

Ladies and Gentlemen of the Committee on Inland Fisheries and Wildlife,

My name is Roberta Manter, I live in Fayette, and I am the Founder of Maine ROADWays, which is an acronym for Residents & Owners on Abandoned & Discontinued Ways. I only heard about this bill this morning, as I was about to leave the house to take my neighbor to a doctor's appointment. When I got back I tuned in online, and after hearing some of the testimony against the bill, I tried to register to testify via zoom, but I was too late. I wish I could have been there in person.

As Maine ROADWays, I represent people from all over the state who have problems with discontinued roads. (I also serve in that capacity on the Abandoned and Discontinued Roads Commission.) I heard some questions about who the landowners are who will be affected by this legislation. You heard testimony regarding large landholders, and they are definitely a piece of the puzzle. But there are also many, many small landowners who grant permission for ATV trails to cross their land. I doubt if many of them are aware of this proposed legislation. As you heard, if just one landowner refuses to grant permission, that can shut down miles of trail.

A great many ATV trails depend on miles of "discontinued" roads that used to be town or county ways, but which were discontinued - often because the homes they served went vacant during the Depression, and the town or county could no longer justify the expense of maintaining these roads. Under Maine law, *town ways discontinued before 1965 and county ways discontinued before 1976 generally reverted to private property. Roads discontinued after those dates generally were retained as public easements of travel, although ownership of the land under the road reverts to the abutting property owners.* So there are two types of discontinued roads; those that are now private property, and those where a public easement remains. Both types of discontinued roads can make excellent ATV trails, but they often provide the only access to abutting properties and homes.

On those discontinued roads where a public easement remains, it's unclear who gets to grant permission for an ATV trail, and that makes it difficult for law enforcement to know what to do. Some say that because the abutters own the land under the road, they should have control over ATV use. Others argue that since the public owns an easement over the road, the town or county has final say. But the public is no longer obligated to provide any maintenance for discontinued roads. In 1970, the Maine Supreme Court declared in *Jordan v Canton* that a public road with no public maintenance "will inevitably be destroyed," resulting in loss of property access. We have found this to be true.

Public use in the absence of public maintenance is one of the two biggest complaints Maine ROADWays encounters from landowners and residents on these roads statewide. We get on average one new complaint per week, year round. If a town discontinues a road because it can no longer afford the maintenance, is it reasonable to expect that landowners or even ATV clubs will be able to afford the maintenance in the face of ever heavier vehicles using the road?

Some say that a discontinued road is like a layer cake. The abutters own the dirt under the road, but the public owns the easement over it. So which of them should have the right to grant or

deny ATV access? Shouldn't that decision rest with the person who has to maintain the road to preserve their own access? I say, if you can use the easement without disturbing my dirt, that's fine. These bigger ATV's cannot do that, especially on a road that may not have seen any public maintenance for fifty years or more.

On the other hand, establishing an ATV trail over **private** property (i.e. early discontinuance) requires landowner permission. These bigger ATV's are more likely to cause damage to sensitive trails. That can destroy property access. When the landowners and residents see their access being compromised, they may be forced to withdraw permission in order to preserve their ability to reach their land or their home. That means ALL ATV's, not just the bigger ones, will lose trails.

Loss of access is the second biggest complaint Maine ROADWays encounters on discontinued roads. In many cases, landowners have always allowed neighbors beyond them along a discontinued road to continue to use the road for property access, understanding that otherwise their properties would be legally land locked. But increasingly, we see landowners getting fed up with abuse of the discontinued road that crosses their property, and have put up a gate, depriving *everyone* of access, not just the ATV's. I already know of several cases where people lost access to their home because another landowner put up a gate or barricaded the road with boulders. I fear that increasing the size of ATV's will exacerbate this problem.

We have neighbors who own small ATV's. They use them for utility purposes, and occasionally to travel over our shared discontinued road. We'd like them to be able to continue to do that. They use the road respectfully because they also depend on it for access. But a bigger ATV at certain times of the year could do serious damage to the only access to our home. We often have a secondary "mud season" during fall rains, which typically coincide with hunting season. How many hunters will begin cruising up and down our road in big, heavy side-by-sides if this bill passes? Each one will leave ruts, and if those ruts are not graded out between when the last person travels the road and when the ground freezes, it will interfere with snow removal.

There is a woods road that goes from our discontinued road across private land and connects to Kennebec Land Trust land. The owner allows use by snowmobiles, but not ATV's. Both the woods road and the KLT trails have been damaged by ATV's and 4wd trucks, neither of which should be there. Allowing bigger ATV's on our ATV trails will make more people try to go places that cannot support that weight, and will make it tempting for them to cruise discontinued roads at times or under conditions when cars cannot. We try to stay off our road when it's soft, to avoid damaging it. Others will say, "Oh, I'm not worried, I have 4wd.!" We tell them that's not the point. The point is that if you use it because you have a vehicle that is able to make it through the mud while we are trying to stay off of it, we are left coping with the damage, and with the expense of repairing it.

Please, protect access for residents and landowners. Vote LD 276 Ought Not to Pass.
Thank you.