not a public easement was retained prior to September 3, 1965 may be so

difficult as to lead to litigation just to determine whether or not the municipality would have to take up a new discontinuation for a long forgotten road. Once that is settled, ascertaining the damages that ought to be paid upon discontinuance would create a whole additional ball of legal wax. Would damages need to be paid to the property owners who abutted the road back 54-plus years ago, or to their descendants as reparations, or to the current abutters, or all of the above?

These are just a few of the basic questions that will come up if this provision is enacted into law, let alone the more complicated fact-specific issues that will arise with each case. While it is difficult to ascertain just how many old wounds this provision will reopen if enacted into law, it is likely safe to say that the legal research fees alone, before damages are even contemplated, will in themselves constitute a substantial unfunded mandate.

Section 3 – Snow fences

It has long been the perspective of the Association's Legal Services Department that Title 23, section 3201, is an antiquated law which serves as little more than a statutory vestige of a bygone era. It is unclear what purpose would be served by the Legislature, in 2019, modernizing a law targeted at a 19th-Century snow barrier technology that has less use in today's society than horse buggies. Again, it would be helpful to understand the real world basis for this proposal.

Section 4 – Mail Routes

As with the previously discussed section of statute, section 3202 is archaic, having been enacted circa 1836. Today, two other statutes form the modern basis of ensuring adequate municipal maintenance of Maine roads. Title 23, section 3651 now requires the municipal maintenance of public roads for safety and convenience, and Title 23, section 1003 mandates municipal maintenance of state aid roads in the winter.

Several issues flow from the imposition of a new year-round mandate to maintain any established "mail route" in the municipality.

The first issue raises legal "nondelegation" questions. By mandating local governments to comply with United States Postal Service regulations, the bill delegates to the federal USPS at least some of the standards for local road maintenance in Maine. Regardless of whether or not this provision would be legal, simple common sense dictates that state law should not delegate to the U.S. postal service the determination as to which roads in the state get maintained nor how they are maintained. Local road maintenance standards should be up to the local legislative body.

As a practical matter, this Association has had trouble even locating the applicable USPS regulations. Multiple local post offices have informed MMA that whether or not to deliver mail is a matter of carrier discretion. Tying local road budgets to mail carrier discretion seems to be extremely unworkable, if not unwise, public policy.

It is also unhelpful to define "public right-of-way" as a public right-of-way. The language begs the question as to whether this term includes public easements over privately owned roads. Either way, under the terms of section 4 public roads, and possibly private roads over which

public easements exist, would have to be made at least functionally passable for light rear-wheel drive postal vehicles by the municipality, year-round “if the mail route is year-round.” If enacted, the option of closing roads to winter maintenance will be cast away and municipal officials will need to start budgeting in the ballpark of \$6,000 per mile annually for plowing an untold number of additional miles of roads, not to mention the additional costs of ensuring all roads are at all times passable for postal carriers. Sometimes, particularly due to mud conditions but also due to snow, the USPS carriers will decide to not even traverse currently maintained roads. This bill could therefore require municipalities to spend more resources on maintaining dirt roads that get muddy this time of year, and significantly increase plowing, sanding, and salting of roads used for postal delivery in winter, all to meet the standard that a postal delivery person desires.

Due to the many variables involved, the per-mile cost of road creation, surfacing, ditching, and maintenance varies. Whether dirt or gravel, it appears maintenance alone costs, very roughly, at least \$10,000/mile. A 2010 report by the University of Maine’s Margaret Chase Smith Policy Center estimated that Maine’s local governments shoulder 81 percent of the total \$98 million annual cost to keep roads clear in winter. Adjusted for inflation, local property taxpayers are already spending nearly \$90 million annually for winter road maintenance. After school costs, infrastructure improvements are already commonly one of the biggest ticket items in municipal budgets.

It is clear that municipalities throughout the state are already having significant difficulties covering the costs of their actively maintained local roads. One need only read the local news for an article describing a recent town meeting where road costs were one of the primary issues residents and officials had to grapple with.

How are municipalities expected to afford bringing additional roads that are currently not maintained as a matter of law up to year-round vehicular passage standards when they can hardly afford to keep their currently active public roads passable? Moreover, why should they have to in the absence of documentation of widespread issues with postal service delivery?

Section 5 – Penalties for municipal officials

To underscore the significant new unfunded mandates proposed in this legislation, the bill includes a reminder that failure to comply with laws put on the books nearly two hundred years ago will subject municipal officials to indictment, conviction, “and a reasonable fine imposed therefor.”

In conclusion, LD 1536 upends carefully crafted laws governing town ways and replaces them with provisions that add extra municipal costs and incite litigation against municipalities. This bill is at odds with longstanding law, the public interest, and public financial capacity.

Appendix C

TOWN OF GLENBURN APPLICATION FOR BUILDING PERMIT

Permit Number: _____

Applicant Name: _____ Telephone: _____
 Address: _____
 City, State, Zip: _____
 Owner's Name (if not applicant): _____ Telephone: _____
 Location of Property: _____ Map _____ Lot _____
 Existing Use of Property: _____ Vacant _____ Residence _____ Other: _____
 Structures Now on Lot: _____ Residence _____ Garage _____ Other: _____
 Proposed New Construction: _____

LOT SIZE: Road Frontage: _____ Side Frontage: _____ Depth: _____ Area: _____

Documents included with this application or observed by the CEO:

<input type="checkbox"/> [] Internal Plumbing Permit # _____	<input type="checkbox"/> [] Plans & Spec. Of Proposed Construction
<input type="checkbox"/> [] External Plumbing Permit # _____	<input type="checkbox"/> [] Proof of Sales Tax, New Mfg. Housing Only
<input type="checkbox"/> [] CBO Land use Permit # _____	<input type="checkbox"/> [] Authorization of Agent
<input type="checkbox"/> [] PB Land-use Permit # _____	<input type="checkbox"/> [] Site Plan and/or Supplemental Information
<input type="checkbox"/> [] Permission for Inspection	<input type="checkbox"/> [] Estimated Value when Completed \$ _____
<input type="checkbox"/> [] Flood Plain Permit # _____	<input type="checkbox"/> [] DTP Permit by Rule
Contractor's Certification No. _____	(Required in structure zoning when more than one cubic yard of soil within the standard zone is displaced.)

To the best of my knowledge, all information submitted on this application and on all attachments thereto is true and correct. All construction and structure placement will be in accordance with this application, the ordinances of the Town of Glenburn, and Maine State Statutes. I understand that the Code Enforcement Officer has up to 5 working days to issue or deny the requested permit. I further understand that any interested party may appeal the Code Enforcement Officer's decision to issue the building permit within 60 days of issuance.

Signature: _____ Date: _____

(FOR OFFICIAL USE ONLY)

REVIEW OF BUILDING PERMIT APPLICATION

Date Received: _____ Date Fee Paid: _____ Amt of Fee: \$ _____ Insp. Rec. #:

Part of Subdivision: Yes ___ No ___ If YES, Name: _____

Applicant's Subdivision Covenant: _____

Property Zoned as: _____ Census Code: _____

Subject to Shoveland Zoning? Yes ___ No ___ In Flood Hazard Area? Yes ___ No ___

Action on Application: APPROVED ___ DENIED ___

If Denied, Reason for Denial: _____

If Approved, the following conditions are prescribed: _____

If approved this permit is based on information given by the applicant in the record regarding his ownership of the property and boundary locations. The applicant has the burden of ensuring that he has a legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership or similar title issues. The permit holder will be well-advised to resolve any such title problems before expending money in reliance on the permit.

Permit will expire on _____ unless substantial construction has begun by that date

Code Enforcement Officer: _____ Date: _____

Complete Waiver Form and/or Agent Authorization Form, if applicable

TOWN OF GLENBURN

WAIVER FORM

(sign if applicable)

I hereby acknowledge that the permit requested on the reverse side of this form is for a structure to be erected on a lot located on a *non-town maintained private road*.

I further and forever discharge and release the Town of Glenburn, Maine, its agents and employees, including but not limited to the Town Council, Town Manager, Road Commissioner, Fire Chief, Planning Board, and Code Enforcement Officer, and their successors and assigns from all actions, causes of action, damages, claims, or demands whatsoever including claims based on negligence in which I, my heirs, executors, administrators, or assigns may have against the Town of Glenburn or other above described persons or parties resulting from my being issued a permit to erect a structure or buildings on a non-town maintained private road.

This waiver will terminate on the effective date that the above referred to private road becomes a property accepted town way by majority vote of a legally called town meeting.

Signature of Applicant: _____ Date: _____

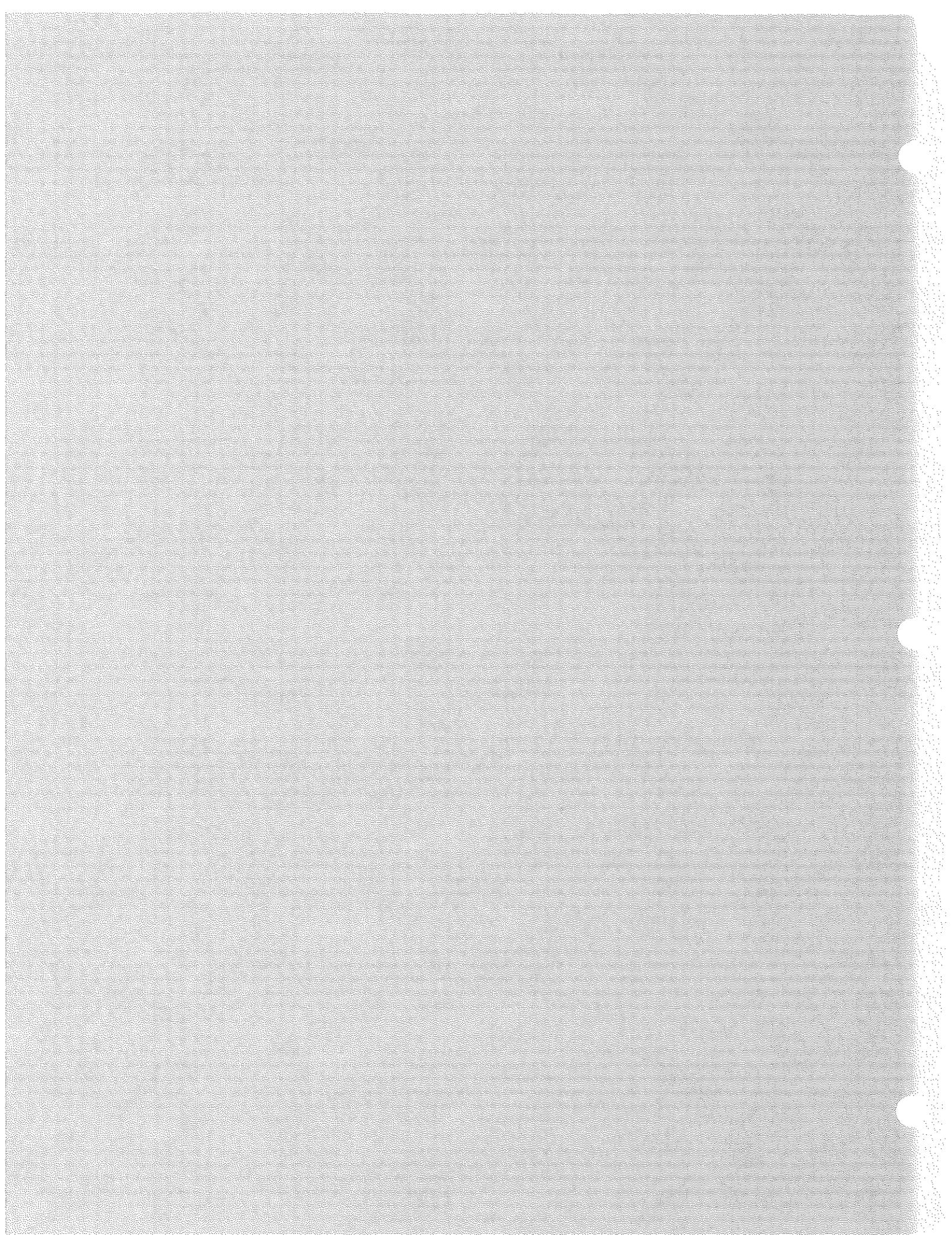
AGENT AUTHORIZATION FORM

(sign if applicable)

I do hereby certify that I am the owner of the parcel of land located in the Town of Glenburn, ME described on the reverse side of this form. I further authorize as my agent, the applicant named on the reverse side of this form, to apply on my behalf for a Building Permit from the Code Enforcement Officer of the Town of Glenburn, ME.

Signature of Owner _____ Date: _____

Signature of Owner _____ Date: _____





COMMUNITY ♦ ADVOCACY ♦ KNOWLEDGE ♦ LEGACY

Board of Directors

Paul Sampson
President

Doug Baston
1st Vice-President

Tom Allen
Secretary

Richard Nass
Treasurer

John Bozak

Terri Coolong

Dan Crocker

Mike Dann

Seth Sprague

Bill Weary

Nathan Webb

Jeff Williams

Chapter Leaders

Si Balch

Larry Beauregard

Kyle Burdick

Joe Dembeck

Dan Jacobs

Randy Lagasse

Rich Merk

Gordon Moore

Paul Sampson

Jeff Williams

Dear State and Local Government Subcommittee on Abandoned and Discontinued Roads,

Thank you for the opportunity to suggest solutions to the issues around discontinued and abandoned roads. We have focused on two statutory changes (Recommendations #1 & #2) and two areas that we believe warrant further examination, which would help reduce some of the biggest concerns (Recommendations #3 & #4).

Recommendation #1 - Eliminate Abandonment of Roads Going Forward for Any Road Which Has Not Yet Reached the 30 Year No Maintenance Standard.

No single issue has led to more confusion and problems than abandonment. Abandonment continues to cause problems. Many of the problems created by abandonment in the past cannot be undone, but at least we can stop creating more confusion and uncertainty.

The purpose of creating abandonment in 1976 was to eliminate the responsibility of municipalities for long forgotten roads. Essentially meaning roads not used, no longer passable; in fact many of them were grown up with trees and barely recognizable as having been roads. Abandonment occurs when a road has not been maintained for 30 years.

There was logic to this approach. However, it came with a multitude of issues.

- There is no clear date of when abandonment actually occurs.
- There is often no record of when or how a determination of abandonment was made.
- There is no clear description of the road considered abandoned. The entire road or a portion of the road?
- Abandonment is automatic - there is no notice to people impacted.
- There is no public process or vote by the municipal governing body (like there is for discontinuance).
- Abandonment is not considered a municipal action. Municipal officials can simply declare a road is abandoned and are not required to produce an explanation of how that determination was reached. There is no local appeal, so anyone who disagrees, must bring action in Superior Court.

Why eliminate statutory abandonment going forward?

- First, there is a clear, straightforward, and recordable way with a full public process, for a municipality to rid itself of any road it chooses - the discontinuance process. In the 2016 legislation, this Committee did an excellent job of clarifying that process.
- Second, there is no public process required for abandonment. There should be a chance for anyone impacted by the elimination of a municipal road to have their say.
- Third, having two processes – discontinuance and abandonment – for eliminating a road is confusing. They are different, though most people use the terms interchangeably.
- Fourth, the reason for abandonment has long passed. Abandonment has remained in effect for 43 years. All ancient, long forgotten roads are now abandoned.

Recommendation #2 - When a Municipality Determines That a Road Has Already Met the Abandonment Standard, It Must State in Writing the Evidence Upon Which That Determination is Made. That Determination is Appealable Through Normal Local Appeal Processes.

Abandonment for roads that have not already reached the 30 year no maintenance standard would no longer be allowed if the law is repealed as suggested in Recommendation #1. However, there will be roads where the 30 year no maintenance standard already applies, but the municipality has not yet made a determination of abandonment.

In those situations, Recommendation #2 would do two things. It would: 1) require the municipality to publically state in writing on what evidence the determination of abandonment was made (there is no requirement now); and 2) allow for a local appeal process (instead of a landowner going to Superior Court as required now) as there is now for other municipal actions.

Current statute does not consider the determination of abandonment by a municipality, though binding, to be a municipal action. Thus, there is no local appeal process, and anyone aggrieved must take the municipality to Superior Court.

These changes would allow for anyone who disagrees with the determination of abandonment to see the evidence used and if not satisfied, use the local, much less time consuming and costly process (than Superior Court) to appeal the determination.

Recommendation #3 – Encourage Municipalities to Identify Those Discontinued or Abandoned Roads Where A Public Easement Exists with Little or No Public Interest.

One of the biggest problems with discontinued and abandoned roads is around the retention of a public easement. In most cases, the retention of the public easement was automatic without a lot of thought as to whether or not it was needed. The major reason for retaining a public easement was to prevent landowners from being land-locked. The assumption was that the landowners who need the road would keep it in repair, but it would not be used, much if at all,

by the public. There are constitutional reasons why a right-of-way couldn't simply be given to those who need to use the road to access their property.

In reality, there are many discontinued or abandoned roads with a public easement where the public has uncontrolled use. The private owner(s) who need the road for access maintain the road and have the liability, but the public gets to use the road without any cost or responsibility. This really is unreasonable.

To avoid creating more problems in the future, thought should be given to eliminating the public easement where there is currently no or little public interest or need. These are prime roads to have the landowners who need the road for access to exchange mutual rights of ways. (There could be some roads which only a single landowner needs for access). If the exchange of rights-of-ways is agreed to among the private owners, the municipality should extinguish the public easement.

Recommendation #4 - Examine the Concept of Minimal Maintenance Roads Standards for Discontinued or Abandoned Roads with a Public Easement Where There is a Clear Public Interest and Use or as an Alternative to Discontinuing a Road.

As part of the changes to discontinued and abandoned roads this Committee recommended, and the full legislature endorsed in 2016, was a request to municipalities that by November 1, 2018, they inventory all existing town roads, as well as identify the status of all discontinued and abandoned roads. This was meant as a positive step in sorting out the confusion regarding old roads, particularly those caused by abandonment. Unfortunately, not a single municipality participated.

We still believe this would at least clarify the status of many of these roads. Under existing statute, a public easement on a discontinued or abandoned road is a public right held by the municipality. It is difficult to alert people acquiring land on an old road when even a municipality does not know its status. However, given the response to the 2016 legislation, it seems unlikely many municipalities will ever complete a road survey. Recommendation #4 is a partial alternative.

Roads with public easements that have clear public use and interest should receive some maintenance. It seems reasonable that municipalities should receive funding to maintain such roads even at a lower standard, but contribute to the maintenance. It also seems reasonable that a municipality should not be able to count any road it is not actively maintaining toward its road miles for which it receives state funding.

Tom Doak, Executive Director
Maine Woodland Owners

