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Final Report of the COMMITTEE TO STUDY ACCESS TO PRIVATE AND PUBLIC LANDS IN MAINE

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Executive Summary

Residents and visitors of Maine have enjoyed a tradition of access to millions of acres of privately owned land. The extraordinary changes in land ownership in the State during the last 10 years have caused growing uncertainty among the recreational users of these vast private land ownerships. Continuing access to private lands cannot be taken for granted.

The Committee to Study Access to Private and Public Lands in Maine was originally established by a Joint Study Order House Paper 1951 during the Second Regular Session of the 119th Legislature. The Access Committee submitted its report to the Joint Standing Committee on Agriculture, Conservation and Forestry in February of 2001. LD 1810, An Act to Implement the Recommendations of the Committee to Study Access to Private and Public Lands in Maine, was enacted as Public Law 2001, Chapter 466. Among the recommendations endorsed by the legislature was the reauthorization of the committee "to deliberate on information gathered and develop policies that will best ensure public access to both public and private lands adequate to meet the growing demand for outdoor recreation in Maine." As a result, the Committee to Study Access to Private and Public Lands in Maine was reauthorized by Joint Study Order H.P. 1387. This paper is the final report of the reauthorized Access Committee.

The Committee to Study Access to Private and Public Lands consisted of 2 Senators and 3 members of the House of Representatives. The Access Committee shares a growing concern that as land transfers occur, more and larger tracts will be unavailable for traditional recreation. What more can we as policy makers do to promote continuing access?

Recommendations

During the second phase of its work, the study committee revisited the issue of access to flowed lakes. In this report the term "flowed lake" means a lake created or expanded by construction of a manmade impoundment. The public access rights provided under the Colonial Ordinance do not apply to lakes that did not exceed 10 acres prior to impoundment. A comprehensive list of ponds that are in excess of 10 acres by virtue of a manmade impoundment does not exist. Several state agencies, primarily within the Departments of Environmental Protection, Conservation and Inland Fisheries and Wildlife, are involved in gathering information on the ponds and lakes of the State for a variety of purposes. **When new information clarifies the status of a pond, that pond should be placed on either a list of ponds verified as being a great pond or a list of those examined and determined not to be a great pond.** We suggest that the staff most familiar with the various lakes programs meet and discuss the benefits of and most efficient mechanism for sharing information.

The committee discussed various sources of data on landownership. State agencies, specifically the Maine Forest Service and Maine Revenue Service, maintain records from which information on changes in ownership can be derived. We do not want to create a new reporting requirement for landowners and do not want to impose a burden on state agencies that would require additional staff or data management capabilities. The recommendations we are making

regarding data compilation and reports are made with the intent of providing useful information using existing resources. **The recommendations for improved information on land ownership are as follows:**

- **Require Maine Revenue Services to report annually on the number of landowners owning more than 500 acres of commercial forestland.**

- **Require Maine Revenue Services to compile and report detailed information on an annual basis for land transfers of 10,000 acres or more within the unorganized territories.**

- **Require the Maine Forest Service to provide information on land transfers of parcels of 1,000 acres or greater enrolled under Tree Growth Tax Law and located within the municipalities.**

- **Require the Maine Forest Service and Maine Revenue Service to report annually on land enrolled under tree growth by parcel size categories.**

Incentives for landowners who allow responsible recreational use of their lands is a policy option that needs to be explored. In light of the projected revenue shortfall for fiscal year 2002-2003, enactment of legislation with a negative fiscal impact would be extremely difficult during the second session of the 120th Legislature. The current situation should not, however, dissuade lawmakers from examining issues and deliberating the consequences of a variety of tax incentives. **We recommend that the Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Taxation meet and develop an approach for further deliberations on tax incentives to encourage public access to private lands.**

Maine's Tree Growth Tax Law provides for the current use valuation of "land used primarily for growth of trees to be harvested for commercial use". The committee discussed a two-tiered Tree Growth Tax program with an additional incentive (lower property tax) for lands open to the public for recreation; however, such an adjustment would have a negative impact on tax revenue both to the towns and to the State. This committee is not recommending any changes to Maine's Tree Growth Tax Law. Given the revenue forecasts for State government, now is not the time to be considering a measure with a large negative fiscal impact. We have heard repeatedly of the importance of the tree growth tax program in keeping land in commercial production. **This committee is not recommending any changes to Maine's Tree Growth Tax Law.** Negative unintended consequences may result if landowners feel uncertain about the stability of the program and benefits of enrollment.

The committee is proposing that public access be an eligibility requirement for lands enrolled under Maine's Open Space Tax Law. Legislation submitted by this committee proposes that land initially enrolled in the Open Space Tax Law after April 1, 2002 must be open to the public without charge for year-round nonmotorized recreation including fishing, hunting, cross-country skiing, hiking and nature observation. Temporary or localized public access restrictions may be imposed to protect active habitat of endangered species, to prevent

destruction or harm to fragile protected natural resources, or to protect the recreational user from a hazardous area.

The State is, and has been, acquiring land and interest in land to ensure opportunities for outdoor recreation for future generations. **This committee supports the acquisition of conservation easements as an effective tool to preserve public access in perpetuity to lands with high value for outdoor recreation. The State is negotiating increasingly complex easements. It is vital that the interests of the public are assured. To that end the Resolve proposed by this committee requires the Director of the State Planning Office to convene a working group to develop a set of principles to be addressed when any agency of the State is considering a conservation easement to be acquired in whole or in part with state funding.** The working group is also charged with identifying a process for the release of information to the public and opportunities for the public comment to comment on a proposed project.

We conclude our work with a renewed awareness of the importance of Maine's outdoor heritage and remote lands in defining the character of our State. We also conclude our work with a better understanding of property rights and market forces affecting landowners. As a committee, we cannot provide guarantees for continuing use of private land. We can and have proposed measures that will bring to the attention of policy makers and agencies within the legislative and executive branches timely information on changes in land ownership and the implications of these changes and the importance of public discussions and assurance that the public interest will be served when land or interest in land is acquired with public funds.

I. INTRODUCTION

A. Creation of the Committee

The Committee to Study Access to Private and Public Lands in Maine was originally established by a Joint Order during the Second Regular Session of the 119th Legislature, House Paper 1951. The committee submitted its report to the Joint Standing Committee on Agriculture, Conservation and Forestry in February of 2001. LD 1810, An Act to Implement the Recommendations of the Committee to Study Access to Private and Public Lands in Maine, was enacted as Public Law 2001, Chapter 466 (**Appendix A**). Among the recommendations endorsed by the legislature was the reauthorization of the committee "to deliberate on information gathered and develop policies that will best ensure public access to both public and private lands adequate to meet the growing demand for outdoor recreation in Maine". The Committee to Study Access to Private and Public Lands in Maine was reauthorized by Joint Study Order H.P. 1387 (**Appendix B**). A list of committee members is included as **Appendix C**.

The reauthorized study committee was charged with the following duties:

1. Determine the status of public access to flowed lakes in the State. In this report, the term "flowed lake" refers to a lake that was created or expanded by a manmade dam.

2. Review and report on the issue of the division and sale of land by timber companies and the private acquisition of large tracts of undeveloped land surrounding the State's great ponds;

3. Consider policy options to promote continued access to public and private land; and

4. Work with the Departments of Inland Fisheries and Wildlife and Conservation to develop a map that shows significant areas in the State where public access is restricted, prohibited or permitted with the payment of a fee.

The Committee to Study Access to Private and Public Lands consisted of 2 Senators and 3 members of the House of Representatives. With the exception of Rep. Volenik who was replaced by Representative Clark all members serving on the original committee continued to serve on the reauthorized committee. The chairs of the original committee continued to serve as chairs.

B. Study Process

The Committee to Study Access to Private and Public Lands held 5 meetings during the legislative interim of 2001. All meetings were held in Augusta. During the previous study period in 2000, the committee received extensive public testimony at

meetings in Pittston Farms (Greenville/Rockwood region), Ashland, Rangeley, Augusta and Millinocket. The February 2001 report of the committee summarizes testimony, findings and recommendations for that period. This report provides insight into the committee's continuing discussions relating to the duties above. The reader should remain aware of the committee's previous deliberations and is encouraged to read the earlier report. It is on the world wide web at http://www.state.me.us/legis/opla/accessrpt.PDF .

This report is organized by topic rather than a chronological summary of each meeting held. Requests for additional information and meetings with agency staff evolved from committee discussions and events in the news related to access issues. Certain topics were revisited frequently during the course of the committee's work. Recommendations are presented under each topic. The concluding statement offers some reflections on our thoughts in August of 2000 when we began this study and our perspectives and continuing concerns in December of 2001.

II. PUBLIC ACCESS TO LAKES

During the first phase of the committee's work considerable time was spent gaining an understanding of public access rights to Great Ponds under the common law of Maine based on the Colonial Ordinance. As the committee was concluding its work in February of 2001, the Attorney General responded to an inquiry from the committee regarding access to flowed lakes. To quote from that letter: "In sum, based upon the analysis that Maine courts have employed to date, it would logically follow that purely artificial impoundments of waters, that never qualified as Great Ponds in their natural state, do not appear to become Great Ponds, in an after-the-fact application of the Colonial Ordinance, by reason of a dam impoundment. If such artificial water impoundments are not Great Ponds, then it would follow that there is no public access right to them provided under the Colonial Ordinance". A copy of the letter is found in **Appendix D.**

During the second phase of its work, the study committee revisited the issue of access to flowed lakes. Determining which of Maine's approximately 2,500 lakes are flowed lakes is not an easy task. In 1993 there were 744 dams registered in Maine. Public Law 1993, chapter 370 repealed the statute that required certain dams 2 or more feet in height with the capacity to impound 15 acre feet or more of water to be registered. Dams that were constructed solely for assisting in the floating of logs during past timber operations were exempt from the registration requirement. The Maine Department of Environmental Protection maintains a listing of the 744 dams registered in 1993 including the name and size of the water impounded.

Individuals knowledgeable of Maine's lakes, streams and rivers can readily identify 6 large lakes that did not exist prior to the damming of a river. It is reasonable to assume that there are several more. A comprehensive list of ponds that did not exceed 10 acres prior to impoundment does not exist. To conclusively determine which of Maine's impounded lakes are not great ponds by virtue of their size prior to construction of an impoundment would take resources and time beyond the limits of this committee. A historical approach would require research on the origins of each dam and descriptions of the affected water bodies prior to impoundment. Such research

may be fascinating to the historian but the usefulness of the information for developing policy regarding public access is questionable.

A more scientific approach would utilize information from bathymetric (depth measurement) surveys. Knowing the elevation of the natural sill of the lake, depth mapping could be used to determine changes in the surface area of a lake. This type of mapping is being done by the Department of Inland Fisheries and Wildlife. The maps created yield information useful for biologists involved in resource management. Over 1700 lakes have been surveyed to date. These are the larger lakes identified as priority lakes for fisheries resource management. To detract from or add to these mapping tasks to determine Great Pond status might be attributing unjustified importance to this information.

The Submerged Lands Program within the Bureau of Parks and Lands makes a determination of Great Pond status when questions arise regarding ownership of the submerged land under a particular pond. If a pond is indeed a "Great Pond" i.e. 10 acres or greater in size prior to the construction of a manmade impoundment, the State owns the floor of the pond below the low water mark. The Director of the Bureau of Parks and Lands may lease this publicly owned land for permanent docks or other structures in accordance with the statutes and rules adopted to implement the submerged lands program. On a case by case or rather pond by pond basis as the need arises, program staff gather information on a specific lake or pond and make a determination of Great Pond status.

To summarize, several state agencies, primarily within the Departments of Environmental Protection, Conservation and Inland Fisheries and Wildlife, are involved in gathering information on the ponds and lakes of the State for a variety of purposes. As information relative to a pond's natural size and great pond status is developed, it would be useful for this information to be shared. **We encourage state agencies to appraise one another of new bathymetric surveys; historical records or other data relating to ponds whose Great Pond status is undetermined. When an agency believes that new information clarifies the status of a pond, this information should be shared and that pond placed on either a list of ponds verified as being a great pond or a list of those examined and determined not to be great ponds.** The agencies involved know the potential significance of a status determination and also the ponds that by virtue of their size or other characteristics are not readily acknowledged as belonging in one status category or the other. We suggest that the agency staff most familiar with the various lakes programs meet and discuss the benefits of and most efficient mechanism for sharing information.

Knowing that the access rights afforded under the Colonial Ordinance do not apply to 6, 12, or 1200 lakes that are not "natural" great ponds may increase the sense of urgency for acquiring easements or fee simple purchase of frontage on these lakes. Yet the discrepancy between what the public wants and what the Colonial Ordinance provides dissuades us from pursuing research to conclusively divide Maine's lakes into 2 categories of "natural" ponds 10 acres and over in size and lakes that did not exist or were less than 10 acres in size prior to a manmade impoundment. To restate a conclusion in the February report, if what the public really wants is access by motor vehicle to ponds that are accessible by privately owned roads and what

the common law grants is foot access whether on these roads or through the woods, a continuing exploration of which lakes may be accessed under the Colonial Ordinance may detract from more productive efforts to promote the type of public access desired.

For the larger lakes created by dams and included in a hydroelectric project area, public access is likely to be assured at least for an established time period. A license from the Federal Energy Regulatory Commission (FERC) is required to construct, operate or maintain a hydropower project impacting navigable waters or producing power affecting the public utility power grid. As part of the licensing process, FERC typically requires public access to project lands and waters. FERC may require a broad policy allowing public access or may require that a recreation plan specific to the project be prepared and implemented as a condition of licensing. The recreation plan is in effect for the term of the license, usually between 30 and 50 years although it may be modified as circumstances change or safety issues emerge.

At the October 12th meeting of the committee, information was provided on public recreation or access measures associated with hydroelectric facilities owned by FPL Energy Maine and those owned by members of the Independent Energy Producers of Maine (**Appendix D)**. This information indicates public access is provided to several of the larger man-made lakes in Maine - Flagstaff, Wyman, Aziscohos and Indian Pond.

In November of 2000, the Departments of Inland Fisheries and Wildlife, Conservation and Marine Resources published a supplement to the 1995 Strategic Plan for Providing Access to Marine Waters for Boating and Fishing. The **Supplement Public Access to Maine Waters Strategic Plan 1995-2000** indicates that there are 186 lakes over 500 acres in size that do not have assured public access. Appendices at the back of the report list waters without general public access or in need of additional or guaranteed public access. Appendix B-4 lists lakes over 500 acres in size without guaranteed public access in priority order. This list is reproduced in **Appendix F** of this report. Herb Hartman, Deputy Director, Bureau of Parks and Lands within the Department of Conservation appeared before the committee on September 10, 2001 to discuss this report and the priority ratings.

In developing the rating system, a site was considered relatively "assured" if the site had been traditionally used by the public, was owned by a large industrial landowner, and was within the unorganized territories. As Mr. Hartman explained, most traditional water access sites within the northern forest area continue to be open to the public. Despite their relatively "assured" status, sites on large industrial ownerships may still be rated high for obtaining legal access depending on other characteristics of the lake. The Bureau of Parks and Lands (BPL) and IF&W have provided grants for developing parking areas, hand-carry sites and boat launches on shorelines that are privately owned. The current practice is to ask for an easement to legally convey continuing access when a grant is awarded for improving public access over privately owned land. Agreements in the past have often been less formal. Mr. Hartman indicated that subsequent ratings of public access would not consider access to be "assured" based on a private landowner's historical willingness to allow public use for recreation.

III. TRACKING CHANGES IN LAND OWNERSHIP

The unprecedented changes in ownership during the last 10 years have caused growing uncertainty among the many recreational users of the vast private land ownerships that have characterized Maine's north woods. The Access Committee shares the concern that as land transfers occur more and larger tracts will be unavailable for traditional recreation. Transactions make headlines in the newspapers when leases are terminated or a road to a favorite pond is gated. Acquisitions by wealthy individuals for personal retreats or "wilderness kingdoms" may represent a trend or may be isolated examples. Timber investment management organizations (TIMO's) now own more than 15% of commercial timberland in Maine. The landowner objectives of the TIMO's may differ significantly from the industrial and non-industrial landowners who have been the dominant forces in the past. Without the systematic tracking of land transfers, the State has no way of knowing to what extent forestland is changing hands. Monitoring land sales is a basic information-gathering step essential to understanding ownership patterns and potential changes in use.

A report, **Forestland Ownership in Maine: Recent Trends and Issues**, presented to the Joint Standing Committee on Agriculture, Conservation and Forestry in March of 2000, provided information on major land transfers between 1990 and 1999. This report was prepared by Karen Nadeau, an intern for the committee. The Maine Forest Service references this report in the 2001 Biennial Report on the State of the Forest. Providing this type of information periodically could benefit State agencies and policymakers deliberating issues related to timber supply, wildlife management and public recreation.

The committee discussed various sources of data on landownership. State agencies, specifically the Maine Forest Service and Maine Revenue Service, maintain records from which information on changes in ownership can be derived. The recommendations we are making regarding data compilation and reports are made with the intent of providing useful information using existing resources. We did not want to create a new reporting requirement for landowners and did not want to impose a burden on state agencies that would require additional staff or data management capabilities.

The following are the committee's recommendations regarding tracking changes in land ownership:

Recommendation 1: Require Maine Revenue Services to report annually on the number of landowners owning more than 500 acres of commercial forestland. This information can be provided using reports filed with Maine Revenue Services (MRS) for the collection of the Commercial Forestry Excise Tax (CFET). Comparing information on the number of landowners in acreage categories over time will help track how size of ownerships are changing. The table below provides information on ownership size for the year 2000.

Table 1
Ownership of Commercial Forestland
Maine, 2000

Total Acres of Commercial Forestland Owned	**Number of Landowners**
500 – 999	146
1000 – 4999	189
5000 – 9999	87
10, 000 – 99,999	6
100,000 acres and above	19
Total	**447**

There are advantages and disadvantages to all existing data sets. The CFET records provide information on the total acres of forestland owned by a landowner. These records do not have detail on individual parcel sizes or location of the forested acres. The advantages of the CFET records are:

- ✓ CFET records include ownerships down to 500 acres in size
- ✓ Records include land both in the Unorganized territories and in municipalities
- ✓ CFET captures all commercial forestland not just land enrolled under Maine Tree Growth Tax Law

Note: The information in the table above corresponds to ownership classes not parcel or tract sizes. In 2000, there were 447 landowners who own 500 acres or more of commercial forest land.

Recommendation 2. Require Maine Revenue Services to compile and report information on an annual basis for land transfers of 10,000 acres or more within the unorganized territories. Transfer tax forms come into MRS on a monthly basis. Maine Revenue Services is the Chief Assessor for the Unorganized Territory (UT) and has information on each property. Tax records are updated as information is received or in the spring prior to tax bills being mailed in August. For land transferred without requiring the recording of a deed, the seller usually informs MRS of the transfer. However, in some instances, MRS does not learn of a transfer until the old owner receives the current tax bill and subsequently contacts MRS.

MRS can provide the information items in the box below without needing additional resources. This would provide timely information on the largest land transfers, which typically are in the unorganized territories. Identifying the seller and buyer would be useful for monitoring trends in ownership such as the shift from industrial owners to timber investment management organizations (TIMO's).

Name of seller Name of buyer # of acres Classification - e.g. Tree Growth, Open Space Location - township, county Sale price Brief description of the property - buildings, leased property

The advantage of using MRS property tax records is that these records provide detail on specific property and this information is public information. MRS only has this detail on land within the unorganized territory. The recommendation to limit the report to information on parcels of 10,000 in size recognizes that it would be a significant demand on MRS to provide this detail on a large number of transfers. Land sales of over 10,000 acres are unlikely to exceed 5 or 6 in any year.

Recommendation 3. Require the Maine Forest Service to provide information on land transfers of parcels of 1,000 acres or greater enrolled under Tree Growth Tax Law. The Maine Forest Service receives annual reports from municipal assessors with the names of all landowners with land enrolled under TGT. For each landowner MFS has the total acres enrolled, a breakdown of acres by forest type (softwood, mixed wood and hardwood) and the year each parcel was accepted under TGTL. MFS can query its database to determine the number of parcels that have changed owners. Limiting the report to parcels 1,000 acres and larger would not place a tremendous burden on the agency and would capture information in ownership for the larger tracts.

The impact of changes in ownership for much smaller parcels can also be significant for public access, particularly regarding access to water bodies, however, information on a multitude of smaller transactions would be cumbersome for data management and analysis. Assuming the number of transfers above 1,000 acres is not too unwieldy, a knowledgeable staff person familiar with landowners in the State could derive and present information on the number of transactions and also changes in types of ownership: i.e. small private owner, industrial owner, TIMO.

This recommendation for land transfer information is not made with the intent to set tree growth lands apart for specific recommendations with regard to public access. It is proposed because state agencies have this information in a database that can be readily queried and most of the land the public has traditionally used for outdoor recreation is enrolled under Tree Growth.

Recommendation 4. Require the Maine Forest Service and Maine Revenue Service to report annually on land enrolled under tree growth. Working together to provide information on land in both the municipalities and unorganized territories, MFS and MRS can provide the requested information either in a separate report or as part of the biennial State of the Forest

Report. The report must include a comparison with prior reports to provide a profile of Maine's forestland ownership and how parcel size is changing. The rationale for including this recommendation is that larger ownerships are more likely to be open to the public for recreation. A trend towards smaller parcels may be an indicator of decreasing opportunities for recreation on private lands.

Table 2 presents information provided by the Maine Forest Service on the number of parcels enrolled under Tree Growth Tax Law for parcels in the organized territories. This information is presented graphically in **Appendix G**. Maine Revenue Services will have the programming capabilities to generate similar reports for the unorganized territories by summer of 2002.

Table 2
Number of Parcels in Municipalities Enrolled Under Tree Growth Tax Law by Parcel Size
1997, 1999, 2001

Parcel Size Category	**# of Parcels 1997**	**# of Parcels 1999**	**# of Parcels 2001**	**Net Change in # of Parcels between 1997 and 2001**
1- 49 acres	9410	9782	9911	+501
50-199 acres	7248	7577	7700	+452
200-499 acres	1230	1264	1304	+74
500 – 999	349	344	349	0
1000-4999	289	300	289	0
5000 – 9,999	74	69	67	-7
10,000 – 99,999	67	65	65	-2
Over 100,000 acres	0	0	0	
Total # of Parcels	**20,664**	**21,400**	**21,686**	**+1022 (5%)**
				Net Change in acres enrolled
Total acres enrolled	**3,815,866**	**3,692,719**	**3,709,217**	**-106,649 (2.8%)**

Again the reason for using information on land in tree growth is that the information is readily available. To compile this information on all forestland in Maine would require extensive research or municipal reports.

IV. TAX POLICY RELATING TO LAND USE AND PUBLIC ACCESS

A. CURRENT USE TAXATION

The general rule under the Maine Constitution is for real property to be taxed according to just value. However, the Constitution authorizes the Legislature to provide for the assessment of certain types of land based upon current use. The Legislature may enact conditions for current use taxation of the following categories of land:

- Farms and agricultural lands, timberlands and woodlands;
- Open space lands which are used for recreation or the enjoyment of scenic natural beauty; and
- Lands used for game management or wildlife sanctuaries.

(Maine Constitution, Article IX, Section 8, subsection 2)

Maine's Tree Growth Tax Law, Title 36, Chapter 105, Subchapter II-A provides for the current use valuation of "land used primarily for growth of trees to be harvested for commercial use". Provisions for the valuation of farmland and open space land are found in Title 36, Chapter 105, chapter X. Although Chapter X is entitled Farm and Open Space Tax Law and both are commonly referred to together, provisions for the valuation of each are necessarily quite different. This study and report discusses the tree growth tax program and the open space tax program. Current use taxation of farmland does not have the same significance for public access to recreation and was not included in the committee discussions.

1. Public access to land enrolled under Maine's Tree Growth Tax Law. To be eligible for taxation under Maine's Tree Growth Tax Law (TGTL) a landowner must declare that the land is being managed primarily for the growth of forest products and since April 1, 1999 must have a forest management and harvest plan for the parcel. Public access to the land has never been a requirement to participate in Maine's Tree Growth program.

TGTL does state that land is ineligible for taxation under TGTL "when the value of a recreational lease exceeds the value of the tree growth which can be extracted on a sustained basis per acre". (36 MRSA §574-A) The State Tax Assessor determines this value under Title 36, section 576 as part of the assessor's responsibilities for administering the tree growth program.

There are approximately 11.2 million acres enrolled in the tree growth tax program. The largest ownerships (over 100,000 acres) have traditionally been open to the public for recreation. The 14 private landowners surveyed by this study committee in September of 2000 manage a total of 9.46 million acres of which approximately 9.42 million acres are open to the public.

2. Public access to land enrolled under Maine's Open Space Tax Law. The definition of "open space land" for tax purposes is "any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which provides a public benefit in any of the following areas:

- Conserving scenic resources;
- Enhancing public recreation opportunities;

- Promoting game management; or
- Preserving wildlife or wildlife habitat."

(Title 36, section 1102, subsection 6)

All land meeting the definition of open space land is eligible for a reduction of 20% of the ordinary assessed value of the land. Additional reductions may also apply. With regard to public access, land is eligible for an additional 25% reduction in assessed value if public access is reasonable and "the applicant agrees to refrain from taking action to discourage or prohibit daytime, nonmotorized and nondestructive public use. The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses. The applicant, without having the land lose its status as public access open space, may impose temporary or localized public access restrictions to:

> (1) Protect active habitat of endangered species listed under Title 12, chapter 713, subchapter V;
>
> (2) Prevent destruction or harm to fragile protected natural resources under Title 38, chapter 3, subchapter I, article 5-A; or
>
> (3) Protect the recreational user from any hazardous area."

(Title 36, section 1106-A, subsection 3, paragraph C)

Table 3 below provides information on acres taxed under the open space land program

Table 3
Enrollment under Maine's Open Space Land Tax Law - 2001

	Total acres enrolled under general definition	Acres with additional reduction for public access*
# of acres in Unorganized Territories	21,348	N/A
# of acres in Municipalities	49,587	N/A
Total	**70,935**	

* Acres with additional 25% reduction under 36 MRSA §1106-A sub-§2, ¶D.

3. Factors affecting a landowner's decision to enroll under Tree Growth or Open Space Tax Law. Maine's Constitution sets a minimum penalty for withdrawal from any of the 3 current use taxation programs. The minimum penalty under the constitution is payment of the difference between the taxes which would have been imposed over the 5 years preceding the withdrawal had the land been taxed at its highest and best use and the taxes paid under the current use program in which the land was enrolled. A landowner can transfer parcels from tree growth to open space or vice versa without paying a penalty.

Other factors affecting enrollment decisions:

- No person can apply for classification of a combined total of more than 15,000 acres in the farmland tax program and the open space tax program. There is no maximum acre restriction on enrollment in the tree growth program.

- Taxation of open space land may not be reduced below the value it would be assessed under Tree Growth Tax Law.

- Municipalities are reimbursed for reductions in tax revenue for land enrolled in tree growth. Reimbursement for 2000 was 95% of the difference in taxes that is 95% of anticipated taxes if assessed as undeveloped land minus taxes assessed under tree growth valuation formula. Municipalities are not reimbursed for land enrolled in farmland tax or open space tax programs.

- The minimum parcel size for land enrolled under TGTL is 10 acres. No minimum acreage is established in statute for eligibility under open space land.

- To be eligible for taxation under TGTL, a landowner must file a schedule with the tax assessor describing the land and stating that a forest management and harvest plan has been prepared for the land. The plan must be prepared by a licensed professional forester or a prepared by the landowner and reviewed and certified by a licensed professional forester.

- To be eligible for taxation under open space tax law, a landowner must file a schedule with the tax assessor. The assessor determines whether the land falls within the definition of open space land.

4. Requiring public access for participation in current use taxation programs. The committee discussed including public access for recreation as an eligibility requirement for participation in Maine's tree growth tax program. Provisions under New Hampshire's current use taxation laws and Wisconsin's forest tax laws allow a landowner the option of enrolling land as open for public recreation and receiving an additional reduction in taxes on those open lands. Summaries of New Hampshire's and Wisconsin's laws relating to taxation and public access are found in **Appendix H.**

Minnesota recently enacted legislation that repeals the state's Tree Growth Tax Law in 2002 and enacts the Sustainable Forestry Incentive Program effective for taxes levied in 2002 and paid in 2003. To be eligible for taxation under Minnesota's Tree Growth Tax Law, a landowner must allow public access to all enrolled parcels over 40 acres in size. No allowed restrictions on public use are specified. A summary of Minnesota's Sustainable Forestry Initiatives Program is found in **Appendix I**.

Under Minnesota's newly enacted program, a landowner will receive an annual incentive payment, essentially a refund of property tax, for land that is enrolled in the program. For parcels 1,920 acres and greater, the landowner must allow year-round non motorized access for fishing and hunting except within ¼ mile of a permanent dwelling. Landowners are not required to transfer to the new program. There is no penalty for withdrawing land from tree growth in 2003.

Comparing provisions for taxing forestland in the different states is difficult. Elements that differ and make comparisons so complex are:

- **Enrollment period**. In many states a landowner enrolls for a defined period, e.g. 8 years and at the end of that period the landowner can opt out without a penalty. In Maine, there is no defined enrollment period. A landowner may transfer to another current use program but may not withdraw without incurring a penalty.

- **Other taxes.** Some states in addition to property tax collect a "yield tax" at the time of harvest. What may appear to be low property taxes are augmented by revenue from the yield tax.

Recommendations. The following are the committee's recommendations regarding current use taxation:

No recommended changes to Maine's Tree Growth Tax Law.
This committee is not recommending any changes to Maine's Tree Growth Tax Law. We have heard repeatedly of the importance of this program in keeping land in commercial production. We fear unintended consequences of any proposal that increases landowners' uncertainty as to the stability of the program and benefits of enrollment.

Although proposing an additional tax reduction for land in tree growth that is open to the public for recreation free of charge is appealing, this committee is not making that recommendation at this time. Such an adjustment would have a negative impact on tax revenue both to the towns and to the State. Given the revenue forecasts for State government, now is not the time to be considering a measure with a potentially large negative fiscal impact.

The committee is recommending that public access be an eligibility requirement for lands enrolled under Maine's Open Space Tax Law. Legislation submitted by this committee proposes that land initially enrolled in the Open Space Tax Law after April 1, 2002 must be open to the public without charge for year-round nonmotorized recreation including fishing, hunting, cross-country skiing, hiking and nature observation. Temporary or localized public access restrictions may be imposed to protect active habitat of endangered species, to prevent destruction or harm to fragile protected natural resources or to protect the recreational user from a hazardous area.

B. TAX INCENTIVES TO PROMOTE CONTINUING ACCESS TO PRIVATE LANDS FOR PUBLIC RECREATION

Outdoor recreation on private lands contributes much to Maine's economy and quality of life for residents and visitors. Landowners who allow the public to use their lands for recreation often incur increasing costs and inconvenience. As large tracts of forestland are divided and change ownership, it is reasonable to assume that some of the smaller parcels will be posted to prohibit public access. Loss of land for public recreation will increase the pressure on public lands and unposted private lands. Tax policy can provide incentives to landowners who allow the public to use their land for recreation.

This committee did not have time to thoroughly examine tax policy options and deliberatively develop proposals. However, this report does offer brief comments and suggestions for further discussions relating to tax incentives.

1. Property tax exemptions. Under a property tax exemption, a portion of the value of land open to the public would be exempt from taxation. A property tax exemption could be factored into the tree growth or open space tax law and otherwise applied to property taxes for any parcel of taxable land that met the eligibility requirements.

Oregon recently enacted legislation to promote beach access. Under Chapter 872, Oregon Laws 1999, the portion of real property owned by a private individual or organization that is subject to an easement for public beach access is exempt from taxation if certain conditions are met. Basically, the conditions require that a description of the property and an easement allowing access be recorded with the county. The access site for which the tax exemption is granted must be "free and open to the public permanently and continually throughout the year and of sufficient size to accommodate parking for at least 3 automobiles". (See **Appendix J** for text of Chapter 872).

An approach similar to Oregon's might be particularly effective for assuring continued access to Maine's lakes, rivers and oceanfront. The Maine Constitution requires the Legislature to reimburse municipalities for at least 50% of property tax revenue lost as a result of property tax exemptions enacted after April 1, 1978. (Article IV, Part 3, Section 23)

2. Property tax refund. Under a property tax refund , the State would refund to taxpayers a portion of the property taxes paid on land that met eligibility requirements for public access. Minnesota's new program described earlier in this report is an example of a tax refund mechanism. A property tax refund program could operate independently of Maine's current use taxation programs. Administration of a property tax refund program would be the responsibility of Maine Revenue Services.

It is difficult to overstate the importance of private forestlands for Maine's tourism industry. Outdoor recreation in interior Maine, including fishing, hunting, hiking, snowmobiling, nature observation, cross-country skiing, and camping, takes place to a great extent on private lands. In addition to food and lodging expenditures traditionally associated with tourism, resident and nonresident outdoor enthusiasts purchase licenses and specialized sporting gear, hire guide services, and support marinas. Towns like Millinocket, Greenville, Rangeley and Jackman, that border the vast stretches of forestland, are headquarters for wilderness outfitters and whitewater rafting companies. Outdoor recreation is crucial to the economies of Maine's rural areas.

Refunding a portion of the property taxes paid on land that is open to the public for recreation acknowledges the contribution these lands make to our State economy. A property tax refund administered by Maine Revenue Services might be less complicated than other options affecting property tax.

3. Income Tax Incentives. The State could provide an income tax deduction or credit for persons who allow public access for recreation on qualifying property. As with other options for incentives to promote public access to private lands, the Legislature would need to determine the type of a access required for eligibility, the amount of the deduction (or refund) and a means of verifying that access is provided.

Recommendation for further deliberations on tax incentives to encourage public access to private lands. Maine residents and visitors have enjoyed a tradition of access to millions of acres of privately owned land. As ownerships change, and the numbers and types of recreational users increase, continuing access to private lands cannot be taken for granted. Our state agencies continue to cultivate working relationships with landowners and recreational users. Maine's liability laws have been strengthened to protect landowners. The State is acquiring land and interest in land to ensure opportunities for outdoor recreation for future generations. What more can we as policy makers do to promote continuing access?

Financial incentives for landowners who allow responsible recreational use of their lands is a policy option that needs to be explored. Given the projected revenue shortfall for fiscal year 2002-2003, enactment of legislation with a negative fiscal impact would be extremely difficult during the second session of the 120th Legislature. The current situation should not, however, dissuade lawmakers from examining issues and deliberating the consequences of a variety of tax incentives.

We recommend that the Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Taxation meet and develop an approach for further deliberations on tax incentives to encourage public access to private lands.

V. ACQUIRING CONSERVATION EASEMENTS TO ENSURE PUBLIC ACCESS

During the second phase of its work, the committee discussed conservation easements as a tool to provide public access to private lands. A conservation easement is a voluntary, legal agreement, which places permanent restrictions on future development or uses of a property. Land subject to a conservation easement remains in private ownership. Typically a governmental agency or private non-profit organization assumes responsibility for monitoring compliance with the conditions of the easement.

The use of conservation easements to protect large tracts of forestland from development is relatively new. Some of the advantages of acquiring conservation easements rather than fee simple acquisitions are:

- Land remains in private ownership and may continue to be managed for forest products.

- Land remains on the tax rolls and for land enrolled under Maine's Tree Growth Tax Law, valuation and tax revenue will not change.

- Easements can guarentee public access to land without public ownership of the land.

- Easements may be less costly to purchase than fee interest in land. A cost savings may allow the public to protect more acres from development.

- Easements allow protection of land that an owner is unwilling to sell.

In a paper published in the Maine Policy Review in the winter of 2001, David J. Lewis contends that the State does not have a comprehensive policy describing the goals of conservation and conservation easements in the north woods. He argues that although conservation easements are less expensive in the short run, an analysis of the costs and benefits of conservation easements and fee simple acquisitions is needed to compare long-term costs. Conservation easements on forestland unlike ownership of the public reserve lands will not generate revenue for the State from timber harvesting. There will be ongoing costs associated with recreation management and monitoring for compliance with the easement.

At the committee's first meeting in Pittston Farm in August of 2000, Ralph Knoll from the Bureau of Parks and Lands and Alan Hutchinson, Executive Director of the Forest Society of Maine offered information on the emerging "West Branch Project". The West Branch Project is a private-public undertaking by the State of Maine, the Forest Society of Maine, and Wagner Timberlands. The project was announced in the spring of 2000 and negotiations are continuing to preserve traditional public access and allow continued forest management on over 650,000 acres encompassing the headwaters of the Penobscot and St. John Rivers.

In the summer of 2001, Jeff Pidot, Chief of the Natural Resources Division of the Office of the Attorney General, reviewed a draft of the conservation easement being negotiated for the West Branch Project and commented on that draft in a memo dated August 3, 2001. Much of the study committee's next 2 meetings were devoted to discussions on assuring the State's interests are protected in negotiating a conservation easement and clearly stated in the writing of the easement. Jeff Pidot provided a list of issues that a conservation easement must address and discussed with the committee the importance of translating policy goals into enforceable conditions. A summary of Mr. Pidot's comments is found in **Appendix K**.

At the committee's meeting on October 12, 2001, Evan Richert, Director of the State Planning Office and Chair of the Land for Maine's Future Board (LMF), and Roger Milliken, a member of the board provided information on policies regarding the acquisition of conservation easements and LMF's newly developed policy guidelines for working forest easements. Several people with experience in negotiating conservation easements and the development of working forest easements were invited to attend this meeting. Examples of principles and guidance for large-scale conservation easements were distributed and reviewed. The agenda for that meeting and materials provided are found in **Appendix L**.

LMF's guidelines and those developed by other groups offer many points for consideration. However, the State of Maine needs to develop its own set of principles to be addressed when any agency of the State is considering a conservation easement to be acquired in whole or in part with state funds. State agencies are responsible to the people of Maine in ensuring that the interests of the State and its citizens are protected and the purported benefits are, in fact, secured for future generations. Perhaps one of the best ways to assure these interests is to provide the public with information and the opportunity to comment on a project as it is being developed.

The State Planning Office (SPO) coordinates the monitoring and management of conservation easements held by the state. (See Resolve 2001, chapter 31 in **Appendix M**.) The Director of SPO is a member of the Land for Maine's Future Board and currently serves as its chair. Any recommendations regarding guidelines for conservation easements logically should be addressed to SPO. We understand that the Director of SPO has convened a working group to continue discussions on and development of guidelines for the acquisition of conservation easements. Without the benefit of the SPO working group's final product prior to concluding our study, we are including a recommendation that articulates our expectations for this working group or a subsequently convened working group.

This committee supports the acquisition of conservation easements as an effective tool to preserve public access in perpetuity to lands with high value for outdoor recreation.

Recommendation. Require the Director of the State Planning Office to convene a working group to develop a set of principles to be addressed when any agency of the State is considering a conservation easement to be acquired in whole or in part with state funding. The working group is also charged with identifying a process for the release of information to the public and opportunities for the public comment to comment on a proposed project.

VI. MAPPING ACCESS.

At the request of the committee, the Department of Inland Fisheries and Wildlife and the Department of Conservation have produced maps illustrating significant areas in the State where public access is restricted, prohibited or permitted with the payment of a fee. These maps are reproduced in **Appendix N. We recommend that these agencies work together to continually update these maps as gates and checkpoints controlling public access to significant areas are removed, relocated or added.**

VII. CONCLUDING STATEMENT

During the Second Session of the 119th Legislature, the Committee to Study Access to Private and Public Lands in Maine was established in response to concerns over fees charged to access private lands and public lands located behind checkpoints on privately owned roads. As our

study progressed, the issues we examined expanded beyond checkpoints and fees to broader issues for preserving public access.

Large industrial and non-industrial ownerships of forestland in Maine have traditionally been open to the public for recreational use. As both the population in the Northeast and the demand for outdoor recreation increase, maintaining access to private lands continues to be critical to meeting the demand. An increase in the number of users and the types of recreation pursued translates to higher costs for the private landowner. This committee strongly supports incentives to promote public access to private lands for recreation. In a fiscal climate without projected budget deficits, we would be proposing legislation to implement tax incentives. The recommendation for the Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Taxation to develop tax incentives to encourage public access to private lands is not made casually.

During the study period, many newspaper headlines have highlighted changes in ownership within the northern forests. It is increasingly clear that industrial ownership of forestland is no assurance of infinite protection from development and continuing public use for traditional recreation. To many residents and visitors, the feeling of proximity to vast expanses of forestland is as important as the opportunities for fishing, hunting, camping and other activities. Conservation easements offer a tool to prohibit development, guarantee public access and maintain private ownership for timber production. This tool, if used judiciously, is perhaps our best hope of preserving the benefits we have so long enjoyed on the large private ownerships.

We are appreciative of the many people who have shared their perspectives with us during the course of this study. We conclude our work with a renewed awareness of the importance of Maine's outdoor heritage and remote lands in defining the character of our State. We also conclude our work with a better understanding of property rights and market forces affecting landowners. This is not an easy study to conclude. The sense of loss is apparent when we hear people recall their experiences in the woods of northern Maine and their fear that these experiences will be lost to their grandchildren. We are frustrated by our inability to alleviate these fears.

As a committee, we cannot change our Constitution and provide guarantees for continuing use of private land. We can and have proposed measures that will bring to the attention of policy makers and agencies within the legislative and executive branches:

1. Timely information on changes in land ownership and the implications of these changes; and

2. The importance of public discussions and assurance that the public interest will be served when land or interest in land is acquired with public funds.

APPENDIX A

Public Law 2001, chapter 466

PUBLIC LAWS OF MAINE

First Regular Session of the 120th

CHAPTER 466
H.P. 1353 - L.D. 1810

An Act to Implement the Recommendations of the Committee to Study Access to Private and Public Lands in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §6206, sub-§1, ¶E, as amended by PL 1999, c. 603, §4, is further amended to read:

E. On January ~~1, 1995 and on January 1st every 2 years thereafter~~ 1st of every odd-numbered year, report to the joint standing committee of the Legislature having jurisdiction over matters pertaining to state parks and public lands on expenditures from the Land for Maine's Future Fund and the Public Access to Maine Waters Fund and revisions to the strategies and guidelines. This report must include a description of access to land and interest in land acquired during the report period. If an acquisition has been made that does not include guaranteed public vehicular access to the land acquired, the board must provide justification for that acquisition and a plan for continuing efforts to acquire guaranteed public access to the land.

Sec. 2. 5 MRSA §6207, sub-§3, as amended by PL 1993, c. 728, §10, is further amended to read:

3. Priorities. Whenever possible, the Land for Maine's Future Fund and the Public Access to Maine Waters Fund must be used for land acquisition projects when matching funds are available from cooperating entities, provided that the proposed acquisition meets all other criteria set forth in this chapter. For acquisitions funded by the Land for Maine's Future Fund, the board shall give priority to projects that conserve lands with multiple outstanding resource or recreation values or a single exceptional value, provide geographic representation and build upon or connect existing holdings.
When acquiring land or interest in land, the board shall examine public vehicular access rights to the land and, whenever possible and appropriate, acquire guaranteed public vehicular access as part of the acquisition.

Sec. 3. 12 MRSA §1812, first ¶, as enacted by PL 1997, c. 678, §13, is amended to read:

With the consent of the Governor and the commissioner, the director may acquire on behalf of the State land or any interests in land within this State, with or without improvements, by purchase, gift or eminent domain for purposes of holding and managing the same as parks or historic sites. When acquiring land or interest in land, the director shall examine options for obtaining public vehicular access rights to the land. If

an acquisition is made that does not include guaranteed public vehicular access, the director shall describe the acquisition in the report required under section 1817 and the justification for that acquisition. The right of eminent domain may not be exercised to take any area or areas for any one park that singly or collectively exceed 200 acres, nor may it be exercised to take any developed or undeveloped mill site or water power privilege in whole or in part or any land used or useful in connection therewith or any land being used for an industrial enterprise.

Sec. 4. 12 MRSA §1817, sub-§7 is enacted to read:

7. Comprehensive outdoor recreation plan. Beginning January 1, 2003 and every 5 years thereafter, the director shall submit a state comprehensive outdoor recreation plan to the joint standing committee of the Legislature having jurisdiction over state parks and public lands matters, referred in this subsection as the "committee of legislative oversight." The plan submitted by the bureau for review and approval by the National Park Service to establish the bureau's eligibility for funding from the land and water conservation fund under 16 United States Code, Section 4601-11 meets the requirements of this subsection. If federal funding is not available for updating the state plan, the bureau may make a written request to the committee of legislative oversight for an extension for submitting the plan. Upon receiving an extension request, the committee of legislative oversight shall discuss the advisability of an extension and the availability of state funds for preparation of the update. The committee may authorize an extension by writing to the director and stating the year by which an update must be received. A copy of the written extension must be filed by the committee with the Executive Director of the Legislative Council.

Sec. 5. 12 MRSA §1836, sub-§1, as enacted by PL 1997, c. 678, §13, is amended to read:

1. Authority to acquire lands. The bureau with the consent of the Governor and the commissioner may acquire lands or interests in lands on behalf of the State to be managed as nonreserved public lands. When acquiring land or interest in land, the bureau shall examine options for obtaining public vehicular access rights to the land. If an acquisition is made that does not include guaranteed public vehicular access, the bureau shall describe the acquisition in its annual report submitted pursuant to section 1839 and the justification for that acquisition. The bureau shall deliver to the State Archives within a reasonable period of time after their creation or acquisition the originals of all deeds, planbooks and surveyors' field and chainage notes, and any other materials the preservation of which it considers necessary, relating to the ownership, location and management of nonreserved public lands described in this subchapter.

Sec. 6. 12 MRSA §1850, sub-§1, as enacted by PL 1997, c. 678, §13, is amended to read:

1. Authority to acquire lands. With the consent of the Governor and the commissioner, the bureau may acquire lands or interests in lands on behalf of the State to be managed as public reserved lands. When acquiring land or interest in land, the bureau shall examine options for obtaining public vehicular access rights to the land. If an acquisition is made that does not include guaranteed public vehicular access, the bureau

shall describe the acquisition in its annual report submitted pursuant to section 1853 and the justification for that acquisition. The bureau shall deliver to the State Archives within a reasonable period of time after their creation or acquisition the originals of all deeds, planbooks and surveyors' field and chainage notes, and any other materials the preservation of which it considers necessary, relating to the ownership, location and management of public reserved lands described in this subchapter.

Sec. 7. 12 MRSA §1893-A is enacted to read:

§1893-A. Recreational management areas

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Excavation" means an excavation for borrow, topsoil, clay or silt, whether alone or in combination.

B. "Recreational management area" means an area formerly used for excavation on which trails that have been designed for all-terrain vehicle use are developed and on which recreational use by the public is allowed.

2. Development of recreational management areas. An owner or operator of an excavation site proposing to develop a recreational management area and requesting a variance from reclamation standards under Title 38, section 490-E shall request the assistance of the division.

Upon receipt of a request for assistance, the division shall assess the affected land for suitability for an all-terrain vehicle trail system. The division shall advise the landowner of funding, technical assistance and other assistance available through the ATV Recreation Management Fund established in section 7854, subsection 4, paragraph B. When an initial assessment of the affected land indicates the area is appropriate for an all-terrain vehicle trail system, the division may assist the owner or operator in developing a plan and completing a variance application.

Sec. 8. 12 MRSA §7652, sub-§1, ¶A, as amended by PL 1989, c. 493, §49, is further amended to read:

A. The commissioner may acquire in the name of the State, by gift, bequest or otherwise, real and personal property for the location, construction and convenient operation of a wildlife management area or public access sites to inland or coastal waters. When acquiring land or interest in land, the commissioner shall examine options for obtaining public vehicular access rights to the land. If an acquisition is made that does not include guaranteed public vehicular access, the commissioner shall describe the acquisition in the annual report submitted pursuant to section 7034, subsection 11 and the justification for that acquisition.

Sec. 9. 38 MRSA §490-D, sub-§14, as amended by PL 1995, c. 700, §24, is further amended by amending the first paragraph to read:

14. Reclamation. ~~The~~ Except as provided in subsection 15, the affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation should be conducted in accordance with the department's best management practices for erosion and sediment control, and must include:

Sec. 10. 38 MRSA §490-D, sub-§15 is enacted to read:

15. Recreational management areas. An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Division determines the site is suitable under Title 12, section 1893-A.

Sec. 11. 38 MRSA §490-E, as amended by PL 1995, c. 700, §25, is further amended by adding after the 2nd paragraph a new paragraph to read:

When an owner applies for a variance to allow an excavation to be reclaimed as a pond of at least 10 acres but less than 30 acres in size, the department may require public access as a condition for granting the variance. When an owner applies for a variance to allow an excavation to be reclaimed as a pond of 30 acres or greater in size, the department may grant the variance only if the owner demonstrates that public access to the pond is ensured. The requirement for public access may be met by existing public rights or by granting an easement or other right including a right to travel a reasonable distance by foot to a designated area of the shoreline.

Effective September 21, 2001, unless otherwise indicated.

APPENDIX B

HP 1387

H.P. 1387

JOINT STUDY ORDER ESTABLISHING THE COMMITTEE TO STUDY ACCESS TO PRIVATE AND PUBLIC LANDS IN MAINE

WHEREAS, this joint study order establishes the Committee to Study Access to Private and Public Lands in Maine; and

WHEREAS, the charge of this committee is vital to the interests of Maine citizens and camp and business owners in this State; and

WHEREAS, the spring and summer months begin the seasons of peak use of the Maine woods for Maine citizens and tourists and, therefore, are the optimal time for the committee to gather information and study issues related to access to lands; now, therefore, be it

ORDERED, the Senate concurring, that the Committee to Study Access to Private and Public Lands in Maine is established as follows.

1. Committee established. The Committee to Study Access to Private and Public Lands in Maine, referred to in this order as the "committee," is established.

2. Committee membership; chairs. The legislative members appointed to the Committee to Study Access to Private and Public Lands in Maine pursuant to Joint Order 1999, House Paper 1951 shall continue to serve on that committee. The Legislators serving as chairs shall continue to serve in that capacity.

3. Meetings. The chairs shall call and convene the first meeting of the committee within 30 days of adjournment of the First Regular Session of the 120th Legislature. The committee shall hold not more than 4 meetings.

4. Duties. The committee shall fulfill all the duties required by Joint Order 1999, House Paper 1951 and shall:

A. Determine the status of public access to flowed lakes in the State;

B. Review and report on the issue of the division and sale of land by timber companies and the private acquisition of large tracts of undeveloped land surrounding the State's great ponds;

C. Consider policy options to promote continued access to public and private land; and

D. Work with the Department of Inland Fisheries and Wildlife and the Department of Conservation, Bureau of Forestry to develop a map that shows significant areas in the State where public access is restricted, prohibited or permitted with the payment of a fee.

5. Report. The committee shall submit its report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry not later than December 5, 2001. The committee is authorized to introduce legislation related to its report to the Second Regular Session of the 120th Legislature not later than December 5, 2001. If the committee requires a limited

extension of time to make its report, it may apply to the Legislative Council, which may grant the extension.

6. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide staffing assistance to the committee.

7. Compensation. Members of the committee are entitled to receive the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the committee.

8. Budget. The chairs of the committee, with the assistance from the committee staff, shall administer the committee's budget. The committee may not incur expenses exceeding its approved budget. Upon request from the committee, the Executive Director of the Legislative Council shall promptly provide the committee and its staff with a status report on the committee's budget, expenditures incurred and remaining available funds.

Passed by the House of Representatives June 20, 2001 and the Senate June 21, 2001.

APPENDIX C

Membership list, Committee to Study Access to Private and Public Lands in Maine

COMMITTEE TO STUDY ACCESS TO PRIVATE AND PUBLIC LANDS IN MAINE

Joint Order, HP 1387

As Of Thursday, October 04, 2001

Appointment(s) by the President

Sen. Paul T. Davis, Sr.
36 Townhouse Road
Sangerville, ME 04479
(207)-876-4047

Sen. Marge L. Kilkelly
P.O. Box 180
Wiscasset, ME 04578
(207)-882-5410

Appointment(s) by the Speaker

Rep. Monica McGlocklin **Chair**
930 Embden Pond Road
Embden, ME 04958
(207)-566-5740

Rep. Roderick W. Carr
14 Pleasant Street
Lincoln, ME 04457
(207)-794-3911

Rep. Joseph E. Clark
180 Bowdoin Street
Millinocket, ME 04462
(207)-723-5746

Staff: Jill Ippoliti (OPLA) 287-1670
Danielle Fox - OPLA 287-1670

APPENDIX D

Letter from G. Steven Rowe, Attorney General, to the Chairs of the Committee to Study Access to Private and Public Lands – Date 2/12/2001

G. STEVEN ROWE
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February 12, 2001

Senator Marge Kilkelly, Senate Chair
Representative Monica McGlocklin, House Chair
Legislative Committee to Study Access to Private and Public Lands
State House
Augusta ME 04333

Dear Senator Kilkelly and Representative McGlocklin:

Your letter of January 25 asks for the opinion of this department on the issue of whether, under Maine's common law established by the so-called Colonial Ordinance, there is a generic public right of access over private lands to artificial impoundments of waters that did not qualify as Great Ponds in their natural state.[1] If there is no such public right of access at common law, you also ask whether the Legislature may enact a new law the effect of which is to *create* such access rights over private lands without implicating the takings clause of the Constitution, which requires the payment of just compensation. As explained below, we have not found support in Maine's caselaw in favor of a generic public right of access under the Colonial Ordinance to artificial water impoundments that never qualified as Great Ponds in their natural state. Accordingly, an act that imposes public accessways, in the nature of easements over private lands where none existed before, might well be found to give rise to a constitutional taking.

We want to be careful to emphasize the several, important qualifications to this opinion. First, in the time available we have found no caselaw in Maine that deals directly on point with the issue presented, although there are a number of cases and other legal authorities, as cited below, that lead us to the views expressed here. Second, even if the Colonial Ordinance provides no generic public access rights over private property to purely artificial water impoundments, it bears emphasis that there may be public access rights found *outside* of the Colonial Ordinance in such situations. For example, public access rights might be acquired through prescription, custom or other common law legal principles applicable to particular factual settings. Eaton v. Town of Wells, 2000 Me. 176, 760 A.2d 232 (2000). Likewise, the public may have rights under the terms of a private and special law or other legislative enactment that authorized the original

[1] Under the Colonial Ordinance of Massachusetts, which is the common law in Maine, Great Ponds are lakes and ponds that exceed 10 acres in size.

creation of the impoundment. Also not in question is the public's right of access to many impounded lakes in Maine, that were of sufficient size to qualify as Great Ponds in their natural state, and continue to so qualify even though they have been increased in size by reason of a dam at the outlet. Also not at issue is the constitutional police power authority of the Legislature to regulate and protect water bodies and shorelands, regardless of whether they qualify as Great Ponds under the Colonial Ordinance. Likewise, no question is raised here concerning the public's rights to navigate on the waters of navigable rivers, streams, lakes and ponds, again regardless of whether the water body constitutes a Great Pond under the Colonial Ordinance. Finally, it is important to recognize that the development of the common law is an evolving process over time, and our opinion here should not be read to foreclose the courts' further development of that body of law, including the prospect that future courts may interpret and apply the common law in a way that accommodates contemporary or future public usage.

In first describing the public's rights to Great Ponds, the Massachusetts Colonial Ordinance of 1641-47 reads as follows:

> Every inhabitant... shall have free fishing and fowling, in any Great Ponds, bays, coves and rivers so far as the sea ebbs and flows.... Provided that no town shall appropriate to any particular person or persons, any Great Pond containing more than ten acres of land; and that no man shall come upon another's property without their leave otherwise than as hereafter expressed.... And for Great Ponds lying in common..., it shall be free for any man to fish and fowl there, and may pass and repass on foot through any man's property for that end, so they trespass not upon any man's corn or meadow. Reprinted in 1 Cushing, The Laws and Liberties of Massachusetts 1641-1691 at 41 (1976) (language slightly modernized from original).

The Colonial Ordinance is the accepted common law of Maine, and has been widely interpreted by our courts to mean that the State holds title to both the waters and the beds of all Great Ponds in trust for its People. Opinion of the Justices, 118 Me. 503 (1919); Conant v. Jordan, 107 Me. 227 (1910); *See* Tannenbaum, "The Public Trust Doctrine in Maine's Submerged Lands: Public Rights, State Obligation and the Role of the Courts," 37 Maine L. Rev. 105 (1985). By contrast to the public ownership of Great Ponds as embodied in the Colonial Ordinance, lands bordering on a non-tidal river or stream are generally owned by the riparian landowner to the thread of the stream, subject to a public right of navigation on waters that are navigable. Opinion of the Justices, 118 Me. at 506-07; Richards and Hermansen, "Maine Principles of Ownership along Waterbodies," 47 Me. L. Rev. 36, 44-45 (1995). Even where the water body is not a Great Pond, the private shorefront owner is subject to State police power regulation as well as to the lawful exercise of the power of eminent domain. Opinion of the Justices at 508, 513, 516.

As expressed in the provision of the Colonial Ordinance set forth above, the public has a right of access to a Great Pond by crossing private land on foot, but the public may not trespass on the private owner's "corn or meadow." The Court has previously recognized this public

access right to "approach the pond through the unenclosed woodlands to whomsoever belonging, but not to cross another man's tillage or mowing land." Barrows v. McDermott, 73 Me. 441, 451 (1882). While the precise scope of this public right is unexplored by our courts in the modern context, the Legislature has stated a slightly different (and perhaps clearer) formulation in 17 M.R.S.A. §3860. This statute imposes criminal penalties for interfering with the public's right to pass on foot over *unimproved* lands in order to gain access to a Great Pond.

Of course, the public's right of access to a Great Pond under the Colonial Ordinance applies only where the water body itself is a Great Pond at common law. The Law Court has applied the Colonial Ordinance's declaration of public rights in Great Ponds to "*natural ponds* exceeding ten acres in extant." Barrows v. McDermott, 73 Me. at 451 (emphasis added). To the same general effect, when the Court has been confronted with questions about how to define property boundaries on impounded waters, it has generally construed the shoreland ownership to continue to extend to the thread of the impounded stream, although subject to the flowage rights acquired by the dam owner. Mansur v. Blake, 62 Me. 38 (1873); Lowell v. Robinson, 16 Me. 357 (1839); Richards and Hermansen, 47 Me. L. Rev. at 40-44.[2] Likewise, the Court has differentiated between public ownership of Great Ponds under the Colonial Ordinance and ownership of a mill pond raised by a dam across a stream, the latter being essentially private although subject to the public's right of navigation if the stream is capable of supporting such use.[3] Barrett v. Rockport Ice Co., 84 Me. 155 (1891), 156.

In sum, based upon the analysis that Maine courts have employed to date, it would logically follow that purely artificial impoundments of waters, that never qualified as Great Ponds in their natural state, do not appear to become Great Ponds, in an after-the-fact application of the Colonial Ordinance, by reason of a dam impoundment. If such artificial water impoundments are not Great Ponds, then it would follow that there is no public access right to them that is provided under the Colonial Ordinance.

If the Colonial Ordinance provides no generic public right of access to water impoundments that were not Great Ponds in their natural state, you further inquire whether the Legislature may by statute create such public access rights over private lands without implicating the takings clause of the Constitution. Analysis of constitutional takings claims is usually dependent upon a precise factual context. However, consistent with prior decisions of Maine's Law Court as well as the U.S. Supreme Court, if the Legislature were to enact a law the effect of which imposed a public easement where none had existed previously, such an act might well be

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[2] "Title along a great pond extends to the seasonal normal and natural water line at the time of conveyance. Consequently, if the water of a great pond has receded or been raised by artificial means since the time of conveyance, the upland owner neither gains nor loses property." 47 Me. L. Rev. at 40. See Stevens v. King, 76 Me. 197 (1884). Consistent with this principle, if at the time of original conveyance title to the land was in the riparian owner along a stream, and the land was then submerged by reason of an artificial impoundment, title would appear to remain in the riparian owner, and consequently no Great Pond would appear to come into existence by mere reason of the artificial impoundment.

[3] "The rule of conveyance for nontidal navigable streams also applies to artificially created ponds. The boundary of the conveyed riparian property is the thread of the stream as it existed before the pond was created." 47 Me. L. Rev. at 44.

found to be a taking for which just compensation would be required under the Constitution. Bell v. Town of Wells, 557 A.2d 168 (Me. 1989)[4]; Loretto v. Telepromter Manhattan CATV Corp., 458 U.S. 419 (U.S. 1982).

I hope that this answers your questions. If you have further questions for my department, please let me know. Thank you.

Sincerely,

G. Steven Rowe
Attorney General

cc: Senator Paul Davis
Representative Rod Carr
Representative Paul Volenik

[4] The Bell decision was by a bare majority of the Law Court in determining *the scope of the public easement in the intertidal zone* along the seashore. That issue, which the Court may revisit in the future, is not related to the one addressed here. However, the Bell court's majority found that, in the absence of a public easement under the common law, a Legislative enactment later purporting to create such an easement would give rise to a constitutional taking.

APPENDIX E

Information on Public Recreation Or Access Measures Associated with Hydroelectric Facilities

Provided by: Dan Riley,
Bernstein, Shur, Sawyer and Nelson
October 12, 2001

PUBLIC ACCESS AT FPL ENERGY MAINE HYDROELECTRIC FACILITIES

SUMMARY

The Federal Energy Regulatory Commission (FERC) requires that public access generally be allowed to project lands and waters so long as that access is consistent with other project uses and with safety considerations. The requirement to allow public access takes two forms:

1) the broad policy to permit public access, and
2) project specific recreation plans or shoreland management plans required at many projects.

The broad policy may be modified where appropriate, for instance, to restrict public access near project facilities, for safety, or when there is considerable vandalism or other law enforcement issues.

Project recreation plans are often required in the FERC licenses. In these cases, the licensee is required to develop a plan that may include provision of walking or fishermen access trails, boat launches or canoe portages depending on project needs or agency requests. The term of the recreation plans runs concurrently with the term of the license, generally between 30 and 50 years. The recreation plan is not static, however, since the FERC requires an evaluation of recreational needs vs. available facilities for each project every 6 years. The plans might then be altered to fit current circumstances by either removing or adding facilities or access measures. It should be noted that the licensee is not necessarily required to provide additional facilities if either commercial or public facilities exist or can be made available. [Licensees may charge a user fee to recover costs of providing access or recreation facilities or maintenance.]

In an increasing number of cases at FERC licensed projects, formal settlement agreements are including public recreational or public access measures. This is currently applicable in four instances at FPL Energy Maine Hydro projects. For the **Upper** and **Middle Dams Project** on the **upper Androscoggin River**, FPL has committed to improve existing public facilities, provide additional picnic and sanitation facilities, access trails, and whitewater boating releases. In addition, permanent conservation easements will be placed on certain lands that will limit development and provide access in perpetuity. On the **Kennebec River** three projects are currently subject to settlement agreements wherein thousands of acres of land at Moosehead (**East Outlet**), **Harris** and **Wyman** will be placed under permanent conservation easements that include the provision of public access.

The attached table lists by river and site the categories of public recreation and or water access facilities that FPL Energy Maine Hydro provides.

Partial List - Public Recreation and Access Facilities - FPL Energy Maine Hydro[1]

Kennebec River Basin	Public Access	Boat Launch	Carry-in	Canoe Portage	Trails	Camp ground	Primitive Camping	Public Park
Brassua (Moose River)	X	X	X	X			Paper Co.	
Moosehead	X	P	X			C	X	P
Harris	X	X	X			X	X	
Flagstaff (Dead River)	X	XP	X	X		C	PX	P
Wyman	X	XP	X	X			X	
Williams	X	X		X	X			
Weston	X	P	X	X				P
Shawmut	X	X	P	X				
Lockwood					X			
Fort Halifax (Sebasticook R.)	X		X	X	X			
Messalonskee (Mess. Stream)	X	P	P					
Androscoggin River								
Aziscohos	X	XP	X		X	C	C	
Upper	X	PC		X		C	C	
Middle	X	PC		X		C	C	
Errol	X	XP		X		C	C	P
Gulf Island	X	P					X	P
Deer Rips	X		X					
Lewiston Falls	X	P						X
Brunswick	X		P	X				
Presumpscot River								
North Gorham	X		X					
Saco River Basin								
Hiram	X		X	X	X			X
Kezar Falls (Ossippee River)	X			X				
Ledgemere (Little Ossippee)	X	X						
Bonny Eagle	X		X	X				
West Buxton	X		X					
Bar Mills	X		X	X				
Skelton	X	X	X	X				
Cataract	X	P	P					X

X = provided by licensee C = commercial facility

P = provided by public governmental agency. Often co-funded by licensee.

[1] Includes FPLE as either full owner, or partner.

Public Access at Independent Energy Producers of Maine Hydroelectric Facilities

UAH-Kennebec Hydroelectric

Name of the lake or stream on which public access is provided?
Kennebec River between Waterville & Fairfield
Type of public access provided i.e. boat ramp, hand-carry launch, picnic site, campground, trails?
Boat launch
Is access a term of a FERC license? Term of another license or agreement?
A permanent facility was built, as part of licensing mitigation, and turned over to the Town of Fairfield
Does the access provided continue beyond the license period?
The facility was constructed on town property and is owned by the town
Is there deeded access, an easement for perpetual public use of the site?
It will be for public use in perpetuity

Aziscohos

Name of the lake or stream on which public access is provided?
Aziscohos Lake & Megalloway River
Type of public access provided i.e. boat ramp, hand-carry launch, picnic site, campground, trails?
Lakeside picnic area, public parking and a river access trail downstream for fishermen & whitewater boating access.
Is access a term of a FERC license? Term of another license or agreement?
Facilities are provided pursuant to a FERC license article and Land Use Regulatory Commission permit conditions.
Does the access provided continue beyond the license period?
No
Is there deeded access, an easement for perpetual public use of the site?
All public facilities are located on lands owned by ARCo, one of the co-licensees.

PPL Maine

Ellsworth, Veazie, Great Works, Milford, Stillwater, Orono, Howland, West Enfield & Medway

Name of the lake or stream on which public access is provided?
All projects are on the Penobscot River drainage except for Ellsworth which is located on the Union River and Howland which is on the Piscataquis River.
Type of public access provided i.e. boat ramp, hand-carry launch, picnic site, campground, trails?
Numerous public access facilities, including both trailerable and hand-carry boat launches, portage trails, parking sites, nature trails and one ballfield.
Is access a term of a FERC license? Term of another license or agreement?
Yes, term of the respective FERC licenses
Does the access provided continue beyond the license period?
No
Is there deeded access, an easement for perpetual public use of the site?
Facilities will be operated/ maintained by PPL for the duration of the license terms.

APPENDIX F

Lakes Over 500 Acres
Without Guaranteed Public Access

Source:

SUPPLEMENT
Public Access to Maine
Waters Strategic Plan
1995 to 2000

Prepared by:
Maine Department of Conservation
Maine Department of Inland Fisheries and Wildlife
Maine Department of Marine Resources
November 2000

APPENDIX B -4

Lakes over 500 Acres without Guaranteed Public Access in Priority Order
Revised October 2000

PUBLIC ACCESS RATING ARE: 1 = Government Entity / Large Landowner Controlled 3 = Inadequate Access
2 = Private Access / Individual Allows 4 = No Access

DEPT INLAND FISHERIES & WILDLIFE INDICATED NEED RATING IS: 4 = IF Mentioned

BUREAU OF PARKS & RECREATION RATINGS ARE: 1 = Mentioned once 3 = Mentioned 3 times
2 = Mentioned twice 4 = Mentioned 4 or more times

Lakes marked with a double asterisk are classified as management Class 1 or 6 lake under policies and standards of the Land Use Regulation Commission, with vehicular access prohibited. (See Issue 6)

Lakes marked with a triple asterisk are classified as management Class 2 lake under the Land Use Regulation Commission policies and standards, with access sites requiring special consideration. (See Issue 6)

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
KENNEBEC	FAYETTE	1586	PARKER P	1513	3	I	-0	4	11
PENOBSCOT	LINCOLN	2232	COLD STREAM P (Upper)	685	4	U	-0	3	11
ANDROSCOGGIN	POLAND	3758	TRIPP P	768	3	I	-0	4	11
SOMERSET	CARATUNK	0224	PLEASANT P	1120	2	U	4	-0	10

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
WASHINGTON	LAMBERT LAKE	1332	LAMBERT L	605	2	U	-0	4	10
AROOSTOOK	WESTON	1068	BRACKETT L	576	4	U	-0	2	10
KENNEBEC	MONMOUTH	9961	ANNABESSA-COOK L	1420	3	I	-0	2	09
AROOSTOOK	T17 R04 WELS	1680	MUD L	972	4	C	-0	-3	09
KENNEBEC	WAYNE	3824	POCASSET L	601	4	U	-0	1	09
KNOX	APPLETON	5682	SENNEBEC P	532	3	I	-0	1	08
FRANKLIN	DAVIS TWP	2374	KENNEBAGO L (Big)	1700	2	U	-0	2	08
OXFORD	HARTFORD	3604	ANASAGUNTI-COOK L	568	3	U	-0	1	08
LINCOLN	JEFFERSON	5382	CLARY L (Pleasant P)	666	3	U	-0	1	08
YORK	LEBANON	3876	NORTHEAST P	778	2	I	-0	2	08
OXFORD	MAGALLOWAY P	3104	STURTEVANT P	518	4	U	-0	-0	08
PENOBSCOT	MT CHASE	2202	SHIN P (Upper)	544	4	U	-0	-0	08
WASHINGTON	NORTHFIELD	1258	BOG L	826	3	U	-0	1	08
FRANKLIN	SANDY RIVER	3562	BEAVER MTN L	543	3	U	-0	1	08
PISCATAQUIS	T01 R12 WELS	0452	ROACH P (Second)	970	3	U	1	-0	08
PENOBSCOT	T05 R01 NBPP	4708	JUNIOR L	3866	3	U	-0	1	08
AROOSTOOK	T16 R05 WELS	1672	SQUARE L	8150	1	U	3	-0	08
AROOSTOOK	T18 R10 WELS	9789	GLAZIER L	1120	4	U	-0	-0	08
AROOSTOOK	T19 R11 WELS	9785	BEAU L	2003	4	U	-0	-0	08
ANDROSCOGGIN	AUBURN	3750	TAYLOR P	625	2	I	-0	1	07
HANCOCK	ELLSWORTH	4328	BRANCH L	2703	2	I	1	-0	07
OXFORD	FRYEBURG	9709	KEZAR P	1299	3	U	-0	-0	07
YORK	NEWFIELD	3898	BALCH & STUMP PONDS	704	2	I	1	-0	07
YORK	PARSONSFIELD	9887	PROVINCE L	1008	3	I	-0	-0	07
CUMBERLAND	RAYMOND	3694	PANTHER P	1439	1	I	2	-0	07
WASHINGTON	T06 R01 NBPP	1096	MUSQUASH L	1613	3	-	-0	4	07

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
			(West)						
WASHINGTON	TOPSFIELD	1088	MUSQUASH L (East)	806	3	U	-0	-0	07
KNOX	WARREN	5716	SOUTH P	548	2	U	1	-0	07
KENNEBEC	WINSLOW	5458	PATTEE P	712	2	I	-0	1	07
SOMERSET	BALD MTN TWP	0278	AUSTIN P	684	3	-	3	-0	06
PISCATAQUIS	BOWDOIN COL	0410	WILSON P (Upper)	940	4	-	-0	2	06
HANCOCK	BROOKSVILLE	4640	WALKER P	697	3	-	-0	3	06
SOMERSET	PARLIN POND	2544	PARLIN P	543	2	U	-0	-0	06
PENOBSCOT	STETSON	2270	PLEASANT (Stetson) L	768	2	-	-0	4	06
PENOBSCOT	T05 R01 NBPP	9649	SCRAGGLEY L	2758	1	U	-0	1	06
SOMERSET	HOBBSTOWN TW	5104	SPENCER L ***	1819	3	-	-0	2	05
SOMERSET	KING & BARTLETT	5136	KING & BARTLETT L	538	4	-	-0	1	05
AROOSTOOK	MOLUNKUS TWP	3040	MATTASBUNK L	576	3	-	-0	2	05
PISCATAQUIS	RAINBOW TWP	0614	RAINBOW L **	1664	4	-	-0	1	05
PENOBSCOT	T02 R09 NWP	2140	MATTAMISCONTIS L	1025	4	-	-0	1	05
PENOBSCOT	T06 R08 WELS	2178	HAY L	588	3	-	2	-0	05
WASHINGTON	T36 MD BPP	1144	MACHIAS L (Fifth)	1069	4	-	-0	1	05
PENOBSCOT	BRADLEY	4278	CHEMO P	1146	3	-	1	-0	04
PENOBSCOT	BURLINGTON	2250	ESKUTASSIS	876	3	-	-0	1	04
WASHINGTON	CALAIS	1418	NASH L	627	2	-	2	-0	04
SOMERSET	CARRYING PLC	0048	CARRY P (West)	675	4	-	-0	-0	04
HANCOCK	DEDHAM	4292	MOUNTAINY P	691	4	-	-0	-0	04
PENOBSCOT	HOPKINS ACAD	2128	NOLLESEMIC L	660	4	-	-0	-0	04

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
OXFORD	LYNCHTOWN TWP	3966	PARMACHENEE L	912	4	-	-0	-0	04
AROOSTOOK	ORIENT	1063	NORTH L	970	4	-	-0	-0	04
PISCATAQUIS	ORNEVILLE TWP	2158	BOYD L	1005	3	-	-0	1	04
HANCOCK	OSBORN PLT	4450	SPECTACLE P (Spec)	1754	3	-	1	-0	04
HANCOCK	OTIS	4370	FLOODS P	654	4	-	-0	-0	04
PENOBSCOT	T01 R06 WELS	3046	SALMON STREAM L	659	4	-	-0	-0	04
PISCATAQUIS	T01 R10 WELS	0984	JO-MARY L (Lower) **	1910	4	-	-0	-0	04
PISCATAQUIS	T01 R10 WELS	0584	DEBSCONEAG L (3rd) **	1011	4	-	-0	-0	04
HANCOCK	T03 ND	4756	PISTOL L (Lower)	979	3	-	-0	1	04
PENOBSCOT	T03 R01 NBPP	9635	NUMBER THREE POND	666	3	-	-0	1	04
PENOBSOCT	T03 R08 WELS	2016	KATAHDIN L **	717	4	-	-0	-0	04
PISCATAQUIS	T03 R11 WELS	0700	HARRINGTON L	1332	1	-	3	-0	04
PISCATAQUIS	T05 R09 NWP	0914	BEEMEE L	940	4	-	-0	-0	04
PISCATAQUIS	T06 R12 WELS	2884	MUD P	1357	4	-	-0	-0	04
PISCATAQUIS	T06 R13 WELS	2886	LONGLEY P	749	4	-	-0	-0	04
PISCATAQUIS	T06 R13 WELS	2890	UMBAZOOKSUS L	1590	3	-	-0	1	04
PISCATAQUIS	T06 R14 WELS	2896	BLACK P	1450	4	-	-0	-0	04
PISCATAQUIS	T06 R15 WELS	4024	LOON L	1140	4	-	-0	-0	04
PENOBSCOT	T07 R08 WELS	3004	MILLIMAGAS-SETT LAKE	1410	4	-	-0	-0	04
PISCATAQUIS	T07 R09 NWP	0916	HOUSTON P	694	4	-	-0	-0	04
PISCATAQUIS	T07 R14 WELS	2876	SHALLOW L	1110	4	-	-0	-0	04
AROOSTOOK	T13 R12 WELS	1470	ROUND P ***	697	4	-	-0	-0	04
AROOSTOOK	T13 R16 WELS	1448	DEPOT L	883	4	-	-0	-0	04
AROOSTOOK	T17 R14 WELS	1464	EAST L	2551	4	-	-0	-0	04
HANCOCK	T34 MD	4498	ALLIGATOR L	1159	3	-	-0	1	04

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
			***						
HANCOCK	T39 MD	9651	BRANDY P	723	3	-	1	-0	04
HANCOCK	T40 MD	4766	NICATOUS L	5165	3	-	-0	1	04
OXFORD	TOWNSHIP C	3328	POND IN THE RIVER	512	3	-	-0	-0	04
KNOX	UNION	4810	CRAWFORD P	591	2	-	-0	2	04
WASHINGTON	WHITING	1368	SUNKEN & ROCKY LAKES	1126	3	-	-0	1	04
AROOSTOOK	WINTERVILLE	1610	ST FROID L	2400	3	-	-0	1	04
WASHINGTON	ALEXANDER	1290	POCAMOON-SHINE LAKE	2464	3	-	-0	-0	03
WASHINGTON	CALAIS	1428	HOWARD L	527	3	-	-0	-0	03
WASHINGTON	CHARLOTTE	1402	PENNAMA-QUAN L	1209	3	-	-0	-0	3
WASHINGTON	CRAWFORD	1302	CRAWFORD L	1677	1	-	2	10	03
WASHINGTON	DEBLOIS	7449	BOG BROOK FLOWAGE	565	3	-	-0	-0	03
SOMERSET	DOLE BROOK T	9861	LONG P	845	3	-	-0	-0	03
HANCOCK	EASTBROOK	4346	WEBB P	915	3	-	-0	-0	03
WASHINGTON	GRAND LAKE S	1288	BIG L	10,305	1	-	-0	2	03
PENOBSCOT	LAKEVILLE PL	4688	SYSLADOBSIS L (Upper)	1142	3	-	-0	-0	3
PENOBSCOT	LINCOLN	2330	UPPER P	506	3	-	-0	-0	03
SOMERSET	PITTSFIELD	5472	DOUGLAS P	566	3	-	-0	-0	03
PISCATAQUIS	SHAWTOWN TWP	0482	ROACH P (Third)	570	3	-	-0	-0	03
PISCATAQUIS	T02 R10 WELS	2064	HURD P	640	3	-	-0	-0	03
PENOBSCOT	T03 R09 NWP	0942	ENDLESS L	1499	3	-	-0	-0	03
PISCATAQUIS	T05 R12 WELS	2892	CUXABEXIS L	592	3	-	-0	-0	03
SOMERSET	T05 R17 WELS	2414	ST JOHN P (Fifth)	670	3	-	-0	-0	03
PISCATAQUIS	T06 R10 WELS	2718	WEBSTER L	531	3	-	-0	-0	03
SOMERSET	T06 R17 WELS	2412	BIG BOG	1064	3	-	-0	-0	03
AROOSTOOK	T07 R05 WELS	3080	UMCOLCUS L	630	3	-	-0	-0	03
PENOBSCOT	T07 R07 WELS	3011	GRAND LAKE	2483	3	-	-0	-0	03

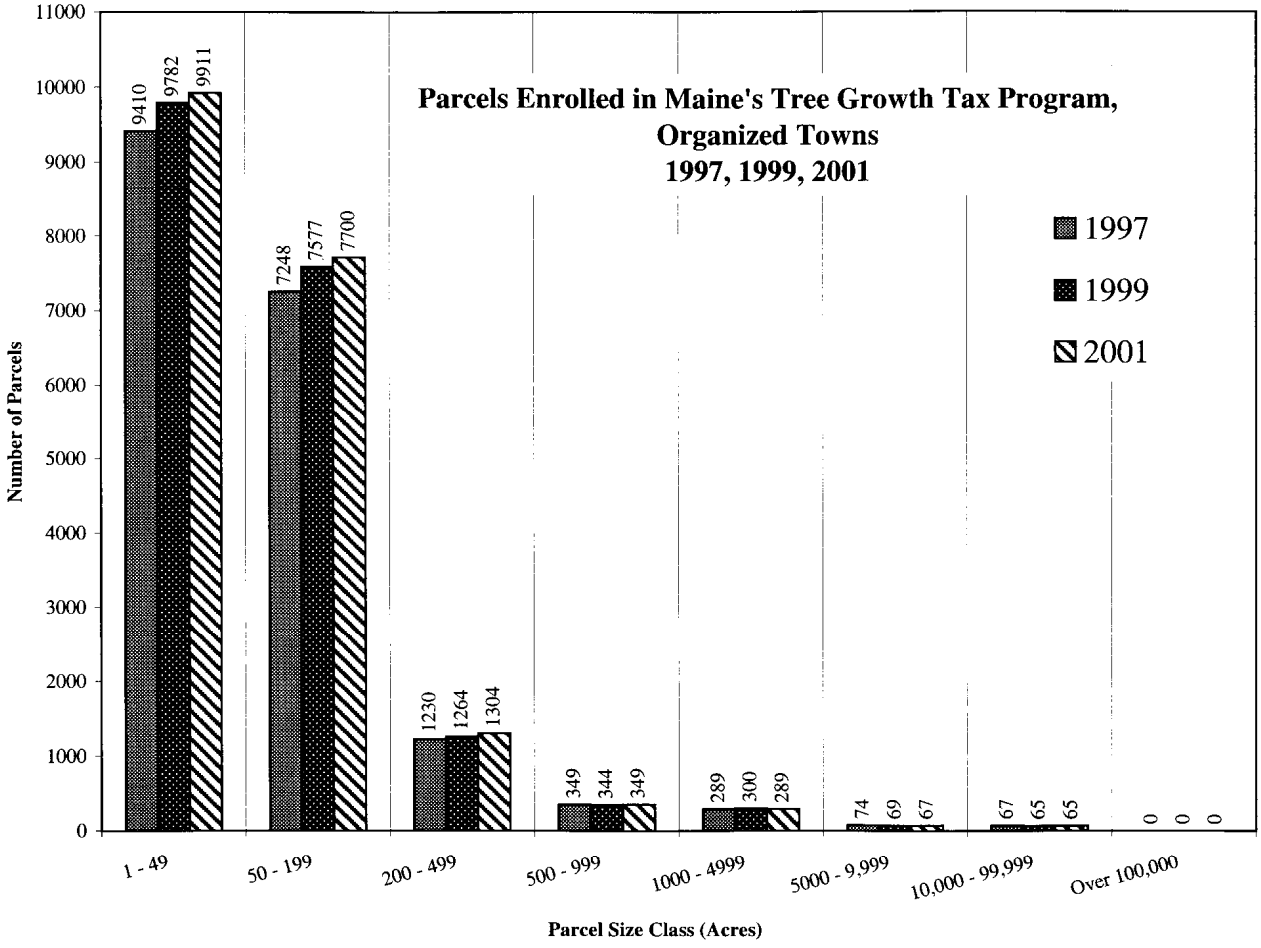
COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
			SEBOEIS						
PISCATAQUIS	T07 R09 NWP	0800	LONG POND	643	3	-	-0	-0	03
PISCATAQUIS	T07 R12 WELS	2866	INDIAN P	1222	3	1	-0	-0	03
PISCATAQUIS	T08 R10 WELS	4180	MUNSUNGAN L ***	1415	3	1	-0	-0	03
PISCATAQUIS	T09 R11 WELS	2756	PLEASANT L (Big)	979	3	-	-0	-0	03
PISCATAQUIS	T10 R11 WELS	1938	CLEAR L ***	614	3	-	-0	-0	03
PISCATAQUIS	T10 R11 WELS	1920	MUSQUACOOK LAKE (fourth)	749	3	-	-0	-0	03
PISCATAQUIS	T10 R13 WELS	1906	PRIESTLY L	645	3	-	-0	-0	03
AROOSTOOK	T12 R08 WELS	1960	MACHIAS L (Big)	692	3	-	-0	-0	03
PISCATAQUIS	TB R11 WELS	0478	B POND	644	3	-	-0	-0	03
PENOBSCOT	BURLINGTON	2254	MADAGASCAL POND (Big)	750	2	-	-0	-0	02
HANCOCK	GREAT POND	4604	GREAT POND	679	1	-	1	-0	02
SOMERSET	LONG POND TWP	2536	LONG POND	3053	1	-	-0	1	02
OXFORD	OTISFIELD	3446	PLEASANT L	1077	1	-	-0	1	02
WASHINGTON	PERRY	1404	BOYDEN L	1702	1	-	1	-0	02
SOMERSET	PIERCE POND	0086	PIERCE P ***	1650	2	-	-0	-0	02
CUMBERLAND	SEBAGO	3374	PEABODY P	735	1	-	-0	1	02
AROOSTOOK	T01 R05 WELS	3038	MOLUNKUS L	1050	1	?	-0	1	02
SOMERSET	T03 R04 BKP	0170	SPRING L	762	2	-	-0	-0	02
PISCATAQUIS	T05 R11 WELS	2730	SOURDNAHUN K LAKE	1394	2	-	-0	-0	02
PISCATAQUIS	T05 R13 WELS	2898	BRANDY P	650	1	-	1	-0	02
PISCATAQUIS	T06 R14 WELS	4012	CAUCOMGO-MOC LAKE	5081	1	-	1	-0	02
WASHINGTON	T08 R04 NBPP	1072	HOT BROOK L (Upper)	713	2	-	-0	-0	02
WASHINGTON	T08 R04 NBPP	1076	HOT BROOK L (Lower)	912	2	-	-0	-0	02
WASHINGTON	T19 BD BPP	1264	LONG L	698	2	-	-0	-0	02

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
PISCATAQUIS	TA R10 WELS	0243	JO-MARY L (Upper) ***	1873	2	-	-0	-0	02
SOMERSET	BALD MTN TWP	0314	BALD MTN P ***	1152	1	-	-0	-0	01
HANCOCK	BUCKSPORT	5540	SILVER L	630	1	-	-0	-0	01
HANCOCK	BEDHAM	4300	PHILLIPS L (Lucerne)	828	1	-	-0	-0	01
WASHINGTON	DEVEREAUX TWP	1172	MOPANG L	1487	1	-	-0	-0	01
SOMERSET	DOLE BROOK TWP	2454	DOLE POND	704	1	-	-0	-0	01
PISCATAQUIS	E MIDDLESEX	0404	SPENCER POND	980	1	-	-0	-0	01
PISCATAQUIS	LAKE VIEW PL	0956	SCHOODIC L	7168	1	-	-0	-0	01
OXFORD	MAGALLOWAY P	3102	UMBAGOG L	7850	1	-	-0	-0	01
WASHINGTON	MARION TWP	1374	SECOND L	1650	1	-	-0	-0	01
HANCOCK	ORLAND	4336	ALAMOOS-COOK LAKE	1133	1	-	-0	-0	01
PENOBSCOT	ORRINGTON	4284	BREWER		1	-	-0	-0	01
SOMERSET	PITTSTON ACA	2516	CANADA FALLS LAKE	2627	1	-	-0	-0	01
SOMERSET	SEBOOMOOK TWP	4048	SEBOOMOOK LAKE	6448	1	-	-0	-0	01
SOMERSET	ST ALBANS	5464	INDIAN P (Big)	990	1	-	-0	-0	01
HANCOCK	SULLIVAN	4388	FLANDERS P	537	1	-	-0	-0	01
PISCATAQUIS	T02 R13 WELS	2936	RAGGED L	2712	1	-			
PENOBSCOT	T03 R09 NWP	2130	BRANCH L (East)	1100	1	-	-0	-0	01
HANCOCK	T04 ND	4736	CHAIN L (Upper)	717	1	-	-0	-0	01
SOMERSET	T04 R05 NBKP	0339	PENOBSCOT L ***	1019	1	-	-0	-0	01
PENOBSOCT	T06 R08 WELS	4260	MATAGAMON L	4165	1	-	-0	-0	01
PENOBSCOT	T07 R07 WELS	3028	SNOWSHOE L	638	1	-	-0	-0	01
PISCATAQUIS	T07 R11 WELS	2814	HAYMOCK L	704	1	-	-0	-0	01
PISCATAQUIS	T09 R12 WELS	2780	CLIFF L ***	563	1	-	-0	-0	01

COUNTY	TOWN	LAKE CODE	LAKE NAME	ACRES	PUBLIC ACCESS	DIF&W INDICATED NEED	BPR 1988 SURVEY	BPR 1991 SURVEY	TOTAL RATE
PISCATAQUIS	T10 R 15 WELS	1888	ROSS L	2892	1	-	-0	-0	01
AROOSTOOK	T11 R11 WELS	1916	MUSQUACOOK LAKE (2nd)	813	1	-	-0	-0	01
AROOSTOOK	R12 R11 WELS	1914	MUSQUACOOK LAKE (1st)	698	1	-	-0	-0	01
AROOSTOOK	T14 R08 WELS	0009	FISH RIVER L	2642	1	-	-0	-0	01
WASHINGTON	T19 ED BPP	1238	LOVE L	672	1	-	-0	-0	01
HANCOCK	T22 MD	4476	ROCKY POND	666	1	-	-0	-0	01
WASHINGTON	ED BPP	1304	CLIFFORD L	954	1	-	-0	-0	01
HANCOCK	T28 MD	4482	LEAD MTN P (Upper)	1021	1	-	-0	-0	01
HANCOCK	T35 MD	4784	SABAO LAKE (Lower)	755	1	-	-0	-0	01
PENOBSCOT	T4 INDIAN P	0986	JO-MARY LAKE (Middle)	1152	1	-	-0	-0	01
WASHINGTON	T42 MD BPP	1148	MACHIAS LAKE (Fourth)	1539	1	-	-0	-0	01
WASHINGTON	T42 MD BPP	1124	MACHIAS LAKE (Third) ***	2778	1	-	-0	-0	01
WASHINGTON	T43 MD BPP	1116	WABASSUS L	953	1	-	-0	-0	01

APPENDIX G

Number of Parcels Enrolled Under Tree Growth Tax Law



Source: Department of Conservation, Maine Forest Service
December 6, 2001

APPENDIX H

Summary of
New Hampshire's Current Use Taxation Law
&
Wisconsin's Forest Tax Law

NEW HAMPSHIRE: CURRENT USE TAXATION AND PUBLIC ACCESS

- In 1968 the people of New Hampshire approved a proposition to amend the state constitution and allow undeveloped farm and forestlands to be taxed based on its current use value.

- Approximately 3 million acres (almost 60% of the state's taxable private land) are enrolled in the current use program for farm, forest and open-space land.

- Land assessed under current use may be posted. Receiving current use does not require a landowner to open the property to public use.

Optional 20% Recreational Adjustment

- New Hampshire's current use law provides for a 20% reduction on the current use value of the land if the land is open to public recreation. The conditions for this optional recreation discount are as follows:

  - ✓ The land must be open 12 months a year to public recreation use without an entrance fee.

  - ✓ The owner may not prohibit skiing, snowshoeing, fishing, hunting, hiking or nature observation on the land "unless these activities would be detrimental to a specific agricultural or forest crop or activity". Posting to prohibit an activity must be approved by the local assessing officials.

  - ✓ The landowner may prohibit any activity not listed above. For example, owners may prohibit camping, snowmobiles and ATV's.

- Approximately 40% of the land enrolled under current use is benefiting from the optional recreational discount. (Department of Revenue Report, 1998)

- The percent of land enrolled under current use taxation that is not posted yet owners are not taking advantage of the recreational discount is not known.

Sources: New Hampshire Statutes, Title 5, Chapter 79-A
Current Use Administrative Rules Chapter Cub 100
S.P.A.C.E. Newsletter Summer, 2000

Prepared by: Office of Policy & Legal Analysis 11/22/00

WISCONSIN FOREST TAX LAWS AND PUBLIC ACCESS

History

- Wisconsin's first forest tax law was enacted in 1927 as the Forest Crop Law. The minimum acreage for eligibility in the program was 40 acres. Public access for fishing and hunting was a condition of participation in the program.

- In 1954, the Woodland Tax Law was passed for owners of woodlots as small as 10 acres. Public access was not a condition of participation.

- In 1986, both of these laws were replaced with the Managed Forest Law. Agreements under the 2 previous tax laws continue until the time of renewal. Enrollment under the Forest Crop Law is for a period of 25 or 50 years. Enrollment under the Woodland Tax Law is for a 15 year period.

Provisions of Managed Forest law (MFL)

- At least 10 acres of contiguous forest land

- A landowner enrolling under the MFL has the choice to enroll the land as open or closed to the public. Higher property taxes are paid on closed land.

- A landowner may designate one area of up to 80 acres in each municipality as closed to public access. A landowner owning 80 acres or less in a municipality may enroll in MFL and close the entire parcel to public access. The landowner pays the higher tax rate for closed land.

- For land enrolled as open land, the landowner must permit public access for hunting, fishing, cross-country skiing, sightseeing, and hiking.

- An owner may prohibit the use of motor vehicles or snowmobiles on open managed forestland.

- An owner may restrict public access to any area of open managed land which is within 300 feet of any building or within 300 feet of a commercial logging operation that conforms to a management plan.

- Lands enrolled under the MFL are designated as MFL-O and MFL-C to indicate open and closed land on the municipal tax roll.

- MFL-O lands are taxed at 74 cents per acre

- MFL-C are taxed at $1.74 per acre

Sources: Wisconsin Statutes Chapter 77 Subchapter VI, sections 77.80-77.91
http://www.dnr.state.wi.us/org/land/forestry/ftax/managed.htm

Prepared by: Office of Policy & Legal Analysis 11/22/00

APPENDIX I

A Summary of
Minnesota's Sustainable Forest Incentive Program

Minnesota Omnibus Tax Bill enacted as
2001 First Special Session
Chapter 5, Article 5
August 8, 2001

Article 8: Sustainable Forest Incentives	
Overview Establishes a Sustainable Forest Incentive program that gives landowners who implement forest management plans annual incentive payments. (The property is subject to property taxes.) Claimants enrolling at least 1,920 acres must allow year-round nonmotorized access for fishing and hunting. Repeals the Tree Growth Tax Law. Allows property currently enrolled in the Auxiliary forest law to either remain in that program for the length of the contract, or transfer to the sustainable forest incentive program established under this article provided there is mutual agreement between the county and the landowner and a tax payment is made to the county by the landowner. Entire article is effective for taxes levied in 2002, payable in 2003 and thereafter.	
1-3	Sections 1-3. Relate to property enrolled in the auxiliary forest tax law. Current law provides that property enrolled in the auxiliary forest law may, without penalty, move into tree growth upon mutual agreement between the county and the landowner and a tax payment is made by the landowner (see tax calculation in the next paragraph). Since this article repeals the tree growth law for taxes payable in 2003 and thereafter, provisions are needed to replace that law.
	Under current law, when an auxiliary forest contract expires, the landowner must pay the county a yield tax (i.e., based on the value of the timber). If the landowner wants to transfer the property to tree growth before the auxiliary forest contract expires, it can be done only if there is mutual agreement between the landowner and the county **and** the landowner makes a payment to the county equal to the tax difference between the auxiliary forest tax (the total of a yield tax and a per acre tax) and what it would be paying under the tree growth tax.
	The changes made in these sections continue this same practice, but instead allow the auxiliary forest property to automatically qualify for the new sustainable forest program if there is mutual agreement between the county and the landowner **and** the tax payment is made to the county. The tax calculation is slightly altered under these sections since the amount now has to factor in the number of years left of the contract that the property will now be under the new sustainable forest law. No further penalty is imposed for taking the property out of the auxiliary forest program.
4	**Revenue recapture; refund.** Includes refunds under the Sustainable Forest Incentive Act in the definition of tax refunds subject to revenue recapture.

	Sections 5 to 15 are the Sustainable Forest Incentive Act
5	**Purpose.** Declares that it is state policy to support sustainable forest resource management on both private and public lands. Provides that the purpose of the act is to encourage private forest landowners to make a long-term commitment to sustainable forest management.
6	**Definitions:**
	Subd. 1. Provides that the terms have the following meanings.
	Subd. 2. "Approved plan writers" are natural resource professionals, including certified foresters, who are approved by the commissioner of natural resources as plan writers.
	Subd. 3. "Claimant" means a person who owns forest land in the state and who files a claim under this chapter.
	Subd. 4. "Commissioner" means the commissioner of revenue.
	Subd. 5. "Current use value" means 90 percent of the statewide average annual income per acre divided by the capitalization rate. The average annual net income is a weighted average based on stumpage prices and annual tree growth rates and acreages by cover type.
	Subd. 6. "Forest land" means land of at least 20 contiguous acres, in which at least 50 percent are forested and for which the owner has implemented a forest management plan that was prepared or updated within the last ten years by an approved plan writer.
	Subd. 7. "Forest management plan" means a written plan that includes:
	- owner-specific forest management goals;
	- a reliable field inventory of the property;
	- a description of the soil type and quality;
	- an aerial photo or map of the property showing vegetation and other natural features;
	- the proposed future conditions of the property;
	- prescriptions of how to meet the proposed future conditions;
	- a recommended timetable for implementing the prescribed activities; and
	- a legal description of the parcels included in the plan.
	All management activities must be in accordance with timber harvesting and forest management guidelines.
	Subd. 8. "Timber harvesting and forest management guidelines" means guidelines developed in chapter 89A (sustainable forest resources) and adopted by the Minnesota forest resources council in 1998.
	Subd. 9. "Capitalization rate" is the average annual effective interest rate for St. Paul on new loans made by the Farm Credit Bank.
7	**Eligibility requirements.** Provides that property may be enrolled in the sustainable forest tax program if it meets all of the following requirements:
	Property is at least 20 contiguous acres and at least 50 percent of the land must be forested during the enrollment,
	A forest resource management plan must be prepared and implemented during the

	period in which the land is enrolled,
	Timber harvesting and forest management guidelines must be used in conjunction with any timber harvesting or forest management activities conducted on the land during the period in which the land is enrolled,
	Land must be enrolled for at least 8 years,
	No delinquent property taxes on the land, and
	Claimants with at least 1,920 acres (i.e., 3 sections of land) enrolled must allow year-round nonmotorized access for fishing and hunting, except within a quarter mile of a permanent dwelling. Property owners are not liable for injury to individuals who gain access to the property under this requirement.
8	**Application procedure.** Provides that landowners wishing to enroll in the program need to complete, sign, and submit an application to the commissioner by September 30 in order for the land to be enrolled for the following year. The commissioner shall notify the owner, in writing, within 90 days of receipt of application whether the application was approved. The application, including the commissioner's approval constitute an agreement between the commissioner and the landowner. That agreement shall be deemed a covenant which shall run with the land for at least eight years. Provides for appeal of denied applications.
9	**Annual certification.** Provides for an annual certification to the commissioner that all requirements and conditions for enrollment are being met. Failure to certify annual compliance by August 15 shall result in immediate removal of the land from the program and the imposition of penalties.
10	**Calculation of average taxable market value; timberland.** Requires the commissioner to calculate a statewide average estimated market value per acre for class 2b timberland.
11	**Annual incentive payment.** Provides for an annual payment for land enrolled in the program. The payment, which is annually determined by the department is equal to the **greater of**:
	(1) the difference between the property tax that would have been paid on the land under the timberland classification and average total township tax rate if it were valued at (i) the statewide average timberland market value per acre and (ii) the average statewide timberland current use value per acre; or
	(2) two-thirds of the previous year's property tax amount calculated using the previous year's statewide average total township tax rate, the average statewide timberland estimated market value per acre, and the timberland class rate; or
	(3) $1.50 for each enrolled acre.
12	**Incentive payment; appropriation.** Provides for annual payments to be made on or before October 1, and requires the commissioner to pay interest on any payments not paid by October 1 or 45 days after a completed certification is filed, whichever is later.
	Appropriates from the general fund the amount necessary to make annual incentive payments.
13	**Removal for property tax delinquency.** Requires the commissioner to immediately remove any property from the program that has a property tax delinquency. The claimant has 60 days to pay the delinquent taxes. Lands terminated due to property tax delinquency are not entitled to an annual incentive payment under this chapter and the owner is subject to removal

	penalties.
14	**Withdrawal procedures.** Provides that a property owner in the program may notify the commissioner of the intent to terminate enrollment after a minimum of four years in the program. The commissioner shall acknowledge the termination receipt within 90 days and indicate to the owner the effective termination date of the program. Termination occurs on
	January 1 of the fifth calendar year beginning after receipt of the termination notice. After termination, an owner wishing to continue the property's enrollment beyond the termination date must reapply for enrollment. Allows the commissioner to allow for early withdrawal without penalty in cases of condemnation for a public purpose.
15	**Penalties for removal.** Provides that if the commissioner determines that property enrolled in the program is in violation of the conditions for enrollment, the commissioner shall notify the owner of the intent to remove the property from the program. The owner has 90 days to appeal in writing. The commissioner has 60 days to notify the owner as to the outcome. If the commissioner removes the property from the program, its owner is liable
	for payment to the commissioner of an amount equal to the tax benefit received under this chapter for the previous four-year period, plus interest. The owner has 90 days to pay the amount due. Provides that the owner may appeal to tax court.
16	**Appropriation.** Appropriates $194,000 in fiscal year 2003 from the general fund to the commissioner of revenue to administer this article.
17	**Repealer.** Repeals the tree growth tax law effective for taxes levied in 2002, payable in 2003 and thereafter.

Source: Minnesota House of Representatives, House Research Act Summaries
www.house.leg.state.mn.us/hrd/as/82/8001

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APPENDIX J

Oregon Laws 1999, chapter 872

Chapter 872 Oregon Laws 1999
Session Law

AN ACT

SB 1060

Relating to public beach access; creating new provisions; and amending ORS 105.688.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 1999 Act is added to and made a part of ORS 390.620 to 390.660.

SECTION 2. (1) In order to further the policy established in ORS 390.610 and to preserve the right of public access to the ocean shore, the State Parks and Recreation Department shall coordinate with affected local governments to provide increased public access to the coastal shorelands.

(2) The State Parks and Recreation Department may:

(a) Ensure that beach access sites are posted for public use;

(b) Maintain parking and trash disposal facilities at beach access sites; and

(c) Maintain beach access sites in a safe and litter-free manner.

SECTION 3. Sections 4 and 5 of this 1999 Act are added to and made a part of ORS chapter 307.

SECTION 4. (1) Upon compliance with subsection (2) of this section, the portion of real property owned by a private individual or organization that is subject to an easement for public beach access shall be exempt from taxation if:

(a) The property is designated as a beach access site for free and open use by the public and the easement contains or is accompanied by a description of the property that conforms with the requirements of ORS 93.600 and allows the county assessor to locate the boundaries of and otherwise identify the property;

(b) The easement and legal description are recorded in the records of the county recording officer and a copy of the recorded easement and the property description is filed in the office of the county assessor; and

(c) The beach access site is free and open to the public permanently and continually throughout the year and is of sufficient size to accommodate parking for at least three automobiles.

(2) On or before April 1 preceding the first tax year for which exemption under subsection (1) of this section is desired, the owner shall file a claim for exemption with the county assessor, except that if the property becomes qualified for the exemption after March 1 but before July 1, the claim shall be filed within 30 days after the property qualified for the exemption.

SECTION 5. (1) If, after an exemption under section 4 of this 1999 Act is granted, the county assessor determines that the property or a portion of the property is not managed, operated or maintained in a manner consistent with section 4 of this 1999 Act:

(a) The exemption granted under section 4 of this 1999 Act may be terminated;

(b) For the first tax year following the date of termination and each succeeding tax year, the property or portion shall be assessed and taxed as other property similarly situated is assessed and taxed; and
(c) Notwithstanding ORS 311.235, there shall be added to the general property tax roll for the tax year next following the determination, to be collected and distributed in the same manner as other real property tax, an amount equal to the amount of tax that would have been due on the property had it not been exempt under section 4 of this 1999 Act for each of the years during which the property was exempt from taxation under section 4 of this 1999 Act, not to exceed 15 tax years.
(2) The assessment and tax rolls shall show "potential additional tax liability" for each property granted exemption under section 4 of this 1999 Act.
(3) No additional taxes shall be imposed under subsection (2) of this section if the property becomes disqualified for exemption under section 4 of this 1999 Act because the property is destroyed by fire, act of God or other natural disaster.
(4) Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.
(5) A property that has lost eligibility for exemption under section 4 of this 1999 Act may requalify for exemption beginning with the tax year following payment of any additional taxes.
SECTION 6. Sections 4 and 5 of this 1999 Act apply to tax years beginning on or after July 1, 2000.
SECTION 7. ORS 105.688 is amended to read:
105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:
(a) All public and private lands, including but not limited to lands adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;
(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the lands described in paragraph (a) of this subsection; and
(c) All machinery or equipment on the lands described in paragraph (a) of this subsection.
(2) The immunities provided by ORS 105.682 apply only if:
(a) The owner makes no charge for permission to use the land; [*or*]
(b) The owner transfers an easement to a public body to use the land; or
[*(b)*] **(c)** The owner charges no more than $20 per cord for permission to use the land for woodcutting.

Approved by the Governor July 28, 1999

Filed in the office of Secretary of State July 28, 1999

Effective date October 23, 1999

APPENDIX K

Chief of Natural Resources Division of the Office of the Attorney General Jeff Pidot's Comments on Conservation Easements

Legislative Committee on Public Access
Comments of Jeff Pidot
Chief, Natural Resources Division
Attorney General's Office
September 10, 2001

Senator Kilkelly, Representative McGlocklin and members of the Committee: I am Jeff Pidot, here today at the Committee's request to answer your questions about conservation easements. Please let me take a moment to provide a few introductory comments, and then I'll try to answer your questions.

First, what is a conservation easement? In short, it is an enforceable promise, recorded in the registry of deeds, made by a landowner as to how its property will be managed and used in the future. Under the authorizing statute enacted by the Legislature, conservation easements may be held and enforced by state and local governments as well as certain non-profit conservation organizations. Once granted, conservation easements are usually permanent and they bind future owners of the property involved as to the promises made in the easement.

While a conservation easement is a conveyance of an interest in real estate, it is *not at all* like a simple deed that would be used to convey a fee interest in land. A conservation easement is a highly nuanced, legally complex document that must deal with many issues concerning future use and management of the property involved.

Here is a short list of the **principal issues** that a conservation easement must carefully deal with:

What are the purposes of the particular conservation easement?

What uses will be prohibited on the property?

What uses will be retained by the landowner?

What rights of public access and use will be established for the property?

What special protection will be provided for sensitive areas on the property?

Where forest management will be the dominant use of the property in the foreseeable future, what restrictions will be placed on that use so that forest management is sustainable?

To what extent may the property be divided in the future?

What provision is made for monitoring and management responsibilities and costs?

Who will have liability for what happens on the property in the future?

Especially where the conservation easement is being purchased, is the document written to assure that the easement holder's rights are secure, so that these rights will not be lost due to circumstances beyond the holder's control?

What provision is made for enforcement of the terms of the conservation easement by the holder?

Of course, where the easement is to cover a large area, or will cost considerable money, the precise language of the conservation easement dealing with each of these issues requires even greater scrutiny and care.

The West Branch Project Easement: Let me turn for a moment to my office's involvement in connection with the proposed conservation easement for the large West Branch project.

First, it is important to note that this is still a work in progress and, so far as I'm aware, still undergoing negotiation.

Earlier this summer, my office was asked by the Department of Conservation and Land for Maine's Future Board to comment on the draft conservation easement as it had been negotiated up to that time.

In reviewing this matter, the AG's office was acting as the state's lawyer. Our comments were written to avoid suggesting changes to the essential transaction as it was explained to us. Our comments were not designed to harm the prospects of a successful project, but just the opposite: to make sure that the State is legally getting what it is bargaining and paying for.

In our comments, we've pointed out places where we are uncertain whether the legal language of this complex document will provide the State all the rights that it may believe it should have. We've also pointed out an array of wording changes that we believe would better protect the State's legal interests and provide a better balance between the parties. While our written comments were prepared based upon an expedited review as requested by the agencies, the comments were carefully written to raise these issues now, so that the State's decision makers can go forward with as full an understanding as we can provide of the legal implications of this document.

You already have a copy of our written comments, and I'd be happy to answer any questions that you might have. Thank you for inviting me today.

APPENDIX L

Committee to Study Access to
Private and Public Lands in Maine
Meeting Agenda & Materials
October 12, 2001

COMMITTEE TO STUDY ACCESS TO PUBLIC AND PRIVATE LANDS IN MAINE
120TH LEGISLATURE – INTERIM 2001

Friday, October 12, 2001
Room 206, Cross Office Building
9:00 a.m. – 3:00 p.m.

AGENDA

9:00 Land For Maine's Future Program- Discussion of selected provisions
with OPLA staff and Evan Richert, Chair, LMF

- Resolve 2001 Chapter 31, Resolve, to Encourage State Monitoring and Management of Conservation Easements and LD 1700 as originally introduced
- P.L. 2001, Chapter 466, sections 1 & 2, An Act to Implement the Recommendations of the Committee to Study Access to Private and Public Lands in Maine and LD 1810, sections 1, 2 & 3 as originally introduced
- P.L. 1999, chapter 514, The General Fund Bond Issue to Finance the Acquisition of Lands and Interests in Lands for Conservation, Water Access, Outdoor Recreation, Wildlife and Fish Habitat and Farmland Preservation and to Access $25,000,000 in Matching Contributions from Public and Private Sources, ratified by Maine voters on November 7, 1999.
  - Sec. A-6. Disbursement of bond proceeds
  - Provisions under LMF regarding title to lands acquired under LMF 7 MRSA §6209, sub-§2

10:00 Working Forests Easements – Brief presentations

- Guidance for Working Forest Easements – Policy & Guidelines adopted by the Land for Maine's Future Board, Proposal Workbook July 1, 2001 – *Roger Milliken, Jr. LMF Board Member*
- Principles and Recommendations for the Development of Large-Scale Conservation Easements in the Northern Forest – Karin Tilberg, Acting Executive Director, Northern Forest Alliance
- Maintaining Public Values on Private Forest Lands through Conservation Easements – Alan Hutchinson, Executive Director, Forest Society of Maine

Panel Discussion with above speakers plus

Jeff Pidot, Natural Resources Division, Office of the Attorney General
Tom Rumpf, The Nature Conservancy

LUNCH BREAK

1:30 Public Access to Lakes within a project licensed by the Federal Energy Regulation Commission (FERC) – Dan Riley for FLP Energy Maine and the Independent Energy Producers of Maine

2:00 Committee discussion – Developing Recommendations

* Tracking land transfers
* Standards/ provisions for conservation easements held by the state

Land for Maine's Future Program
Proposal Workbook
Board Adopted Policy & Guidelines

July 1, 2001

Maine State Planning Office, 184 State Street, Augusta, Maine 04333-0038
207-287-3261 www.state.me.us/spo/lmf

Guidance for Working Forest Easements

In early 2001, an easement subcommittee was formed to identify

- the essentials for any easement funded by the Lands For Maine's Future Program (LMF)
- elements that are desirable but not always necessary, and
- cautions related to various elements

The following guiding principles were adopted by the LMF Board on May 9, 2001. It recognizes that this is a working document, and that amendments and refinements are likely as experience dictates.

There are two types of working forest easements – strip easements (primarily along water bodies), and landscape easements. Some elements are appropriate for one type and not the other. The Board further recognizes that in many cases, (e.g. ecological reserves, key recreation areas, boat launches and parking areas) fee purchase is probably a better tool and should be used alone or in concert with an easement.

It is our understanding that the basic intention of a working forest easement is to protect both the natural values and economic values of the forest, along with its potential to provide traditional recreation opportunities for the public. Each easement will vary depending on the property involved and the intentions of the grantor and grantee. However, each easement should define existing conditions, contain a clear statement of goals, remedies for non-compliance and outline a process by which the landowner and easement holder can meet to review the easement and its implementation, ideally annually. It should allow the parties to mutually determine acceptable amendments to the easement to reflect changes in science or society while remaining faithful to the original goals.

For working forest easements funded by the LMF, the Board will require:,

A-1. No additional (or very limited and clearly defined) additional non-forestry or non-recreation related development. Prohibition of commercial, industrial and residential uses except for forestry and recreational uses, while allowing for existing types and scales of non-forestry uses to continue when consistent with easement goals.

A-2. Strict limits on subdivision, with the goal of maintaining large enough parcels to be a) cost effective to manage for timber production and recreation and b) cost effective for the holder to monitor compliance with easement terms. Allowable subdivision may include limited divisions of very large tracts and small subdivisions to correct boundary issues with abutters.

A-3. Rights for the public to use the property for traditional pedestrian recreational uses such as fishing, hiking, hunting, snowshoeing and nature observation. Central to this is extinguishing the landower's right to enjoy or provide exclusive, private use. (Certain areas may be designated off limits to the public to protect fragile ecological or archaeological resources, privacy related to buildings, or public safety. A process should be established to incorporate additional areas at the mutual consent of the landowner and holder and to identify and close areas such as active harvest operations that involve safety hazards.)

A-4. An enforceable commitment to maintain (or enhance) the property's potential to provide a perpetual yield of fiber and timber. Recognizing the duration (forever) of an easement and our inability to predict the future of current forest uses, the emphasis here is on *potential* to provide, not a requirement to provide. Clear language must be included that defines sustained yield (taking into account forest history, productivity and potential for natural catastrophe), stipulates specifically how it shall be measured, and provides for independent review to determine if ongoing forest management meets these requirements. Remedies for non-compliance should be clear, stringent and easily enforceable. Language should also stipulate that Best Management Practices (BMPs) be utilized in all forest management operations.

On a case by case basis, depending on size of the easement, conditions on the land or other factors, additional easement elements may significantly strengthen the value to the public as listed below. Whenever additional protections of forest conditions or rights to provide public use are included in an easement, the Board should require of the holder an estimate of annual costs for monitoring or management and how it plans to cover them.

B-1. The Board recognizes that protection of ecological sustainability is very important. Additional protection of sensitive, rare or representative ecological features may be desirable. As part of the LMF application process, the potential holder will have assessed the ecological values of the property. Grantor and grantee should consider fee acquisition of areas of high ecological value in addition to the easement, or more stringent protections of certain natural communities, habitats or ecological health.

B-2. Requirements to include additional protections of visual quality, recreational features and/or riparian zones, or restrictions on intensive forest management practices such as herbicides and plantations.

B-3. Limitation of mining on the property to surface deposits of gravel, sand and shale for purposes of road construction and maintenance on the property only. Include caps on the number and size of borrow pits and establish reclamation procedures. In some cases (e.g. large landscape easements) it may be appropriate to allow mining of subsurface minerals. In such cases, strict limitations on areas disturbed and associated development should be stipulated to protect the main values of the working forest, undeveloped forest land and traditional public recreation, including associated aesthetics.

B-4. Rights to manage public recreation on the property. Clear goals for such management should be stated in the easement.

B-5. The right to construct, maintain, relocate and/or limit trails on the property for motorized and/or non-motorized recreation.

B-6. The right to provide to the public vehicular use of certain roads across the property or to specific features (e.g. trail heads, water bodies) on the property. This may apply to motorized (e.g. snowmobile) trails, as well.

Such rights should not necessarily be required on strip easements. Since their primary aim is to keep water frontage undeveloped, water access is probably sufficient. Rights of way to the water or boat launches at specific locations may be stipulated or purchased in fee where appropriate.

When vehicular use is stipulated, rights and obligations to maintain roads and trails must be addressed. The easement should define standards to which private roads and trails will be maintained as well as how maintenance costs maintenance are to be divided between the landowner and the holder.

B-7. Road access to the property. The Board should keep in mind that in many cases in the Maine woods, vehicle access may be customary, but not guaranteed by law. The Board should acquire access to properties under easement whenever possible. However, it may be more cost effective for relevant state agencies to keep a list of key access roads and include them in future negotiations with landowners who control access between public roads and the property.

Northern Forest Alliance

May 2001

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Statement of Principles and Recommendations for the Development of Large-Scale Conservation Easements in the Northern Forest

Over the last decade, the use of conservation easements as a land protection tool in the Northern Forest has changed dramatically. Prior to the mid-1990s, easements were relatively small, averaging just a few hundred acres in size. Today, they are being applied on an unprecedented scale with easements of hundreds of thousands of acres becoming common. In addition, we are beginning to seek major public funding to purchase these easements to compliment the significant levels of private funding that have purchased most large Northern Forest easements to date.

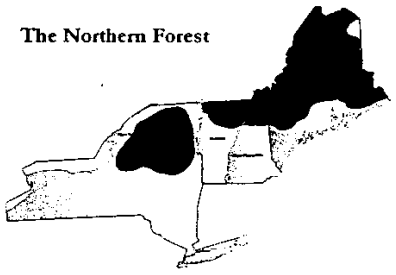
The Northern Forest Alliance (NFA) has long supported conservation easements as an important component of an overall conservation strategy for the Northern Forest. With the unprecedented scale of easements being applied across the region, there is a compelling need to define standards and principles that will guide the development of effective easements and secure the public interest. This need is all the more critical because the first wave of large-scale easement projects will set important precedents for future projects.

In response to this need, NFA has crafted a statement of principles and recommendations for the development of large-scale easements in the region (summarized on the reverse page). We recognize that every easement is unique and must be crafted to meet the goals of the landowner, the easement holder, and the programs or organizations providing funding, as well as the characteristics of the property and the particular public values that the easement is intended to protect. As such, these guidelines are not intended to be a hard-and-fast "litmus test," but rather a guide for decisions regarding support of and advocacy for specific easement projects, especially large-scale projects involving significant public funding. Individual easement projects will be evaluated not only for their compliance with these principles and recommendations, but also their overall public benefit, the precedent they set for future projects, and their relationship to other conservation opportunities.

What is a conservation easement?

A conservation easement is a legal agreement by which a landowner voluntarily restricts the use of his or her property for the purposes of conserving specific natural-resource values. Ownership of land involves a bundle of rights, such as the right to develop the property, to restrict access, or to harvest timber. Under a conservation easement, the landowner sells or donates some of these rights to a qualifying organization such as a public agency or a land trust. Any rights not conveyed by the easement are retained by the landowner.

The Northern Forest



The 26 million-acre Northern Forest is the largest remaining wild forest in the East.

Northern Forest Alliance Principles & Recommendations for Large-Scale Conservation Easements

Note: The following is a summary of the NFA's "Statement of Principles and Recommendations for the Development of Large-Scale Conservation Easements in the Northern Forest."

1. The primary purpose of forest conservation easements should be to provide permanent protection to public benefits associated with undeveloped forest areas, while allowing other uses compatible with the purposes of the easement. These benefits include maintenance of healthy ecosystems, clean air and water, recreational access, conservation of biodiversity, scenic values, and productive forest resources.

2. Easements should be used as part of an overall landscape-level conservation strategy that includes stronger protection for some areas, including fee purchase by public agencies or non-profit organizations.

3. Funding for easements should include a dedicated source of revenue to support long-term monitoring and enforcement of easement provisions by the easement holder.

4. Easements must be strong enough to provide permanent protection for the identified public values but flexible enough to allow adjustment based on future knowledge, conditions and opportunities. In particular, easements must not preclude the opportunity for additional conservation in the future, and should specifically note this in the text of the easement. As provided for by applicable law and the stipulations of the easement, additional restrictions must be compatible with the interests of the landowner, easement holder, and general public.

5. Conservation easements may help provide a variety of public benefits (including employment, tax revenues, and supplying raw materials to local businesses) via commodity production on undeveloped forestland. However, where extractive uses (such as harvesting timber, tapping maple sugar trees, collecting mushrooms, or stripping bark) are allowed by the easement, decisions to undertake such uses should remain with the landowner and not be mandated by the easement.

6. Easement goals must be clearly and carefully stated, and structured to avoid interpretations that may conflict with the easement's original intent. The easement's statement of purposes should be prioritized and inclusive of all values that the easement is intended to protect.

7. Subject to the objectives of the landowner, easement holder, funding source, and general public, and a comprehensive resource analysis of the property, the following issues should be considered during easement development: restrictions on development and subdivision; public access; land management plan and guidelines; protection of soil and water quality; identification and protection of unique or sensitive areas, features, or species; mining and other uses that may impact identified conservation values.

8. On properties where timber management and other extractive uses are allowed, easements should include provisions that ensure that such management is ecologically sustainable over the long term.

9. To the extent practicable, parties establishing large-scale easements should seek input from a range of parties with an interest in the land. Interested parties may include public agencies, local citizens and officials, scientists, and conservation and recreation organizations.

10. The expenditure of public funds should be commensurate with the public benefit derived from the easement.

11. It is appropriate for private non-profit organizations such as land trusts to partner with public agencies in developing, holding and monitoring publicly-funded easements. In some cases, there will be benefits to having qualified private organizations hold publicly-funded easements. However, such partnerships must maintain an acceptable level of public accountability to reflect the public investment in the property.

FOREST
SOCIETY
of MAINE

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GUIDING PRINCIPLES FOR LAND CONSERVATION PROJECTS

(Adopted February, 1998)

The Forest Society of Maine seeks to protect and conserve the forests of Maine for the broad range of traditional values they provide: ecological, economic, and recreational. The following attributes are sought by the Forest Society of Maine in land conservation projects and are used as guidelines by the Society in considering potential properties and projects.

These guidelines allow the Society to evaluate projects relative to their potential contributions towards achieving the Society's goals and mission. These criteria are presented as guiding principles as opposed to hard and fast rules, in recognition of the need for flexibility in thinking and organizational actions required to address the complex and diverse array of situations, opportunities and challenges before us.

Project Location

The Forest Society of Maine is a statewide land trust and as such will consider projects from throughout the state. However, the organization's principal focus is on the areas of the state typically thought of as the "North Woods" or "Big Woods" of Maine. That area generally includes the regions of Maine north of Rt. 2, the Western Mountain regions, and interior, Downeast Maine (Hancock and Washington Counties). Preference will be given projects in those areas. Projects outside those areas will also be considered, and their merits weighed, case-by-case, against FSM's goals and mission.

Project Size

Generally, 500 acres is the minimum desirable project size. Smaller projects will be considered, case-by-case, with preference given to projects with special values or circumstances such as: significant ecological or scenic features; abutting protected lands; opportunities to assist partners; or the threat of loss of forest values with no organization other than FSM to address the need.

Forest Management and Stewardship

Projects emphasizing long-term stewardship and demonstrating exemplary forest practices.

Conservation Values

Projects which bring special values in wildlife, fisheries, public recreation, water resource or shoreline features, which include rare natural community types or which have significant scenic, educational, scientific, or ecological components, and which allow for adequate protection of those special values.

(Continued)

Public Access
Projects where appropriate public access is provided and where the recreational use will be well balanced with other values.

Threat of Conversion
Projects where forest lands and values are threatened by development or by other conversions to non-forested uses.

Forest Productivity
Projects involving forestlands that are, or have the potential to be, a highly productive timber resource which can make a significant long-term contribution to the State's forest products industry and the local economy.

Forest Structure
Projects where the forest is natural in character and diverse in structure (having good health, a preponderance of native species including both hardwoods and softwoods, a diversity of age classes, and association with non-forested natural communities), or can be restored to a more natural state.

Project Feasibility
Factors related to a project's potential for success will be taken into consideration, including the resolution of due diligence considerations (title, survey, environmental issues, etc.), reasonable price; sufficient funding for acquisition and stewardship needs; and access by FSM for monitoring and enforcement.

Partnerships
Projects which provide opportunities for FSM to merge or catalyze diverse interests towards common goals.

Strategic Values to FSM
Projects which bring benefits to FSM that enhance the Society's abilities and long-term prospects for success. Such benefits may include public relations, financial support, or relationships with landowners or partners.

DRAFT
February 9, 2001
Introduction

The goal of this document is to provide a baseline of understanding among four organizations - Forest Society of Maine, Maine Coast Heritage Trust, The Maine Chapter of the Nature Conservancy and The Trust for Public Land - that have been working individually and cooperatively on working forest easements in Maine. Because partnerships with agencies, landowners, local communities and other non-profit groups are critical to our work, we are striving to develop easements that are consistent and complementary to the extent possible.

This document draws on our collective experience in designing, implementing and monitoring working forest easements and it reflects many existing state policies. This document is not intended to be inflexible, but rather to serve as a working set of guidelines for the elements that should be considered when designing easements for working forests. We understand that not every easement will necessarily incorporate every element and that there are many ways to meet the same goals. Each working forest easement will vary to reflect the nature of the property, the public values found on the land, and the interests of the landowner and the easement holder.

Working Forest Easements – Critical Elements to Consider

ELEMENT	GOAL	SUGGESTED PROVISIONS
Development	Maintain tracts of undeveloped forestland.	Restrict development by prohibiting new structures, except temporary structures and minor improvements for forestry uses and recreational uses that are consistent with the easement goals. Prohibit commercial, industrial, and residential uses of the property except for forestry, and allow for existing types and scales of non-forestry uses to continue as consistent with the easement goals. ***Project specific questions to consider:*** Are parts of the property best left out of the easement area as development zones? Are there future commercial uses not currently being undertaken on the land that would be consistent with the easement goals?
Subdivision	Maintain large tracts working forestland	Establish subdivision limits that preclude the property from being divided into parcels that are too small and numerous for 1) cost-effective monitoring, 2) consistency with easement goals, or 3) cost-effective management as working forests. Allowable subdivisions may include limited divisions of very large tracts and small subdivisions to correct boundary issues with abutters. ***Questions:*** For this property, what is the minimum viable parcel size for 1) cost-effective monitoring, 2) cost-effective management as working forests, and 3) consistency with the easement goals?

Public recreational use	Allow public pedestrian recreational use of the property.	Guarantee rights for the public to use the property for pedestrian recreational purposes such as fishing, hiking, hunting, and snowshoeing. The holder may designate certain areas off limits due to sensitive ecological resources. The grantor may retain the right to temporarily restrict, reroute, or close certain areas for safety or operational purposes. The easement may include a provisions that allows future recreational uses consistent with the easement goals and acceptable to the holder and grantor. The holder may be given the right to develop and maintain a limited number of recreational sites (such as campsites, picnic sites, boat launching sites, and hiking trails). ***Questions:*** What, if any, sensitive areas should be off-limits to public use permanently or temporarily? What kind and number of recreational sites, if any, are appropriate for this property and are consistent with the easement goals?
Access to the property	Provide public access to the property.	Provide public access to the property on certain designated roads and/or trails. ***Questions:*** Does public access to the property already exist? If so, by what means - water, a right-of-way, a public road? What, if any, rights of access does the landowner have that can be conveyed to the grantor?
Public vehicular use on the property	Provide limited public vehicular recreational uses.	Provide vehicular use on the property on certain designated roads or trails as consistent with the easement goals. The grantor need not have responsibility to maintain these roads or trails for public use. The easement holder should have the right to maintain the roads or trails. The grantor may retain the right to temporarily restrict, reroute, or close these roads or trails for safety or operational purposes. ***Questions to consider:*** Is vehicular use on the property consistent with the easement goals? If the designated access roads are closed or impassable, can access be accommodated elsewhere?
Roads	Ensure that existing and new roads are consistent with the easement goals.	To the extent possible, minimize construction of new paved roads and paving of existing roads. New roads may be precluded from areas with high ecological or recreational values. ***Questions to consider:*** Are there existing roads on the property that should be closed to reduce fragmentation or limit access? How can future permanent roads be

minimized?

Riparian areas	* Conserve and maintain the function and structure of natural riparian ecosystems. * Protect water quality.	At a minimum, protect riparian areas via current regulations and best management practices. Identify important riparian areas and provide special management considerations for those areas.
Ecological and cultural values	* Protect rare and endangered species and rare and exemplary natural communities. * Conserve other important wildlife values and special natural, scenic, historical, or archaeological features. * Maintain and encourage a range of ages of trees and stands to viably represent all successional stages across the landscape.	Protect ecological and cultural values through one or more approaches, including the following: a) through resource inventories and field analysis, identify and designate "protection" or "special management" areas and establish appropriate, specific limitations on forest management practices (beyond state regulations or BMPs; b) establish broad management goals for special resources (such as the percentage of the property to be maintained in hardwood, mast production, or deer winter cover) and/or establish provisions for alternative agreements with the state for special resources; and c) forest certification. To manage for ecological values across the landscape, develop standards for clearcutting, planting of non-native tree species, use of genetically modified organisms, stand conversion, plantations and retention of mature forests. ***Questions:*** If forest certification is the basis of the easement, what back-up provisions are necessary if the certification process is no longer valid or active? How should the easement address the use of genetically modified organisms?
Forest Management	Conserve productive forestland and ensure sound forest management	Address forest management at the long-term, landscape level and base management guidelines on a thorough assessment of the property's resource values. Include provisions in the easement for a current forest management plan that is approved by a licensed forester, that adequately addresses key easement elements prior to harvesting activity, and is regularly updated. Include easement provisions that ensure review or approval of the forest management plan and provide for annual discussions of the easement and forest management plan among the easement holder, easement monitor, and landowner to facilitate forest management decisions consistent with the terms of the easement.
Mining and mineral extraction	Limit mining to surface gravel, sand, and shale extraction for use on the property.	Include caps on the size and number of borrow pits and establish reclamation procedures. ***Question:*** Are the mining terms included in the easement in accordance with IRS conservation easement guidelines?

APPENDIX M

Resolve 2001, chapter 31

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RESOLVES
First Regular Session of the 120th

CHAPTER 31
H.P. 1252 - L.D. 1700

Resolve, to Encourage State Monitoring and Management of Conservation Easements

Sec. 1. Pooling of resources for monitoring and management of conservation easements. Resolved: That the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Atlantic Salmon Commission are encouraged to pool existing resources for the purpose of monitoring and managing conservation easements held by each of those state agencies; and be it further

Sec. 2. Coordination by State Planning Office. Resolved: That the Executive Department, State Planning Office shall to the extent practicable within existing resources coordinate the state monitoring and management of conservation easements by:

1. Coordinating the pooling of agency resources; and

2. Encouraging state agencies pursuant to section 1 to compile and maintain monitoring information on all conservation easements they hold and to report annually to the State Planning Office regarding that information.

Effective September 21, 2001, unless otherwise indicated.

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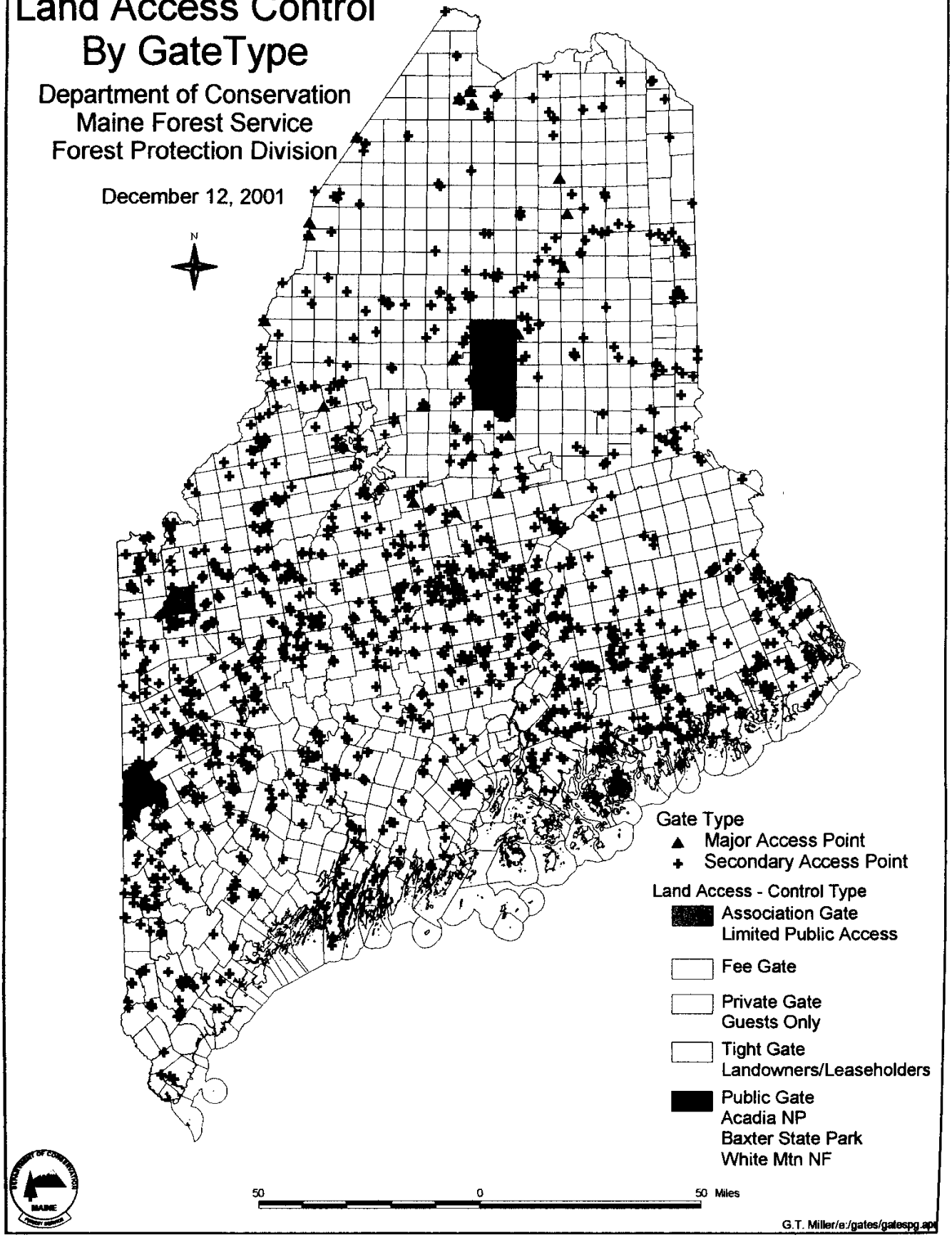
APPENDIX N

Maps of Access Control Points

Land Access Control By GateType

Department of Conservation
Maine Forest Service
Forest Protection Division

December 12, 2001



Gates per Town
Gates by Type

Department of Conservation
Maine Forest Service
Forest Protection Division

December 12, 2001