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## Maine's Public Reserved Lands: A Tale of Loss and Recovery

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# Maine's Public Reserved Lands:

## A Tale of Loss and Recovery

by Richard Barringer, Lee Schepps, Thomas Urquhart, and Martin Wilk

### Abstract

The story of Maine's public reserved lands—or public lots—is worth the telling for its own sake and for its enduring lessons. Provided for in the Maine Constitution of 1820 and neglected for more than a century, the public lots were once scattered widely across the Unorganized Territory of northern, western, and eastern Maine. Today, they are restored to public use and benefit, reassembled into large blocks of land that, in aggregate, are more than twice the size of Baxter State Park. These consolidated public lots offer a wide spectrum of extraordinary values, include many of the crown jewels of Maine's natural heritage, and will remain for public use and enjoyment as long as they are valued, accessed, and safeguarded from harm.

### BACKGROUND

When Maine separated from Massachusetts in 1820, it acquired a public domain estimated at the time by Moses Greenleaf at some 10 to 12 million acres (Greenleaf 1829) and later reduced by the Webster-Ashburton Treaty of 1842 to 8 million acres. This public domain was surveyed first by Massachusetts and then by Maine into townships, plots of land generally six miles by six miles in size, to be used as the framework for future settlement and local governance. The Articles of Separation, which became the new state's constitution, required that as it sold off this public domain (in keeping with past practice in Massachusetts), Maine would reserve four lots of 320 acres each in any newly organized township—one each for support of the minister, the church, and the school, and one for general purposes.<sup>1</sup>

With Massachusetts acquiescing, Maine soon modified the formula to a single 1,000-acre lot in each new township “for public use.”<sup>2</sup> These public reserved lands were to be held in trust by the state for the benefit of each future town that would come into being as the public domain was settled and populated. In the meantime, the Maine Constitution prohibited the state from selling them off or conveying them.

Pending the arrival of settlers, the only realizable value from the public domain was its standing timber. Even before Maine statehood, authorities realized there were no practical means of protecting the public domain lands, including the public lots, from timber trespass or theft.<sup>3</sup> Over the first 30 years of statehood, the problem only worsened, even as the expansion of the United States westward made it apparent that settlement of remote portions of Maine was unlikely to proceed at the pace hoped for in 1820.

Barred from selling off the public lots outright, the legislature in 1850 addressed the timber-trespass problem by authorizing the state land agent to sell the “right to cut and carry away the timber and grass” from the public lots (Chapter 196, Maine Public Laws of 1850). This right was to continue until the township involved might be incorporated as a town or organized as a plantation.<sup>4</sup>

In 1874, with virtually all its vast public domain disposed of to land speculators and aspiring industrialists, and the timber rights to the public lots sold pursuant to the act of 1850, the legislature acted to terminate the Office of Land Agent. It found after the fact, however, that it hadn't the power to do so, since this remained a constitutional office. So, it changed the constitution the following year but did not in fact abolish the Office of Land Agent until the 1920s. Responsibility for the public lots eventually passed to the Maine Forest Service (MFS), established in 1891, when the forest commissioner and land agent became the same office (Maine Forest Commissioner 1929).

Early in the twentieth century, Maine began to tax all timberlands in private hands, including timber rights on the public lots, which remained virtually unmanaged by the MFS for most of a century, treated as if they were the



*A staged photo of MFS Forester John Walker (r.) and an unidentified colleague setting a public lot corner-post for Township 16 Range 11 WELS, Aroostook County, in the late 1960s.*

exclusive property of the surrounding, private landowners.

By the early 1970s, the administration of Governor Kenneth Curtis, with the support of progressive Republicans in the legislature, had transformed the institutions and structure of Maine state government. One hundred and eighty-five separate state agencies nominally reporting to the governor were collapsed into 15 cabinet-level departments. This remarkable political feat, together with the new state income tax, brought about a time of what federal Judge Frank Coffin, as a youthful Congress member-elect in the 1950s, had termed “the positive power of government” to make a difference in the lives of all Maine people.<sup>5</sup>

Prompted by the urgings of two private citizens—White Nichols of Wiscasset and Ed Sprague of Oquossoc—environmental reporter Bob Cummings published an article in the *Maine Sunday Telegram* of March 12, 1972, about the public lots, suggesting that the state had been derelict in its stewardship of them (Cummings

1972a). As public interest in the issue grew, long-time Forest Commissioner Austin Wilkins requested that Attorney General James Erwin look into the legal issues surrounding ownership and responsibility for the public lots.<sup>6</sup> To undertake the analysis, Erwin chose Lee Schepps, a young assistant attorney general in the Environmental Protection Division.

### HISTORICAL AND LEGAL RESEARCH

Schepps looked first into the history of the public lands reservations by Massachusetts and Maine; researched the issues of timber trespass and the 1850 Maine law authorizing the sale of timber rights on the public lots; and examined the practice of forestry at the time. His reading of *Man and Nature* by George Perkins Marsh (1864) confirmed for Schepps that there was no concept of professional forest management in the early and mid-1800s. Such forest management came into practice in the United States only through the work of early forestry pioneers of whom Gifford Pinchot is best known today. Theodore Roosevelt brought Pinchot into his administration early in 1905 as first chief of the US Forest Service.<sup>7</sup>

Schepps did further historical research on the meaning of the word *timber* at the time (as opposed to *growth*, *wood*, or *trees*) and found legal cases involving disputes over contracts using each of these expressions. It appeared to him that timber in the 1850 Maine law had a distinct meaning, without contemplation of successive growths. If the original deeds granted only the right to cut and carry away the timber then in existence, the duration of that right could not expand its substance, Schepps would later argue.

Schepps submitted his report to Attorney General Erwin in early fall 1972.<sup>8</sup> On October 25, 1972, Phyllis Austin headlined her story for the *Portland Press Herald*, “Public Lots Report Not Ready for the Public: Erwin.” The *Maine Sunday Telegram* went even further, printing a story by Cummings of a charge by Orlando Delogu of the University of Maine Law School that Schepps’s report was being suppressed by the attorney general (Cummings 1972b). Due largely to Cummings’s relentless reporting over the following weeks and months, the issue became highly publicized and politically charged across the state, especially in Augusta.

## A NEW ERA

In January 1973, a new legislature elected Republican Jon Lund of Augusta as attorney general, and Lund promptly released the Schepps report. In it, Schepps argued that

- the right to cut timber on the public reserved lands referred only to the standing timber in existence at the time of the sale of those rights, not subsequent growth, and the rights had therefore long since been exhausted;
- in 1850, long before the method had been invented to make paper from wood, the word timber had a specific and widely understood meaning;
- the rights conveyed did not extend to the use of the land for a form of agriculture, namely, the industrial production of wood fiber to make paper;
- the rights had been treated by the private owners as if they were the entire surface rights, which is not what the documents themselves said; and
- regardless of the extent of the timber rights conveyed, the deeds specified that the rights expired upon the incorporation of the township or its organization as a plantation, acts fully within the power of the state legislature.

Finally, Schepps noted that more than 100,000 acres of public lots had never been located on the ground by a surveyor. The state therefore owned approximately a 4 percent common and undivided interest in every such township and was therefore a 4 percent partner in ownership of well over 2.5 million acres across the Unorganized Territory. Without a partnership agreement, the state had wide legal rights of use and access to the whole of each such township. Further, public lots that had been located on the ground were scattered widely across the Unorganized Territory, some with logging roads across them, many directly in the path of future logging roads for access to adjoining private properties.

In the wake of the Schepps report, the legislature created a high-profile joint select committee to look further into the public lots matter in 1973.<sup>2</sup> After numerous public hearings, the committee wrote legislation to organize Maine's entire Unorganized Territory into several Grand Plantations, thereby terminating the timber rights on the public lots.<sup>10</sup> In response, and in the conviction that their cause was just, Maine's paper companies and nonindustrial landowners brought suit against the state, seeking adjudication of their rights and

status as successors-in-interest to grantees of deeds from the state of Maine between 1850 and 1875.<sup>11</sup>

Attorney Gerald Amero represented the plaintiffs in the case, asserting that the cutting rights on the public lots had been taxed by the state since 1897; that camp lots had been leased on them and the rentals shared equally between the private parties and the state; that there had been successive transfers of cutting rights on public lots among private parties without objection by the state; and that, in general, the state's persistent and long-standing course of conduct barred it from asserting rights it may once have had because of the equitable doctrines of estoppel, laches, acquiescence, and prescription.<sup>12</sup> Finally, the plaintiffs maintained that the right to cut timber until incorporation or organization into a plantation included successive generations of trees and all species and sizes of trees.

The lawsuit was then used politically to hold in abeyance consideration of the grand plantation legislation that would automatically terminate the cutting rights. The state counter-claimed, raising the defense of sovereign immunity and asserting that the timber-cutting rights had expired because the timber in existence at the time of the conveyance had long since been cut.

## THE UNEXPECTED

In the same year, the legislature created a Bureau of Public Lands (BPL) within the new Department of Conservation, to assert and manage the state's interests in the public lots. In late 1973, Richard Barringer, at the invitation of Governor Curtis and with the approval of the (now-defunct and then Republican-controlled) Executive Council, became director of the BPL. As was its custom at the time, the Maine Legislature created the agency with a mission but little else: a modest salary for the director, no staff, and no direction as to what purposes and with what means to manage the public lots over which it had jurisdiction or to retrieve those over which it did not.

In early 1974, Maine Forest Service Director Fred Holt assigned a desk, a vehicle, a forester (John Walker) and a forest ranger (John Hinckley) to the BPL. Barringer, Walker, and Hinckley started off to the woods to survey their charge and, with members of the joint select committee, across the state's Unorganized Territory to assess public sentiment about the grand plantation proposal. They found support for the proposal lukewarm at best, especially among the 10,000 to 12,000 residents of

the Unorganized Territory at the time. Then, in early June of the year, an event occurred that would change everything.

Robert (Bob) Hellendale, president of the Great Northern Paper Company (GNP), approached Governor Curtis in confidence to suggest the possibility of a negotiated settlement to the disputed public lots, of which GNP claimed 90,000 acres, some 60,000 of which were located on the ground. Curtis, through Conservation Commissioner Donaldson Koons, assigned Barringer to explore the opportunity. Over the summer months and into the fall season, Barringer and Hellendale negotiated an agreement to consolidate the 60,000 scattered and located public lots into a small number of high-value places that GNP owned outright.<sup>13</sup>

To persuade GNP's board of directors that he was acting in the company's best interest, Hellendale insisted that the land exchange be made on a strict value-for-value basis, taking into account the differing values of the timberlands involved, access to water and minerals, and other noteworthy features. Average prices were established for these values for all lands that might be exchanged between GNP and the state.

In December 1974, a month before Governor Curtis left office, he and Hellendale signed the agreement that the legislature would later approve. Hellendale's action in the exchange had violated a long-established behavioral norm among the paper companies and large private landowners of Maine (that is, "We get along by going along"); his unilateral action was viewed by the others as a profound betrayal.

Much was going on in the GNP woods at the time: independent logging contractors were attempting to organize for greater rights and compensation; a massive spruce budworm infestation had spread across much of the state, provoking heated public controversy over the aerial spraying of chemical insecticides on millions of acres each year; and the looming prospect of GNP's economic need to harness the hydropower potential of the Big A falls on the West Branch of the Penobscot River.

In retrospect, one may only conjecture that Hellendale wished to put the highly controversial public lots question behind his company and acted accordingly. It is certain, however, that his unilateral action broke the political logjam. Over the next five years, all but one of the paper companies (and only one of the nonindustrial landowners)

would engage in similar exchanges with the BPL, then under a new director.

## GROWING THE BPL LAND BASE

In November 1974, Attorney General Erwin ran unsuccessfully as the Republican candidate for Governor against Democrat George Mitchell and independent James Longley. In the wake of the Watergate scandal and President Nixon's resignation in August 1974, Longley won a surprising victory among Maine voters.

In 1975, shortly after the GNP trade was consummated, Barringer was nominated by Governor Longley to become commissioner of the Maine Department of Conservation. Schepps subsequently became director of the BPL,<sup>14</sup> Walker, director of the Maine Forest Service; and Herb Hartman, director of the Bureau of Parks and Recreation. Together, the four agreed on a strategy for dealing with the claims of the remaining paper companies and private landowners.

Using the same value-for-value approach and selection criteria as used with GNP, Schepps and his staff evaluated and proposed lands for consolidation, negotiated trade deals with paper companies, and sought approval from the legislature to add another dozen consolidated parcels to the BPL's land-holdings. In each exchange, landowners claimed to be donating the timber rights on the public lots and took tax deductions subject to the outcome of the *Cushing v. Lund* litigation. The BPL grew as forest operations and other management activities expanded to hundreds of thousands of acres of newly consolidated units.

In each exchange, BPL staff looked first at the large parcels owned by the landowner involved and, from this menu, selected candidate lands to acquire for the state according to several criteria:

1. To increase the size of existing BPL holdings (for example, Gassabias Lake and the Unknown Ponds, owned by St. Regis Paper Co. and J M Huber, all adjoining a large, state-owned parcel at Duck Lake in Hancock County)
2. To add unique or outstanding parcels (for example, the Richardson Lakes and Mahoosuc Range)
3. To own all or most all of the shoreline of lakes, to control future access and use (such as Sebois Lake, Scraggly Lake, Rocky Lake, Squapan [now Scopan] Lake)



4. To locate lands in different parts of the state, especially with an eye toward public access (such as Donnell Pond, Rocky Lake, Eagle Lake)
5. To acquire good-quality timberland, so the BPL might engage in large-scale forest management, possibly in a leadership role for Maine forest management techniques (in essentially all trades except Gero Island and the Mahoosuc Range)
6. To generate dedicated revenues with which to improve the lands available for public use and the enjoyment of all



*View of Donnell Pond, Hancock County.*

Schepps shared information about lands he believed might best be acquired with Barringer, Walker, and Hartman for their consideration and approval. Schepps then negotiated a trade based on tax-value for tax-value, without separate appraisals. The state accepted no discount to the value of its own lands because they were scattered, largely inaccessible, and in many cases small minority interests not located on the ground. The private landowners in each case received a release of any liability for timber trespass in the past if the state were to prevail in the litigation and claimed tax deductions for the assessed value of their timber rights if the state were to lose the litigation.<sup>15</sup> Each of the trades thus negotiated was consummated after the proposed contract was approved by resolve of the legislature.<sup>16</sup>

### MEANWHILE, BACK IN THE COURTS

The lawsuit was now progressing through the courts, the state represented by Deputy Attorney General Martin Wilk. Because it involved a period of some 125 years and consideration of voluminous documentary evidence, the case was assigned to a referee, retired Supreme Court Justice Donald Webber. By agreement of the parties, the issues involved were narrowed to just two: (1) whether or not the cutting rights related only to timber in existence at the time the rights were conveyed and (2) whether the cutting rights were limited to certain sizes and species of trees considered timber at the time. All other issues were to be reserved.<sup>17</sup>

The two issues were presented to Justice Webber based on a Stipulated Record of over 1,000 pages and more than 250 exhibits. Two days of evidentiary hearings were held

during which the state presented as its lead-witness University of Maine Professor David C. Smith on the contemporaneous meaning of the term *timber* in the timber and grass deeds.<sup>18</sup> The referee issued his report in May 1979, deciding both issues in favor of the private landowners, holding that the timber-cutting rights included all standing timber in existence at the time the cutting rights were sold and all timber growing on the land thereafter. Superior Court Justice Daniel Wathen accepted Justice Webber's report and entered judgment in favor of the landowners.

The state appealed the judgment to the Maine Supreme Judicial Court. During oral argument, the Court raised the question of whether the state's sovereign immunity prevented the Court from deciding the case on the merits. Both the state and landowners argued that due to the narrowing of the issues, sovereign immunity was not a bar. The Court disagreed and deferred any action on the appeal until the legislature might formally waive the state's sovereign immunity.

Importantly, in this decision written by Justice Sidney Wernick, the Court expressly recognized the special status of the state as trustee of the public lots: "It is in its sovereign capacity that the State of Maine holds title, as trustee to public lots in unorganized townships and plantations" *Cushing v. Cohen*, 420 A.2d 919, 923 (Me. 1980). The Maine Legislature took formal action waiving the state's immunity, and on August 4, 1981, the Supreme Court decided the case.

Normally, the entire court of seven justices sits to hear and decide cases on appeal. Initially, five justices heard the appeal: Roberts, Wernick, Godfrey, Nichols, and Glassman, Chief Justice McKusick and Justice Delahanty having recused themselves. When the case was finally heard on the merits, Justice Glassman had died, and his replacement was not appointed until after the case was decided. So, just four justices decided the case: Roberts, Wernick, Godfrey and Nichols.

In a three-to-one decision written by Justice Roberts, the Court ruled in favor of the state, that the timber-cutting rights related only to the timber in existence at the time the rights were conveyed and that these rights had been exhausted. In light of this decision, the second issue—the definition of timber at the time—did not need to be addressed. The Court expressly stated that it was not deciding the present rights of the parties “in light of their conduct and that of their predecessors over the past 130 years.” The Court also stated, “We express no opinion on the question of the effect, if any, the parties’ subsequent conduct may have under such doctrines as estoppel, acquiescence, waiver, laches, or prescription, which by the parties’ agreement are not at issue in this proceeding” (*Cushing v. State of Maine*).

The timber covered by the timber and grass deeds had either all been cut or had otherwise ceased to exist by about 1920. However, the private landowners had continued to harvest timber on the public lots until the present. Since, as the state maintained, the private landowners had no rights to that timber, their cutting was unauthorized and the state would be entitled to damages for the value of all such timber. Given the large volume and the length of time of unauthorized harvesting, the potential damages were substantial. The Court left it to the state, however, to figure out just how to proceed from its decision to a final settlement.

#### A PROPOSED COMPREHENSIVE SOLUTION

Shortly thereafter, Barringer, at that time director of the State Planning Office, Conservation Commissioner Richard Anderson, and Deputy Attorney General Wilk met to strategize. After considering options, they agreed to ask Governor Joseph Brennan to convene all the private landowners in a single meeting, where he might propose the state’s plan to resolve the entire issue. Brennan agreed, and every party to the matter subsequently agreed to

attend the historic occasion. Anderson, Barringer, and Wilk labored for months on the comprehensive proposal, embracing all landowners’ interests, assisted by staff from the State Planning Office, Department of Conservation, and notably Deputy Commissioner Annee Tara who coordinated the effort.

On May 4, 1982, Governor Brennan welcomed his several dozen guests to the Blaine House, opening with some light humor that went unacknowledged. He then detailed the issue at hand and carefully introduced the state’s comprehensive proposal, a bound copy of which was distributed to each landowner.<sup>19</sup> The proposal would consolidate the public lots to the maximum extent possible in a relatively small, manageable number of units. This consolidation would be accomplished on a *two-for-one* value basis, to compensate the state for the timber value lost in the previous six decades of company harvesting. The landowners’ response was one of shock and disbelief. One appeared literally to fall from his chair, and all left the Blaine House silent and angry.

The state spent the next three years negotiating with the private landowners to settle all outstanding issues. Wilk represented the state and Donald Perkins Sr. represented most of the private landowners. At first, the private parties were united in resistance to the state’s proposals for land exchanges in settlement. They strongly and repeatedly reasserted the same arguments initially pled in *Cushing v. Lund*, before these were narrowed by agreement to the two issues brought before the Supreme Court. Wilk and Perkins held several negotiating sessions, with neither side moving from its initial position. Little progress was made, and it appeared the parties might be obliged to engage in prolonged and expensive litigation.

Then, in a second startling development, Bradford (Brad) Wellman of the Seven Islands Land Company, on behalf of the heirs of David Pingree, broke from the other private landowners and, through corporate counsel,<sup>20</sup> entered into negotiations directly with the state. In what was to become the standard for all future settlements, Seven Islands agreed to settle on the terms the state had set forth—namely, exchanging lands on the two-for-one value basis proposed by Governor Brennan. This agreement sent shock waves among the remaining landowners and radically changed the tenor of subsequent negotiations.

The Pingree settlement lent credibility to the state’s insistence on recovering meaningful compensation for 50

years of unauthorized harvesting. The state acquired quality lands that the entire industry recognized as highly valued by Seven Islands. It elevated the state's negotiating posture in discussions with the other parties and caused some to rethink the wisdom of standing together in opposing the state's position. The more enlightened landowners now knew they could not escape coming to terms with the state, and that the longer they waited, the more difficult their negotiating position might become. They recognized that settling with the state was not going to be easy and was, in the long run, unavoidable.

The state focused its efforts on landowners it believed to be most amenable to settlement and deferred discussion with those it believed to be most reluctant. The one-at-a-time negotiating strategy proved effective. As each successive settlement was announced, those who had not settled became increasingly isolated and alarmed, at risk of facing more onerous demands from the state. In the end, all the remaining landowners came to the table and entered into mutually agreeable land exchanges. According to Lloyd Irland, Maine state economist at the time, the two-for-one damages claimed for unauthorized cutting since the 1920s accrued added value of approximately \$50 million to the state, in addition to the value of the extraordinary lands acquired.<sup>21</sup>

When asked recently where he had gained the nerve, the confidence to present the complex and sophisticated comprehensive proposal to the assembled leaders of the most powerful industry in Maine at the time, Governor Brennan thought a moment and responded, "I knew very well all of you who put it together, and I simply trusted you" (Brennan, personal communication, 2019).

The litigation had taken more than eight years from start to finish, during which time the landholdings in BPL's unchallenged jurisdiction increased from 50,000 to 600,000 acres. Meanwhile, before the Maine Supreme Judicial Court rendered its historic decision in favor of the state, and while the litigation was still pending, Barringer, Schepps, and others had provided for the public lots' long-term management in the public interest by drafting and shepherding to enactment two far-reaching Maine laws: the first, to improve their management according to the principles of multiple use (30 MRSA § 4162[1]); and the second, to create a nonlapsing revenue account for their



*Above, Gov. Joseph Brennan signs the second land exchange with GNP, finalizing the Great Northern settlement, in 1983. Also present, l. to r., Richard Anderson, Donald Perkins, Sr, Martin Wilk, Annee Tara, Richard Barringer, Paul Sterns, Paul McCann, and Rob Gardiner.*

improvement and public access and use (30 MRSA § 4163).<sup>22</sup>

These two Maine laws have withstood the test of time and been used as models by other states in their management of large blocks of multiple-use land. They have also yielded a model of what has become known as exemplary forest management for its dramatic impact on carbon sequestration to combat the dire effects of climate change.<sup>23</sup>

## MULTIPLE USE

As assistant attorney general, Schepps had learned of the multiple-use concept and law that guided the US Forest Service's management of its vast holdings, mostly in the West. In 1972, a controversy arose between the Baxter State Park Authority (of which the Maine attorney general is a member) and GNP over the latter's residual cutting rights on one of the two scientific management townships at the north end of the park, which were acquired by Governor Baxter in 1962. The federal law and its provisions became the framework for the successful case Schepps built to delimit GNP's harvesting techniques within the township according to the principles of multiple use and scientific forest management.

The multiple-use mandate written into Maine law for the management of the public reserved lands is based on the federal Multiple Use Sustained Yield Act of June 1960



for management of the national forests. This act was the first major restatement of purpose for the use of our national forests since their creation early in the century, under the guidance of Gifford Pinchot. The legal definition of multiple use pursuant to the federal law reads:

The management of all the various renewable surface resources of the forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustment in use. (Public Law 86-517)

Pursuant to this mandate in Maine law, as the state acquired ownership of each new parcel, the BPL conducted an inventory of all resources on the property. Based on this, BPL Chief Forester Leigh Hoar and Forester Ted Howard prepared a management plan for the parcel, including

1. a conventional forest management plan for commercial cutting/thinning;
2. wildlife management opportunities and issues, to be shared with the Maine Department of Inland Fisheries and Wildlife for its recommendations;
3. recreational opportunities, including camping, boat launching sites, and potential trail sites, with input from the Bureau of Parks and Recreation;
4. input about potential mineral deposits from the Bureau of Geology; and
5. any other attributes or potential uses foreseen at the time and to be noted for future interest and management.

Each management plan was then used as a guide for decisions about how the BPL would manage these lands, with a designated dominant use for each parcel from which other uses might follow.<sup>24</sup>

### THE “PUBLIC TRUST” ISSUE

It is worth noting that the title of Schepps’s article about the public lots written for *Maine Law Review* is “Maine’s Public Lots: The Emergence of a Public Trust” (Schepps 1974). He gave it this title with good reason, as there is no precise legal definition of what constitutes a public trust. At one extreme, the large public domain inherited by Maine from Massachusetts was merely an asset of the state, not unlike surplus land at the Pineland

Center in New Gloucester or the Stevens School in Hallowell, when their intended uses changed, and not unlike the balance on hand in the state’s bank account. With respect to these assets, the state is clearly owner and acts as proprietor. The legislative branch of government has plenary power over the disposition and use of such assets.

At the other extreme is Baxter State Park, owned by state government, but because of limitations imposed on it by Governor Baxter, the state is just the nominal owner for the benefit of the general public. Under English Common Law and the British Constitution, the judicial branch of government has large powers with respect to the use and disposition of such public trust assets.

Under US law, the courts enforce and protect the beneficiaries of trusts. The US Supreme Court has held, for example, that the submerged lands in Lake Michigan are not merely public domain but constitute a public trust. That court struck down an act by the Illinois Legislature disposing of Illinois public property on the lakebed (*Illinois Central RR v. Illinois*, 146 U.S. 387 [1892]).

Maine’s public reserved lands appear similar to these submerged lands and are perhaps even more restricted. The Maine Constitution explicitly requires that they be reserved. The first proposed change of use—that is, in the identity of which portion of the public was to be the beneficiary and in the configuration of the assets themselves—was explicitly authorized by the judicial branch of Maine state government in 1973.<sup>25</sup> Thus, they might become assets of the general public, rather than of the local residents exclusively, and they might be consolidated into large blocks.

At some point it would be appropriate for the attorney general (or some person with legal standing) to inquire about the status of these lands. The public reserved lands of Maine appear to enjoy special and restricted status. If the legislative or the executive branch of Maine state government decides to cut timber on the public reserved lands to generate additional state revenues or to use these lands or the income from them for a purpose that strays from the existing authorized use, the judicial branch may be willing to assert its traditional power with respect to public trusts. The matter is complicated, but in the end, Maine’s public reserved lands constitute a public trust, and their use and protection for the people of Maine ultimately and properly reside with the judicial branch of the state government.

## SOME LESSONS FROM THE PAST

One may ask, How did this dramatic change in Maine's economic history and to the very map of Maine come about, despite the determined opposition of the most powerful industry in the state and its private landowning partners?

As late as 1959, a distinguished scholar of American politics remarked, "In few American states are the reins of government more openly or completely in the hands of a few leaders of economic interest groups than in Maine. [Its lumber and power interests,] combined with the textile and shoe manufacturers have done more than merely 'influence' Maine politics; control is probably a more accurate term" (Lockard 1959: 79). Or as Lee Schepps, a Texas native, recently remarked, "Things just don't happen in Austin if you piss off the oil and gas men" (Urquhart, forthcoming).

Maine's success in this nearly decade-long endeavor was driven by a combination of factors that may be described as a rare alignment of the planets, 12 in all:

1. A robust and insistent free press
2. Sustained leadership within the executive
3. Support of the legislature and judiciary
4. Talented, imaginative, and creative staff
5. Strong, insightful analysis
6. Great teamwork
7. Skillful negotiating
8. Calculated risk taking
9. Devotion to the task
10. Good timing
11. Good luck
12. Personal courage

White Nichol and Ed Sprague, two persistent private Maine citizens, made the issue public and kept it in the public mind over several decades. Bob Cummings and Phyllis Austin, intrepid reporters, gained the support of their editors and made the continuing story newsworthy. Lee Schepps, a young assistant attorney general, authored a creative and compelling analysis of a thorny and complex issue. Attorney General James Erwin, a respected public official, hesitated in making the analysis public. Successive attorneys general and governors afforded continuing political leadership and institutional support for the analysis and its fallout.

The presidents of two private companies—Bob Hellendale of Great Northern and, later, Brad Wellman of the Heirs of David Pingree, the one a giant paper company, the other a revered family ownership—were prepared to break with corporate allies and a longstanding tradition of disciplined unity on important public issues. Deputy Attorney General Martin Wilk skillfully led negotiations that benefited all parties. Among the public agency staff involved, tenacious commitment to the public good, sustained teamwork, and mutual trust grew with time and brought out the best in one another, making the challenging work of execution and implementation, well, fun!

Finally, the timing was right. Environmental consciousness was growing in Maine and the nation in the wake of Rachel Carson's *Silent Spring* and the first Earth Day. "The times they are a-changin'," Bob Dylan intoned, and the right people came together to meet this challenge with an abiding belief in the public interest, government as an instrument of the public good, and unceasing teamwork as the vehicle of high accomplishment.

And what of the landowners today, some 40 years later? In the afterword to his forthcoming book, Thomas Urquhart writes, "With the passage of time, much of the bitterness around the struggle has turned to acceptance, even a feeling of satisfaction." Urquhart quotes Brad Wellman, retired president of Pingree Associates: "Take away all the resentment and what-not, I think the result has been good for both the landowners and the State." And Roger Milliken, president of Baskahegan Company, stated that "the dominant-use policy [was] farsighted and an example of Maine leading; and ecological reserves...never would have happened otherwise" (Urquhart, forthcoming).

## A TIME OF TUMULT

In the wake of the 1991 shutdown of Maine state government, Independent Angus S. King Jr. was elected governor in 1994. In January 1995, as a first act, King created a Productivity Realization Task Force to seek out cost savings and efficiencies throughout Maine state government. At the recommendation of Conservation Commissioner Ronald Lovaglio and with the permission of the legislature, the bureaus of Public Lands and Parks and Recreation were merged into the Bureau of Parks and Lands (today's BPL).



*Stratton Brook in the Bigelow Preserve, Franklin County*

The merged organization faced a complex assignment to distinguish among the several missions and management purposes of the various lands within its expanded jurisdiction. Each is now dealt with separately in accordance with its governing statutes, and revenues generated from the separate categories of land are deposited to separate state accounts. Public reserved lands include the original public lots, lands acquired and consolidated through the trading of public lots, and other lands designated by the legislature as public reserved lands (e.g., those acquired by the well-supported Land for Maine's Future program).<sup>26</sup>

The public lots make up most of the lands managed by the BPL today and most of the revenues generated by these lands. They enjoy the unique constitutional trust protections that form the basis for repeated attorneys' general opinions respecting their management. Recently, they became the focus of a heated controversy over harvesting levels and the use of revenues from them.

In January 2011, Republican businessman and former Waterville Mayor Paul LePage succeeded Democrat John Baldacci as governor of Maine. A one-time employee of Scott Paper Company, LePage chose Doug Denico, a corporate forest manager, to lead the Maine Forest Service. The appointment presaged a prolonged assault on the mission and revenues of the public lots and prompted two fine, career civil servants, Will Harris and Tom Morrison, to resign as director of the BPL in protest (Urquhart, forthcoming). Maine's public reserved lands, however, would be back in the headlines.

It began with a confidential memorandum of October 22, 2012, to the governor, in which Denico proposed a

more-intensive, commercial approach to timber management on the public lots, by way of a dramatic increase in their harvesting. BPL foresters and their long-standing Silvicultural Advisory Committee had set a 2013 allowable cut on the public lots of 141,500 cords, based on the bureau's Integrated Resource Policy (Maine BPL 2000). Without consultation with the bureau or public comment, Denico ordered a 61 percent increase, to 227,732 cords. This action proved but the first blow in a years-long encounter between the Maine Forest Service and the BPL, as well as between the executive and legislative branches of Maine government over management of the public lots and access to the Public Reserved Lands Trust Fund for non-trust purposes.

Shortly after Denico's decree, the Maine Pellet Fuels Association (MPFA) offered the governor's office a plan to replace old, inefficient home-heating furnaces with energy-efficient wood pellet boilers, to be paid for, in part, with a cash rebate from the state. Together, the MPFA and administration decided the rebate would best come not from the state's general fund but from the Public Reserved Lands Trust Fund that would be enhanced by the Denico harvesting plan (Les Otten, personal communication, 2019).

Dipping into the trust fund for an unrelated purpose had occurred before, most recently in 1992 when Attorney General Michael Carpenter barred the use of public lot revenues to meet a shortfall in the state budget.<sup>27</sup> In June 2013, authorizing legislation from the governor for the MPFA proposal, LD 1468, was voted down by the legislature; still, LePage would persist.

In 2014, the governor won a second term, and in his 2015 State of the State address, used the prospect of a potentially devastating spruce budworm outbreak in the Maine woods to justify cutting still more timber on the public reserved lands. Robert Seymour, professor of forestry at the University of Maine, one of the nation's foremost forest scientists and long-standing member of the BPL's Silvicultural Advisory Committee, took issue. Seymour labelled the governor's rationale an unnecessary scare tactic to hide his real objective, to secure more revenue from the public lots for a favored political purpose.

"Forestry on the Public Reserved Lands," Seymour testified, "has been an extraordinary success story at no cost

to the people of Maine. Why change it?” George Ritz, a retired BPL forester, testified that due to the agency’s management practices over the past 30 years, the threat of spruce budworm was “greatly exaggerated,” especially since fir, the budworm’s preferred species, “composes only about 9% of the timber inventory on the Public Lands” (Urquhart, forthcoming: 402)

In response, LePage asked in his budget message to the legislature for even greater change, proposing to split the Bureau of Parks and Lands between a new Bureau of Conservation (with the parks) and the Maine Forest Service (with the public reserved lands). He sought, in effect, to restore the care of the trust lands to the agency from which the legislature had removed them in 1973 when it created the Bureau of Public Lands. “Having all the foresters under one roof” made sense, the MFS’s Denico argued, and, added Agriculture, Conservation and Forestry Commissioner Walt Whitcomb, “This would ensure *uniform management* of Maine’s forest” (emphasis added) (Urquhart, forthcoming: 402).<sup>28</sup>

An exasperated oversight committee of the legislature voted unanimously on April 15, 2015, to direct the BPL to stick with the annual allowable cut supported by Seymour and other professional foresters, 141,500 cords. They also attached language protecting the BPL from interference by the Maine Forest Service.

Undaunted, LePage introduced yet another emergency bill, LD 1397, to authorize transfer of “revenues from the increased harvest of timber” on the public lots to Efficiency Maine “to assist rural Mainers with heating costs.”<sup>29</sup> Frustrated, the legislature set up a special commission of stakeholders under the chairmanship of Senator Tom Saviello (R–Franklin County and former forester for International Paper Co.), to consider the management policies on the public lots and review how the revenues generated might best be spent.

The historic importance of the commission’s deliberations was underscored in a letter dated September 23, 2015, signed by five former conservation commissioners—Richard Barringer, Richard Anderson, Ronald Lovaglio, Edward Meadows, and Patrick McGowan.<sup>30</sup> “It is not our habit,” they began, “to look over the shoulders of our successors in office, or to offer unsolicited advice.... However, the issues at stake compel us to speak.” Surplus revenues “must adhere to their long-term public trust

requirements,” and the commission should be guided by the attorney general in this regard.

The public reserved lands had “only in recent times yielded revenue surpluses,” the former commissioners noted, and these funds should be spent on the \$55–60 million backlog in needed capital improvements to the lands themselves. Regarding agency realignment, they found “no virtue or any administrative gains, cost savings, or public benefits” to be had from restoring responsibility for the trust lands to the Maine Forest Service. The annual allowable cut of 141,500 cords was appropriate and should be maintained until a new inventory would inform future decision-making.

On October 26, 2015, then-Attorney General Janet Mills sent a written opinion regarding the legal risks of raiding a constitutionally protected trust fund. A definitive answer would have to come from the Maine Supreme Judicial Court, she argued, but based on the 1992 case, the governor’s proposal “would likely meet great skepticism.” Further, public reserved lands dollars spent on state parks (an idea that had also been raised) would replace general fund monies, “effectively making trust money interchangeable with general fund revenue, which is not permitted” (Bentley and O’Brien 2015: 5).

The special commission released its unanimous report with recommendations in December 2015 (Bentley and O’Brien 2015). Mindful of the attorney general’s warning, it did not include money for Efficiency Maine among its recommendations. The BPL should maintain a cash operating account of \$2.5 million a year against unexpected costs; a forest inventory should be undertaken the next year and every five years thereafter; and BPL foresters should make decisions on harvest levels, subject to ACF Committee oversight by the legislature.

Not surprisingly, Governor LePage attacked the commission and its report, as well as the bill that would implement its findings. The legislature passed LD 1629, however, and the governor promptly vetoed it. The legislature’s vote to override his veto fell nine votes short. In 2016, Senator Saviello again presented a bill to implement the committee’s recommendations, which passed, and again the governor vetoed it. The Environmental Priorities Coalition—a partnership of 34 environmental, conservation, and public health groups—took up the battle this time, and the legislature succeeded in over-riding the governor’s veto.





*Sign for Deboullie Public Land in Aroostook County*

The new law (LD 586, Chapter 289 Public Law, 2017) gave the BPL needed tools and opportunity to implement clarified policies on Maine’s public reserved lands for the foreseeable future. It mandated a forest inventory every five years and detailed reports on growth and harvest levels to assure public accountability. The lands would get improved trails, bridges, and access especially for persons with disabilities. New public lands signage would at last let hikers, hunters, canoeists, kayakers, campers, anglers, and nature lovers know just where they are and that this splendid heritage might belong to them for all time as long as they remain forever watchful.

### THE PROMISE OF THE FUTURE

These possibilities would have to wait, however, upon a new gubernatorial administration. In January 2019, Democrat Janet Mills succeeded Paul LePage to become Maine’s first female governor. Amanda Beal, the new ACF commissioner, previously led the Maine Farmland Trust’s efforts to revitalize Maine’s rural landscape. Andy Cutko, the new BPL director, is an ecologist who has worked for the Maine Natural Areas Program and The Nature

Conservancy. He comes to his position with a depth of knowledge about the public reserved lands and well equipped to manage these natural treasures as they were intended, for the people of Maine and our visitors, for their many and diverse values.

Today, after a full generation in relative obscurity, the public reserved lands’ future lies in the hands of Bill Patterson, the new deputy director of the BPL. With his great appreciation for these lands, renewed public interest in outdoor recreation, and a staff of several dozen talented and experienced forestry and recreational professionals, Patterson looks forward to the challenge. A trained forester, he is well qualified with advanced degrees from Cornell University and the University of Montana, and more than 20 years’ experience at The Nature Conservancy, 15 of which as northern Maine program manager.

Patterson believes that an important challenge facing the agency is to increase public awareness and appreciation of these lands—“where they are, how and for what purposes they are managed, and what is their potential to serve Maine people and our growing numbers of visitors.”<sup>31</sup> To this end, he will seek to improve the management capacity and tools available to his staff; to identify for improvement particular sites with high demand and large need; and to invest in their future by leveraging the new, federal America’s Great Outdoors monies for strategic investments.

We wish Patterson and his colleagues every success in this important, high-minded, and occasionally fraught endeavor. Forty years of experience teaches that the public reserved lands are at once a high-value and a highly vulnerable asset—vulnerable to periodic raids on the trust fund to meet emergency political needs, and to takeover by private commercial interests. If it is to succeed in this new opportunity, the BPL must take the offensive and build a comprehensive strategy to broaden public knowledge of the public reserved lands and their many values, to improve public access to them and to the facilities they offer, and to realize their potential to help strengthen Maine’s rural economy.

This strategy would best be created in collaboration with other state and federal agencies and private organizations that leverage Maine’s exceptional outdoor recreation assets to increase economic opportunity and revitalize remote rural communities. These organizations include, among others, Acadia National Park, Katahdin Woods & Waters National Monument, Baxter State Park, Allagash

Wilderness Waterway, the Appalachian Mountain Club, the International Appalachian Trail, Northern Forest Center, Northern Forest Canoe Trail, and the new Office of Outdoor Recreation within the Maine Department of Economic and Community Development.

Most of all, if their great potential is to be realized, the BPL must take care to build abiding support for the public reserved lands among the citizens of Maine, just as Governor Baxter did for his renowned State Park. These lands must become part of all that Maine people know, understand, enjoy, take pride in, and love. They will endure and become all they might be only as part of Maine people's hearts, minds, imaginations, and ongoing conversations.

Finally, then, one may ask, what is the overriding lesson in all of this, for all of us? It is to heed the words often attributed to Thomas Jefferson, "Eternal vigilance is the price of Liberty"—then, now, and always!

## ACKNOWLEDGMENTS

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## NOTES

- 1 <https://legislature.maine.gov/lawlibrary/sections-of-the-maine-constitution-omitted-from-printing/9296/>
- 2 In 1824 the legislature declared, "There shall be reserved in every township, suitable for settlement, one thousand acres of land to average in quality and situation with the other land in such township, to be appropriated to such public uses for the exclusive benefit of such town" (Chapter 280, Maine Public Laws of 1824).
- 3 Henry David Thoreau reported on his journeys to "Ktaadn, Chesuncook, and the Allegash and East Branch," where he navigated in part based on then-current maps of Maine's public domain. Encountering timber thieves along the way, Thoreau observed, "Much timber has been stolen from the

public lands. (Pray, what kind of forest-warden is the Public itself?) I heard of one man who, having discovered some particularly fine [pine] trees just within the boundaries of the public lands, and not daring to employ an accomplice, cut them down, and by means of block and tackle, without cattle, tumbled them into a stream, and so succeeded in getting off with them without the least assistance" (Thoreau 1864: 74).

- 4 A Maine plantation is a populated township with intermediate legal status granted by the legislature short of an organized municipality.
- 5 In a 1956 speech to Bucks County, Pennsylvania, Democrats, Coffin elaborated, "Lincoln believed a man's legs should be long enough to reach the ground. We believe government should be big enough to do whatever job needs to be done by it. It is a tool to help mankind in a society growing more complex, to help him live the good life" (Coffin 2004: 372).
- 6 For Wilkins' perspective on the matter, see Maine Forest Commissioner (1963).
- 7 In 1898, Austin Cary of East Machias and Bowdoin College was hired by the Berlin Mills Company of New Hampshire as the first company forester in North America. Research-based, scientific forestry was pioneered in Maine and New England by the inspired work of Cary, largely in collaboration with the Brown and Great Northern Paper companies (Smith 1972).
- 8 Later published as "Maine's Public Lots: The Emergence of a Public Trust," *Maine Law Review* 26(2), 1974.
- 9 The joint select committee was cochaired by Sen. Harrison Richardson of Cumberland County and Rep. Elmer Violette of Aroostook County and staffed by Asst. Attorney General Lee Rogers, Herb Hartman, and Nancy Ross.
- 10 LD 1812, An Act to Organize the Unorganized and Deorganized Territories of the State of Maine and to Provide for Management of the Public Reserved Lands, was introduced on May 3, 1973, by its House sponsor, Democratic Minority Leader John L. Martin of Eagle Lake.
- 11 The carefully watched case was entitled *Cushing v. Lund*. Charles S. Cushing Jr, a Portland native, had a minor stake in the litigation's outcome. He allowed use of his name as the first plaintiff so the case might appear to the court as one of *David v. Goliath, a Common Man v. The State*.
- 12 Estoppel, laches, acquiescence, and prescription are equitable (or, fairness) doctrines that prevent a party from asserting a legal right or claim if a long delay in doing so has prejudiced the other party. Inaction and silence can result in the application of these doctrines where a party has unknowingly acted in a manner inconsistent with the rights of the party who remained silent or failed to assert its rights.
- 13 The BPL was assisted in the consolidation proposal by two college student interns, Vicki Parker of Colby College and Elizabeth Swain of Hampshire College. Other notable contributors to the BPL's early years include David T. Flanagan, Barbara Cottrell, and Linda Harvell. Maps of the public lots before and after consolidation are available in Appendix 2 (<https://digitalcommons.library.umaine.edu/mpr/vol29/iss2/9/>).

- 14 Schepps would be succeeded as director of the BPL by Lloyd Irland, Bernie Schruender, and Rob Gardiner, each of whom reinforced and advanced the collaborative principles, practices, and procedures developed within the bureau.
- 15 For the list of companies involved here, see Appendix 1 (<https://digitalcommons.library.umaine.edu/mpr/vol29/iss2/9/>), entries for 1975–78. The release was given to GNP in the original trade in 1974 and extended to all other parties that elected to enter into trades with the state prior to settlement of the court case. It was expected that if the state were to prevail in the litigation, it would seek damages, so this release created an incentive for the companies to settle before final resolution of the case. GNP also took a tax deduction for a gift of the value of the timber and grass rights, subject to the outcome of the litigation. All subsequent landowners who entered into trades with the state prior to the outcome of the litigation did the same, and all were ultimately obliged to repay the IRS for the deduction previously taken.
- 16 The only significant opposition to resolves submitted to consummate all exchanges came from lawmakers who expressed hope there might one day be settlement and organization of the townships in the Unorganized Territory and from people who lived in or near a Maine plantation. As a result, today there remain some 40 original and located public lots scattered across the UT, most in plantations and ranging in size from 300 to 1200 acres. All are included in the same BPL management planning process as the consolidated parcels within a geographic region. When a plan is established or updated, all original public lots remaining within the region are included in the management plan.
- 17 Importantly, the issues of laches, acquiescence, estoppel, and prescription were reserved. All are complex equitable doctrines that are highly fact dependent, requiring extensive evidence. The case would have been difficult and costly for both parties had these issues been brought before the court. In addition, the plaintiffs were confident that they would prevail on the two narrow issues agreed upon (as they would do before Justices Webber and Wathen), and that by reserving all other issues for another day, they would be able to assert them in a follow-up case if they lost on the narrow issues.
- 18 David C. Smith was author of the widely respected and authoritative *A History of Lumbering in Maine, 1861–1970*.
- 19 See Office of Governor Joseph E. Brennan, “State of Maine Public Reserved Lands: Consolidation Proposal,” May 4, 1982, [https://digitalmaine.com/parks\\_docs/41/](https://digitalmaine.com/parks_docs/41/).
- 20 Edward (Ted) Leonard III of the law firm Eaton Peabody.
- 21 The list of consolidated parcels may be found at <https://www.maine.gov/cgi-bin/online/doc/parksearch/index.pl> using the Public Lands dropdown. Each has a 15-year management plan guided by a citizen advisory committee and reviewed every five years, with a hierarchy of dedicated uses and objectives for forestry, recreation, wildlife, and ecology, and recommendations for infrastructure needs and objectives.
- 22 Both bills were introduced to the legislature by House Speaker John L. Martin. They became law without the signature of Governor Longley, who in general opposed expansion and refinement of governmental authority. His failure to veto was likely due to the positive and supportive intercession of his chief of staff, Allen G. Pease, who had served Governor Curtis as chief of staff. The two laws are now incorporated as 12 MRSA Part 2, Chapter 220, Subchapter 4. The required annual reports to the Maine Legislature for the public reserved lands may be found at [https://www.maine.gov/dacf/parks/publications\\_maps/annual\\_reports.html](https://www.maine.gov/dacf/parks/publications_maps/annual_reports.html).
- 23 Beyond protecting the forest environment and the many ecosystem services it provides, exemplary forestry (1) enhances wildlife habitat for the full range of species present; (2) increases quality and quantity of the wood produced and retained in forest stands over time; and (3) enhances the role forests play to mitigate climate change by increasing resilience, facilitating adaptation to future climate conditions, and management to sequester more carbon in the forest and in forest products, and to use the other influences of forests on climate change in positive ways (Giffen and Perschel 2019).
- 24 The management plan for each consolidated parcel may be found at [https://www.maine.gov/dacf/parks/get\\_involved/planning\\_and\\_acquisition/management\\_plans/index.html](https://www.maine.gov/dacf/parks/get_involved/planning_and_acquisition/management_plans/index.html)
- 25 Maine Supreme Judicial Court, Opinion of the Justices, 308 A2d 253 (1973). Written in response to questions posed by the Senate of the 106th Maine Legislature respecting the grand plantation bill before it, the opinion enabled consolidation of the public lots and extension of their benefits to the Maine population at large.
- 26 The other types of public lands managed today by BPL are the nonreserved public lands, primarily institutional lands considered surplus by other state agencies and assigned to the bureau for natural resource management; state-owned coastal islands; and the state’s submerged lands. The nonreserved lands do not enjoy the same constitutional protections as do the public reserved lands.
- 27 Opinion dated December 15, 1992.
- 28 In 2013, with legislative approval, Governor LePage merged the Department of Conservation with the Department of Agriculture to create the Department of Agriculture, Conservation and Forestry.
- 29 According to its website, Efficiency Maine administers “programs to improve the efficiency of energy use and reduce greenhouse gases in Maine.... by delivering financial incentives to purchase high-efficiency equipment or changes to operations that help customers save electricity, natural gas and other fuels” <https://www.efficiencymaine.com/about/>.
- 30 Drafted by Lloyd Irland and Richard Barringer, the letter is available at [https://digitalmaine.com/irland\\_group/1/](https://digitalmaine.com/irland_group/1/), courtesy Adam Fisher of the Maine State Library.
- 31 Public recreational use of the consolidated parcels varies greatly with relatively heavy use only in such units as the Bigelow Preserve, Nahmakanta, and Debouille. The BPL in general does not have specific recreational use figures for the units, though it occasionally uses trail counters on specific hiking trails. Recreational trends reported in the biennial *Statewide Comprehensive Outdoor Recreation Plan* (or, SCORP) inform recreational management decision-making.



## REFERENCES

- Bentley, Curtis, and Mike O'Brien. 2015. *Report of the Commission to Study the Public Reserved Lands Management Fund*. Augusta, ME: Office of Policy & Legal Analysis. <http://legislature.maine.gov/opla/completed-study-reports/9289>
- Carson, Rachel. 1962. *Silent Spring*. Boston: Houghton Mifflin Company.
- Coffin, Frank M. 2004. Life and Times in the Three Branches, Volume Two, Law-Politics-Congress-AID, Unpublished manuscript, USM Glickman Family Library Archives.
- Cummings, Bob. 1972a. "Public Land Sold and Given Away." *Maine Sunday Telegram*, March 12, 1972.
- Cummings, Bob. 1972b. "Law Professor Claims Erwin Suppressing Lots Scandal." *Maine Sunday Telegram*, October 29, 1972.
- Dylan, Bob. 1963. *The Times They Are A-Changin'*. New York: Columbia Records.
- Giffen, R. Alec, and Robert Perschel. 2019. *Exemplary Forestry for the 21st Century: Managing the Acadian Forest for Bird's Feet and Board Feet at a Landscape Scale*. Littleton, MA: New England Forestry Foundation. <https://newenglandforestry.org/learn/initiatives/exemplary-forestry/>
- Greenleaf, Moses. 1829. *Survey of the State of Maine in Reference to its Geographical Features, Statistics and Political Economy*. Portland ME: Shirley and Hyde.
- Lockard, Duane. 1959. *New England State Politics*. Princeton, NJ: Princeton University Press.
- Maine BPL (Bureau of Parks and Lands). 2000. *Integrated Resource Policy for Public Reserved and Nonreserved Lands, State Parks, and State Historic Sites*. Augusta: Maine Department of Conservation. [https://www.maine.gov/dacf/parks/publications\\_maps/docs/irp.pdf](https://www.maine.gov/dacf/parks/publications_maps/docs/irp.pdf)
- Maine Forest Commissioner. 1929. *Biennial Report of the Maine Forest Commissioner, 1927–28*. Augusta: Forest Commissioner.
- Maine Forest Commissioner. 1963. *State of Maine, Report on Public Reserved Lots, 1963*. Chapter 76, Resolves of 1961. Augusta: State Forestry Department.
- Marsh, George Perkins. 1864. *Man and Nature: Or, Physical Geography as Modified by Human Activity*. New York: Charles Scribner. Reprinted edited by David Lowenthal. Cambridge, MA: Harvard University Press, 1965.
- Schepps, Lee M. 1974. "Maine's Public Lots: The Emergence of a Public Trust," *Maine Law Review* 26(2): 217–272.
- Smith, David. 1972. *A History of Lumbering in Maine, 1861–1970*. Orono: University of Maine Press.
- Thoreau, Henry David. 1864. *The Maine Woods*. Boston: Ticknor and Fields.
- Urquhart, Thomas. Forthcoming. *Up for Grabs! Timber Pirates, Lumber Barons and the Battles over Maine's Public Lands*. Camden and Portland ME: Down East Books and the Maine Historical Society.



**Richard Barringer** served in the administrations of three Maine governors as director of the Bureau of Public Lands, commissioner of the Department of Conservation, and director of the State Planning Office. He later became founding director of the USM's Muskie School of Public Service, where he taught public policy and community planning for 25 years. He is author and editor of numerous books, reports, and landmark Maine laws in the areas of land use and conservation, education, the environment, energy, sustainable development, and tax policy.



**Lee Schepps** represented the state of Maine in the public lots matter, both in the litigation and as the second director of the Bureau of Public Lands. Following his law practice and public service, he pursued a career in business in Texas and retired to Maine with his wife, Barbara Cottrell. He has served on numerous boards, public and private.



**Thomas Urquhart** was formerly executive director of the Maine Audubon Society, where forest practices and the opportunities offered by Maine's North Woods were among his top priorities. He is a frequent writer on nature and conservation issues, including a book of essays, *For the Beauty of the Earth* (2004). His latest book, *Up for Grabs*, to be published in 2021 in connection with Maine's (delayed) bicentennial, is a history of Maine's public lots.



**Martin Wilk** represented the state of Maine in the public lots litigation and in the settlement negotiations that followed the Maine Supreme Court's decision in the state's favor. In the course of his law practice, Wilk served as a neutral fact finder for the Maine Labor Relations Board, chair of the Maine Small Business Loan Authority, chair of the Brunswick Naval Air Station Redevelopment Authority, and as a member of several other boards and commissions.



Charlene Cummings

This may be interesting to the committee, even tho the author is now a proponent of  
cmp's corridor