

ATTACHMENT B – Maine Woodland Owners Association

December 10, 2021

Lynne Caswell, Legislative Analyst
Committee on State and Local Government
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Lynne,

Thank you for the opportunity to provide information to the Discontinued Roads Subcommittee on one legislative priority for Maine Woodland Owners around discontinued and abandoned roads. There is no easy way to address all the issues that retaining a public easement over private lands creates, however we believe there is a way to reduce those conflicts. One particular area that we believe warrants further examination and would help resolve conflicts would be to clarify the use of public easements on discontinued or abandoned roads.

Last session the State and Local Government Committee unanimously approved and the Legislature enacted LD 596, “An Act to Improve the Law Regarding Abandoned Roads.” That bill was signed by the governor and is now Public Law Chapter 145. As enacted, the bill applies to abandonment of town ways beginning October 1, 2021, and contains a provision that “[i]f the municipal officers or county commissioners vote to retain a public easement in an abandoned town way, all other interests of the municipality or county in the town way, if any, pass to the abutting property owners to the center of the town way and the public easement retained is *limited to the rights of access by foot or motor vehicle* [emphasis added] as defined in Title 29-A, section 101, subsection 42.” Any new public easement created on an abandoned road will be limited to rights of access by foot or motor vehicle. Similarly, under 23 M.R.S. § 3022 a public easement created when a municipality “lay[s] out, alter[s] or widen[s] town ways” is “limited to rights of access by foot or motor vehicle[.]” No such clarifying provision exists for older abandoned or discontinued ways.

Public easements serve the valid public purpose of preventing owners at the end of an abandoned or discontinued roadway from becoming landlocked and unable to access their property. In practical use, however, public easements have been utilized as permission to use the way for a growing number of purposes never contemplated, including ATV use. This kind of use is often inconsistent with how the road had been traditionally used and is inconsistent with the requirement in 12 M.R.S. § 13157-A that “[a] person may not operate an ATV on the land of another without the permission of the *landowner or lessee* [emphasis added].” ATV use, and other activities, on discontinued or abandoned roadways can result in significant impacts and create new burdens and liabilities on the landowners now responsible for their upkeep.

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The current situation of uncontrolled public use of the easement across private land, particularly when the owner of the land needs that road for access and maintains that road is unfair. When a public road is abandoned or discontinued all responsibility and liability for the road falls to the landowner to the center of the way. The landowner had none of this responsibility or liability prior to abandonment or discontinuance. The burden shifts to the landowner only when the municipality decides to abandon or discontinue the roadway. To impose this kind of burden and liability on the landowner and provide them with no protection in the form of limitation on the permissible uses is unacceptable and the cause of significant ongoing conflicts.

We suggest that statutory change is needed to provide consistency and connect the dots between the treatment of older and newer abandoned or discontinued ways. In particular, a statutory change could clarify, consistent with LD 596 that a public easement retained on discontinued or abandoned roads in existence *before* October 1, 2021 is limited to the rights of access by foot or motor vehicle.

Thank you for the opportunity to provide these comments on this issue. I am happy to provide additional information to the subcommittee as it moves forward.

Sincerely,



Tom Doak
Executive Director
Maine Woodland Owners