

Senator Baldacci, Representative Salisbury, Members of the State and Local Government Committee:

My name is Roberta Manter, and I live in Fayette. I serve on the Abandoned & Discontinued Roads Commission, but today I'm representing my organization, Maine ROADWays - Residents & Owners on Abandoned & Discontinued Ways. I work with people on both sides of this issue statewide. This bill was well-intentioned, but needs work, as Ryan Pelletier testified.

On the one hand, there are people who lose all access to their property or home because another landowner claims complete ownership of the road, (rightly or wrongly,) and puts up a gate. Before Sept 3, 1965, discontinuance usually retained *no* easement, leaving properties legally land locked. But is it right to deny all access to property? The owner of back land *may* have a valid claim to a right by prescription because they and/or their predecessors-in-title have used the road without interruption for decades before the gate went up. But proving it requires going to court, which may well cost more than the land is worth.

In 1965 the law was changed to say that when a road is discontinued, a public easement is retained. In 1976 the abandonment law was passed, and it also retained a public easement. The public easement was supposed to prevent land locking. Unfortunately, while it preserves access on paper, public use in the absence of public maintenance destroys *physical* access. (Jordan v Canton, See footnote 1.)

Example: Last week, mud season hit. Residents on our road cooperated to stay off it until the frost settled out. I went away for the weekend, as did one neighbor couple. Weekenders in two seasonal homes stayed away. My husband spent several hours with a tractor and grader blade to smooth out the ruts and allow water to run off. Around 4pm on Sunday he called to say the road was smoothing out nicely, and with the temperature dropping that evening, by the time I got home the road should be firm enough that I could drive in without damaging it rather than walking in with luggage after dark. (He could take the car out again early Monday morning.) Five minutes later he called back, livid because while he was in the house, someone had driven in and out again with a truck, putting ruts back in the road. He called again five minutes later to say someone in a small car had driven halfway in and turned around in the road, chewing it up some more. He spent another 1 ½ hours re-grading it just before it froze. If it had frozen in ruts, he could not have plowed the snow we got on Monday. We've been prohibited from gating the road because it's a public easement, but the public doesn't care what they do to the road. It costs them nothing.

So while gates obstruct access for some, they may preserve access for others. How can we preserve access for both groups? Perhaps the solution is to allow gates, but not allow them to be locked unless all who need the road for property access are given keys.

Part of the problem is the law is so confusing, law enforcement doesn't know what they can or cannot do, so they say it's a civil matter and will have to be decided in Court. The Commission is working on a solution, but it's complicated. Let this underscore the urgency of reaching an agreement.

## IS THERE A PUBLIC EASEMENT OR NOT?

Three of the attached photos are of disputed roads, where residents or landowners who have evidence the road remains a public easement have been denied access by landowners who claim exclusive ownership of the road.

The fourth is what our public easement often looked like in spring in the 1970's to 1990's. After pouring our private funds into maintaining a road for the public's use for over 50 years, it no longer gets that bad - but public use when we are trying to stay off of it can still cause significant damage, and we get left with the bill.

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Footnote 1: (See Jordan v Canton, 265 A.2d 96, 99-100 (1970))

"The fact that a [road] continues to have a legal status as a 'public way' over which there continues to be a public easement of travel is meaningless if there is no longer any public responsibility for maintenance and repair. Without maintenance or repair, it is only a question of time before a public road will become impassable or unsafe for travel. The rigors of Maine weather, the action of frost and the erosion from rain and melting snow will speed the process of disintegration. The ability to use the road for vehicular travel and thus the abutter's easement \*100 of access to and over the road to the public road system will inevitably be destroyed."

