



STATE OF MAINE
DEPARTMENTS OF
INLAND FISHERIES & WILDLIFE
AND AGRICULTURE,
CONSERVATION & FORESTRY
AUGUSTA ME 04333-0041



Date: January 21, 2022

To: Senator, Joseph Baldacci Chair
Representative, Ann Matlack Chair
Members of the Joint Standing Committee on State and Local Government

From: Amanda Beal, Commissioner of the Department of Agriculture, Conservation & Forestry (DACF) and Judith Camuso, Commissioner of the Department of Inland Fisheries & Wildlife (DIFW)

Subject: LD 1513 - An Act To Require the Maintenance of a Discontinued Public Road That Provides the Sole Access to One or More Residences

Senator Baldacci, Representative Matlack, and honorable members of the Joint Standing Committee on State and Local Government:

We are sending this letter to outline concerns DACF and DIFW have related to LD 1513, to express opposition regarding the level of involvement the proposed Commission on Maine Abandoned and Discontinued Roads requires of DACF and DIFW staff, and to offer some suggestions for resolution.

The issue of discontinued roads presents legal and social issues that are best addressed locally by municipal officials informed by attorneys, surveyors, landowners, and community residents. [Title 23 § 3026](#) provides guidance on discontinuing roads, determining a road's status, providing damages to an affected landowner, and public notice to affected parties. In their work, if municipalities identify specific areas of the statute that are unclear, they can raise these to the legislature's attention for clarification.

Many discontinued town roads in Maine are used for recreation, including non-motorized (e.g., mountain bikes) and motorized (e.g., ATV and snowmobile) uses. However, ownership of discontinued town roads is often disputed, with adjacent landowners claiming partial or complete ownership rights, and many towns are reluctant to relinquish those rights.

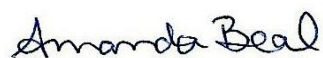
The DACF's Off-Road Vehicle (ORV) Program requires landowner permission to grant funding to municipalities, ATV clubs, and snowmobile clubs to maintain trails. Because of the disputed ownership of discontinued roads, it is problematic for DACF's ORV program to provide funding. The challenge is elevated because there are hundreds of organized towns in Maine, and each town handles the issue differently. The only way for DACF to administer the program is for the applicant to show they have the landowner's permission; DACF does not have a role in securing that permission.

The use of public ways (roads) by ATVs and snowmobiles was authorized in [Title 12 §13106-A \(5\)](#), and [§13157-A \(6\)](#) has also created concerns for DIFW. The statutes allow municipalities to open public ways (defined in [Title 29-A §101 \(59\)](#)) to ATVs and snowmobiles. The definition of public way means owned and maintained by the State, a county, or a municipality, over which the general public has a right to pass. The challenge comes in attaining a shared understanding of how a municipality owns and maintains a road over which the public has a right to pass. We would stress there are underlying facts that determine or establish a right of access, but generating a common understanding, agreement, and acceptance of their status can be difficult.

When these provisions were put in place in Title 12 Part 13, it was done with the expectation that the municipalities would utilize this authority to provide recreational opportunities within their communities based on the municipality's knowledge of the status of the roads in their jurisdiction and their resident's concerns.

The core of the problem is a municipal one, and the challenge to DACF and DIFW outdoor recreational programs is a by-product of this municipal issue. The Departments should be part of the dialogue to address this problem, but we cannot lead its resolution. Creating those solutions is an effort best conducted by a statewide organization representing municipal interests that can then bring any actions requiring legislative action back to the Maine Legislature. The Maine Legislature can then review them, gather feedback through the legislative process and act upon them as they deem appropriate. The most effective role for the two agencies is to provide feedback on specific actions or statute changes proposed as solutions. Both Departments would gladly attend legislative work sessions on particular proposals and provide feedback. However, neither agency has the expertise, staff, or resources to lead the Maine Abandoned and Discontinued Roads Commission. We feel a narrowly focused workshop hosted by a statewide municipal organization that would identify specific problems and potential solutions is a more effective means to address this issue than the proposal as written.

Please do not hesitate to reach out with further questions.



Amanda Beal
DACF Commissioner



Judy Camuso
DIFW Commissioner