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Dear Committee Members:

Thank you for the opportunity to provide my input in support of L.D. 1513 as amended, to form a permanent Commission to work on the problems of abandoned and discontinued roads.

My Name is Neil Lanteigne, I am a landowner in Paris along an old Maine Road that has been Abandoned, Discontinued, and voted Closed.

The road in Paris is known as Dean Road and in West Paris is known as Finn Road. The Paris side of the road was discontinued to the Dean Homestead (My Property) in 1931. West Paris split from the Town of Paris in 1957. The West Paris side of the road was voted "Closed" in March 1965 to the Paris / West Paris town line.

Easements were deeded to the early landowners in the township of Paris and West Paris that predated the town road. In 1773 Rangeways were established by the Proprietors of Township # 4 (Paris and West Paris) that exist forever. On November 4, 1773, when the Proprietors were lotting out the township, they held a meeting at Coolidge Tavern in Watertown Massachusetts and they voted that there be reserved for the use of the proprietors their heirs and assigns forever two rods in width on the eastward side of every range line through the length of the township for the convenience of ways if it should be needed. These Rangeways were established in order to prevent landlocking and segregation in our community. Finn Road was built as the Rangeway for the 9th range of lots in the township of Paris and West Paris. My Survey shows the old road and the Rangeways that crosses through my property has been recorded in the Oxford County Registry of Deeds Plan # 5361.

When the township was lotted out, Double Lot 19 and 20 in the 9th Range was a single lot according to the 1795 plan. (Oxford County Registry of Deeds Plan # 1133) When Double Lot 19 and 20 was subdivided, it created dominant (backlots) and servient estates along the road to prevent landlocking and segregation and ensure property access to the backlots. Double Lot 19 and 20 consists entirely of what is now known today as Korhonen Houselot, Kashner Houselot, Korhonen Backlot, Binney Backlot, and My Backlot. Me and my neighbors, all of our properties along the road combined together are Double Lot 19 and 20 in the 9th Range. We are all part of the same Double Lot 19 and 20 in the 9th Range.

In 1799 Lots 19 and 20, Range 9 was one double lot containing 200 acres and the deed states: "Subject to any right of way that exists over the same" Source: Cumberland County Registry of Deeds Book 29 Page 310

Later in 1799, deed for Lot 19 and the undivided half of Lot 20 in Range 9 containing 150 acres states: "Reserving a privilege for a road or roads if hereafter necessary."

Source: Cumberland County Registry of Deeds Book 30 Page 459

In 1800 Edmond Dean bought Lot 19, Range 9 containing 100 acres (backlots) and the deed states: "Reserving a privilege for a road if hereafter necessary." Source: Cumberland County Registry of Deeds Book 32 Page 108

In 1815 Edmund Dean Jr and Noah Dean deed for Lot 19, Range 9 containing 100 acres (backlots) states: "Reserving a privilege for a road or roads if hereafter necessary."

Source: Oxford County Registry of Deeds (Early Books) Book 11 Page 321

In 1815, Edmund Dean deed for Lot 19, Range 9 containing 100 acres (backlots) states: "Reserving a privilege for roads if necessary." Source: Oxford County Registry of Deeds (Early Books) Book 11 Page 322

In 1848 Edmund Dean deed for the south part of Lot 19 Range 9 (my backlot) references Book 11 Page 321 & 322 and states: "the part hereby quitclaimed from the southerly part of said premises by a line fence built by myself (Edmund Dean Jr) and Noah Dean and is the part that has been in the exclusive possession and occupancy of said Noah and said John Dean for many years and constituting a part of the Noah Dean farm, so called, on which the buildings of said farm stand." Source: Oxford County Registry of Deeds (Early Books) Book 80 Page 41

In 1799 Double Lot 19-20 in the 9th Range was conveyed "subject to any right of way that exists over the same". These rights of way are the Rangeways that were established in 1773 that exist forever in the township of Paris and West Paris. In 1800 Lot 19 (backlots) was subdivided off Double Lot 19-20. The later 1799, 1800 and 1815 backlot deeds state: "Reserving a privilege for a road or roads if hereafter necessary." The backlots (Binney, Korhonen, my backlot) was a single lot in 1815. Sometime after 1815, and "many years" before 1848 the south part of the backlots (my backlot) was subdivided from the north part of the backlots (Binney, Korhonen). Binney and Korhonen backlots are the servient estates to my backlot (dominant estate) along the road.

On October 30, 2015 I was brutally assaulted by my neighbors while walking my dog along the public Finn Road in West Paris Maine. I suffered 4 broken ribs, a broken eye socket, a broken vertebra in my back, a concussion and a traumatic brain injury resulting in PTSD, flashbacks, night terrors and memory issues. I fear for my life. During the assault, a gun was placed against my head and I was threatened to be killed and buried in the swamp if I walked down the road again, told anyone what happened, or went before the West Paris Selectmen to get road access.

On November 12, 2015, less than 2 weeks after the brutal assault, the Town of West Paris after consulting with its Attorney, Mary Costigan of Bernstein Shur Law Firm, behind closed doors in executive session, presumed the road was abandoned sometime prior to 1965 "unless and until there is some evidence that the road was not abandoned prior to 1965". There was no public deliberation. However, no determination was made on November 12, 2015.

"A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way." 23 M.R.S.A. § 3028(1) (2nd sentence). Source: <https://law.justia.com/codes/maine/2015/title-23/part-3/chapter-304/section-3028>

I provided numerous written statements, documents, information and oral comments to the town of West Paris prior to November 12, 2015 and my evidence rebutting the towns presumption of abandonment was apparently ignored and not even considered by the town or the towns attorney.

My email to the town dated August 14, 2017 rebutted the towns presumption of abandonment. The road could not have been abandoned prior to 1965 as presumed, primarily because in 1965 the road was voted closed by the town. The road had to have been a town way in 1965 for the town to vote the road closed in 1965. The road could not have been abandoned prior to 1965 as evidenced by the towns own attested statement provided to me by the town prior to November 12, 2015 that the road was voted closed in 1965. The towns own attested statement of the 1965 closing effectively rebuts the towns own presumption of abandonment prior to the 1965 closing.

After receiving my August 14, 2017 rebuttal, the town realized the road could not have been abandoned prior to 1965 as presumed, and on September 25, 2017 the town filed its "Notice of Determination of Presumption of Abandonment" determining the road was abandoned due to non-maintenance beginning April 15, 1985 and ending on April 15, 2015, resulting in a public easement pursuant to 23 M.R.S.A. § 3028. Source: Oxford County Registry of Deeds, Page 5369 Book 459

The Maine Supreme Judicial Court has long upheld that the public has an unfettered right to use any public easement. Town of Fayette v. Manter 528 A.2d 887 (1987) Source: <https://law.justia.com/cases/maine/supreme-court/1987/528-a-2d-887-0.html>

According to the Maine Supreme Judicial Court, the common law rule is that a perfect legal title cannot be lost by abandonment. The common law rule that "one cannot assert a claim of title by adverse possession against a municipality" precludes any common law abandonment claim based on adverse possession. *Town of Sedgwick v. Butler* HAN-97-727 (1998). Source: <https://caselaw.findlaw.com/me-supreme-judicial-court/1430104.html>

Common law abandonment and adverse possession are insufficient in extinguishing or taking a public easement. The inclusion of common law abandonment under 23 M.R.S.A. § 3028-A is an unjust and discriminatory practice and creates an unfair advantage against those with limited means and opens a minefield that only landowners with deep pockets with expensive lawyers can successfully navigate. Effectively landlocking and segregating the poor.

Common law abandonment is something that is only determined or decided by a Court of law, not a town. If someone wants to argue for common law abandonment in court, that's their right. Towns should be obligated to follow the law. Please don't give the towns the option of claiming common law abandonment in the statutes, the towns have and will abuse the privilege. Common law abandonment is no longer needed, as the statutes are in place. The inclusion of Common Law abandonment in the statute will only lead to further confusion and conflict along our old Maine roads.

The terms "only means of access" or "alternative access" or "only access route" should not be used in 23 M.R.S.A. § 3028-A because it is discriminatory and promotes segregation and landlocking. It should not matter if there is or someone has alternative access. If someone has a right to use the road they should be able to use it. *"Oh he has access over there, he doesn't need access over here."* This ignorant mentality has to be abolished. Something needs to be done to protect the rights of landowners who are deemed to have alternative access.

The Maine Supreme Judicial Court dealt with the very issue of someone deemed to have alternative access in another town. The *Frustaci* case involved a situation where the City of South Portland discontinued two City roads which abutted *Frustaci's* property in Cape Elizabeth. Even though *Frustaci* had access to his property from town roads in Cape Elizabeth, the discontinuance of the South Portland streets made it harder for him to develop his property and reduced the number of lots he could develop. The City had awarded Mr. *Frustaci* no damages, on the theory that he still had access to his property from Cape Elizabeth. *Frustaci* sued the City and won a jury verdict in the amount of \$380,000.00. Needless to say, the *Frustaci* case poses a warning to a municipality considering the discontinuance or abandonment of any town way. The Town must assess all the facts and circumstances of the situation and determine what impact the discontinuance or abandonment will have on the value of abutters' properties, because that impact is compensable in damages even if the abutters retain other access to their properties. *Frustaci v. City of South Portland* 2005-ME101 (2005).

Source: <https://cases.justia.com/maine/supreme-court/05me101fr.pdf?ts=1462359569>

Affected Property should be expanded to all or any landowners along the road, even those that abut the end of the road, regardless if alternative access exists. Affected property should also be expanded to anyone who has a right to or is a beneficiary of the road. The exclusion of others along the road lacks due process and is a discriminatory policy and practice that will undoubtedly lead to landlocking and segregation and further confusion and conflict along our old Maine roads.

23 M.R.S.A. § 3028-A also states that any public utility easements remain even if the public easement is extinguished. Likewise, private and public easements may still exist along the road. Private easements may still exist when a road is discontinued or abandoned. Even when this occurs, however, private individuals may have a right to continue using the road. The municipality should not spend public funds protecting (i.e., litigating) these private rights, but it can suggest to the parties that private rights may exist.

It would not be correct to assume that each property owner owns the abutting former way to the centerline free of any encumbrances such as underlying public or private rights-of-ways that may exist in the same location. A grantor may have expressly reserved rights in this street or may have recorded a notice of intent to reserve an interest in the way. The elimination of one easement may not necessarily result in the elimination of all easements.

I encourage you to read and review "Maine Roads and Easements". There are some excellent diagrams that show even if the public easement to the road was extinguished, underlying rights likely exist in the form of a rangeway or other easement(s). The elimination of one easement does not necessarily cause the elimination of all easements. Source: <https://digitalcommons.maine.edu/cgi/viewcontent.cgi?article=1581&context=mlr>

23 M.R.S.A. § 3028-A makes it easier for towns to dispose of roads by allowing landowners to form private easements, but what happens in the case where a landowner is unfairly landlocked or segregated? Landowners who depend on or otherwise benefit from the road may abut the road at the end of the road or in other towns. A licensed surveyor must be tasked with determining who the interested or affected parties to a road are. Each road situation is unique, and the towns must sometimes look beyond its own borders into other municipalities to determine the effected landowners / who the interested parties are along our Old Maine Roads.

The legislature cannot ignore the historical record and the wording in the property deeds. The Maine Supreme Judicial Court has also recently decided and upheld that that one can convey only what one has been conveyed, and "much is to be presumed in favor of ancient deeds". *Almeder v. Town of Kennebunkport (Goose Rocks Beach Case)* 2019 ME 151 (2020). <https://www.courts.maine.gov/courts/sjc/lawcourt/2019/19me151re.pdf>

The property boundaries are clearly defined by the language in the deeds. The fact is NONE of the other properties along Finn road own the road according to their deeds and chain of title. It is clear by the historical record and language in all the deeds along the road in West Paris that ownership of the road was not intended to be conveyed to the abutting landowners. The landowners along the road have clearly not been conveyed the road according to the language in their deeds, they only own to the side of the road. It is a public road and built as the Rangeway for all landowners in the township of Paris and West Paris to access our properties.

Property of Peter and Deirdre Binney - West of the Old County Road: "THENCE in an easterly direction along the southerly boundary line of said Mike Korhonen property to the westerly boundary of the Old Discontinued County Road; THENCE in a southerly direction on and along the westerly boundary line of said Old Discontinued County Road to its intersection with the Paris – West Paris town line." Source: Oxford County Registry of Deeds, Book 5285 Page 43

Property of Michael and Linda Korhonen – East of the Old County Road. "BOUNDED westerly by the Old County Road so-called." Source: Oxford County Registry of Deeds, Book 2226 Page 305

The Oxford County Sheriff's Office confirm my neighbors do not own the road. "The Binneys and Korhonens own the property on either side of the road leading up to the gate." Chief Deputy James Urquhart Oxford County Sheriff's Office Source: Sun Journal May 5, 2019

I was not trespassing as alleged by the State. My neighbors are attempting to claim something that is not theirs. Neither of my neighbors own the road according to their deeds. The gates are in place illegally. The deed for my neighbor's properties references the road. It defines the properties as ending on the side of the County Road. If your boundary ends at the side of the road, or your property was conveyed subject to rights of others (to the road), then you don't own the road. Finn Road is a public road and Rangeway that the public has an unfettered right to use.

To help ease the burden placed upon landowners (and the courts) there needs to be an appeals process readily and easily available to the county commissioners if a landowner does not agree with a towns decision, both now and in the past, town decisions years, or decades ago. The reality is not even the towns really know what happened in the past nor what to do with any of our old Maine roads. Without an effective appeals provision or policy in place at the town (or county) level, how can we even ensure an equal, fair, and balanced process for landowners? Without an appeals process, neighbors can and will landlock and segregate others along our public roads.

Statutory terminology is one issue identified as a priority matter for the proposed commission under L.D. 1513. An abutter "on" the way, or an abutter "of" the way? Can an abutter that is not technically on the way, but of the way, maybe at the end of the way, in another town, should they not also be able to petition the county commissioners to have obstructions and gates removed? The definition of "Damage to a road" should also be extended to include someone blocking a public easement, resulting in damage to, destruction, or loss of access.

Many other roads in Maine have been illegally voted "Closed" by the towns in the past resulting in landlocking and segregation. I am hopeful the legislature will consider adding protections and an appeals process at the town and county level for landowners for roads that were voted "Closed". Young Road in Fayette is an example of a road that has been illegally voted "Closed" by the town and is now a public easement for the greater good. There have been numerous instances of our Old Maine Roads that have been voted "Closed".

According to my research, Towns Routinely voted Roads "Closed" due to property rights of access. The towns wanted to discontinue the road, but retain an easement for all abutting landowners along the road. The status of a closed road was decided in Superior Court. *Miner v. the Town of Benton, Kennebec County (2008) KENN-AP-06-77*. In 1949 the town decided to close a road because the Selectmen had found it difficult to discontinue the road due to issues of property rights. The Court ultimately determined that it was only Closed. Because the town did not maintain their closed road from 1949 to 1979, the Court decided it was now Abandoned under 23 M.R.S.A. § 3028 with a public easement retained. Source: <https://cases.justia.com/maine/superior-court/KENap-06-77.pdf>

The status of another Closed road was also decided in Superior Court. *Schott v. Cyr and the Town of Greene, Androscoggin County (1996). AND-CV-94-203*. In 1948, the Town of Greene voted to close Hills Ridge Road. In 1993, the town Selectmen declared the road had been closed in 1948 and abandoned as of 30 years after 1948. The Court determined the road has been Abandoned 30 years after the 1948 closing and a public easement was retained pursuant to Title 23 M.R.S.A. § 3028. Source: Androscoggin County Registry of Deeds, Book 3687 Page 252

Any of our old Maine roads that was voted "Closed" in the past by a town should retain a public easement by Statute for the greater good. Routinely towns do not even know what happened in the past and a closing is not a discontinuance or abandonment. It is neither, it is a closing. According to statute, Closing is always a temporary action, and one would have the expectation the road would be reopened at some point in the near future.

I have spent a considerable amount of effort in researching Abandoned Roads in the various Registry of Deeds throughout the State. Thus far I found a total of 181 Abandonment Determinations from 1995 to present including:

In Androscoggin County I found 18 Abandonment Determinations:

Lisbon 1 road in 2002

Minot 15 roads in 2004, and 1 road in 2005

Sabattus 1 road in 2008

In Aroostook County (North) I found 1 Abandonment Determination:

Fort Kent 1 road in 2015

In Aroostook County (South), I found 17 Abandonment Determinations:

Caribou 1 road in 2014 and 1 road 2017

Island Falls 9 roads in 2014, 4 roads in 2015, 1 road in 2017, and 1 road in 2018

In Cumberland County, I found 3 Abandonment Determinations:

Bridgton 1 road in 1997

Gorham 1 road in 2002

Harpswell 1 road in 2012

In Franklin County, I found 4 Abandonment Determinations:

Farmington 1 road in 1995, 1 road in 2011, and 1 road in 2019

New Vineyard 1 road in 2018

In Hancock County, I found 11 Abandonment Determinations:

Bar Harbor 1 road in 1999 and 1 road in 2009

Blue Hill 1 road in 2012

Bucksport 1 road in 2018

Deedham 1 road in 2007
Hancock 1 road in 2002
Lucerne-In-Maine Village Corporation 1 road in 2006

Penobscot 3 roads in 2021

Surry 1 road in 2010

In Kennebec County, I found 6 Abandonment Determinations:

Vienna 5 Roads in 1997

Benton 1 road in 2008

In Knox County, I found 8 Abandonment Determinations:

Union 4 roads in 2000, 1 road in 2007, and 1 road in 2008

Vinalhaven 1 road in 2014

Warren 1 road in 2006

In Lincoln County, I found 2 Abandonment Determinations:

Edgecomb 1 road in 2006

Somerville 1 road in 2016

In Oxford County, I found 29 Abandonment Determinations:

Brownfield 1 road in 2008

Buckfield 4 roads in 2008

Fryeburg 1 road in 1995, 1 road in 1996, and 1 road in 2000

Lovell 1 road in 2018

Otisfield 1 road in 2010

Paris 1 road in 2001, 1 road in 2002, 1 road in 2005, and 1 road in 2008

Sweden 13 roads in 2006

West Paris 1 road in 2017 (Finn Road)

Woodstock 1 road in 2016

In Penobscot County, I found 39 Abandonment Determinations:

Garland 1 road in 2020

Howland 1 road in 2000

Lincoln 1 road in 1995, 1 road in 1996, and 1 road in 1998

Newburgh 22 roads in 2001

Orrington 9 roads in 2004

Plymouth 1 road in 2012

Veazie 1 road in 2002

Winn 1 road in 2011

In Somerset County, I found 5 Abandonment Determinations:

Anson 1 road in 2000, and 1 road in 2009

Madison 1 road in 2000

Skowhegan 1 road in 2017

St Albans 1 road in 2016

In Waldo County, I found 18 Abandonment Determinations:

Frankfort 1 road 2008

Searsmont 15 Roads in 2006, and 1 road in 2007

Unity 1 road in 2011

In Washington County, I found 3 Abandonment Determinations:

Beals 1 road in 2004

Perry 1 road in 2000

Princeton 1 road in 2019

In York County, I found 17 Abandonment Determinations:

Hollis 1 road in 2020

Kennebunkport 1 road in 2020

Limerick 1 road in 2003

Lyman 1 road in 2019

Newfield 1 road in 2019

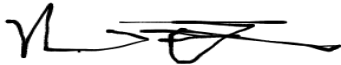
Old Orchard Beach 1 road in 2019

Wells 11 roads in 2001, and 4 roads in 2006

I highlighted examples where towns have abandoned multiple roads in the same year. In my research I have noticed quite often, towns abandon roads without any public input, mostly on advice from the towns Attorney and/or the Maine Municipal Association. Most of these decisions appear to be based solely on an “opinion” of an individual or attorney working for the town in order to limit the towns responsibility and liabilities. This is going to pose a significant liability for the towns and the landowners in the future. The towns have abandoned many more roads that have not been filed in the registry of deeds. **West Paris is an example of a town that abandoned one single road which highlights even one abandonment can open the floodgates to future litigation, resulting in significant liabilities for landowners, towns, and the State.**

I also support the proposed amendment to L.D. 1513 and appreciate Maine ROADWays speaking up on my behalf concerning legislation. I am hopeful the proposed Maine Abandoned and Discontinued Roads Commission will consider implementing my suggestions in the future legislation for the greater good.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Neil Lanteigne', with a stylized flourish at the end.

Neil Lanteigne
Paris, Maine

<https://www.qrz.com/db/NB9D>