

## Meeting Summary #2

November 18, 2004 – Greenville High School Auditorium

Task Force members unable to attend include: Peter Pray, Sen. Stephen Stanley, Sarah Medina participated for John Cashwell, Gerry Whiting participated for Walter Graff, Rebecca Rundquist participated for Roxanne Quimby, and Dave Getchell, Sr. participated for Rachel Nixon.

**Commissioner McGowan** began the meeting welcoming the Task Force members and the public in attendance. He reiterated the charge to the group as put forth in the Executive Order creating the Task Force and reviewed the ground rules.

**Karin Tilberg** (Department of Conservation) then introduced the measures that were enacted following previous legislative studies and referenced in the Executive Order establishing the current task force.

1. Final Report of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands – December 2001
  - Chapter 653 H.P. 1600 – L.D. 2101  
An Act to Allow a Lessee to Purchase Leased Premises When the Lessor Decides to Sell

[http://janus.state.me.us/legis/ros/lom/LOM120th/5Pub651-700/Pub651-700-02.htm#P89\\_13050](http://janus.state.me.us/legis/ros/lom/LOM120th/5Pub651-700/Pub651-700-02.htm#P89_13050)

2. Report of the Committee to Study Access to Private and Public Lands in Maine – February 2001 and

Final Report of the Committee to Study Access to Private and Public Lands in Maine – December 2001

- 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

[http://janus.state.me.us/legis/ros/lom/LOM120th/10Pub451-471/Pub451-471-17.htm#P724\\_148688](http://janus.state.me.us/legis/ros/lom/LOM120th/10Pub451-471/Pub451-471-17.htm#P724_148688)

- Chapter 564 H.P. 1594 – L.D. 2097  
An Act to Implement the Recommendations of the Committee to Study Access to Private and Public Lands in Maine

[http://janus.state.me.us/legis/ros/lom/LOM120th/3Pub551-600/Pub551-600-57.htm#P4729\\_362966](http://janus.state.me.us/legis/ros/lom/LOM120th/3Pub551-600/Pub551-600-57.htm#P4729_362966)

- Chapter 116 H.P. 1593 – L.D. 2096  
Resolve, to Promote the Interests of the People of Maine when Public Funds are Used to Acquire Conservation Easements

[http://janus.state.me.us/legis/ros/lom/LOM120th/2Res101-126/Res101-126-15.htm#P250\\_47217](http://janus.state.me.us/legis/ros/lom/LOM120th/2Res101-126/Res101-126-15.htm#P250_47217)

Karin offered to invite a representative of the Office of Policy and Legal Analysis if the Task Force members had additional questions about this legislation.

**Amy Mills** (Assistant Attorney General) presented the following legal overview of Maine's Great Ponds and Landowner Liability Laws.<sup>1</sup>

## **I. Public Trust in Great Ponds**

### A. Colonial Ordinance of 1641-1647

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.

### B. Relevance of Colonial Ordinance in modern context

1. "corn or meadow"
2. "to fish and fowl"

### C. Great Ponds Act

No person on foot shall be denied access or egress over unimproved land to a great pond . . . . The Attorney General shall . . . prosecute criminally or civilly any person who denies such right of access or egress. Any person may maintain an action . . . for declaratory and equitable relief and actual and punitive damages . . . for any violations of this section.

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<sup>1</sup> Amy B. Mills, AAG. The information and ideas contained herein are those of the author alone, do not constitute legal advice or a legal opinion of the Office of the Attorney General, and are intended for general interest only. Anyone seeking legal advice regarding property law should consult with a private lawyer.

Whoever violates this section shall be punished by a fine of not more than \$100 and by imprisonment for not more than 90 days.

D. Another source of public access: easements

1. Conservation easements
2. Prescriptive easements

**II. Landowner Liability to Public Recreational Users**

A. Landowner Liability Act

1. Encourages public access on private lands
2. Eliminates liability for outdoor recreational activities
3. Has few exceptions, generous with respect to landowners

B. Landowner Liability for Actions of Others

1. Legislation limits landowner liability
2. Specifically regarding environmental harm caused by others

**III. Summary**

- A. Common law: provides for public access, subject to constitutional limitations
- B. Legislative policy and statutory law: encourage public access on private lands

A landowner can post land for no hunting (or a specific activity) but must allow passage to a Great Pond for "fishing and fowling."

**David Soucy** (Bureau of Parks and Lands, DOC) presented a PowerPoint on the state parks, historic sites, public lands, trails and other recreation areas that the bureau manages.

The presentation can be found on the Task Force website at <http://www.state.me.us/doc/>.

**Sarah Medina** (Seven Islands Land Co.) on behalf of North Maine Woods presented a PowerPoint on the background and policies of NMW.

The presentation can be found on the Task Force website at <http://www.state.me.us/doc/>.

**Tim Glidden** (Land for Maine's Future program) presented a PowerPoint on the Land for Maine's Future program and highlights of the program's land conservation projects. Tim provided a handout entitled *A Summary of LMF Policies for Working Forest Easements*.

The presentation and the handout can be found on the Task Force website at <http://www.state.me.us/doc/>.

**Bruce Kidman** (The Nature Conservancy) presented a PowerPoint highlighting some of the projects The Nature Conservancy has completed and the organizations efforts to provide public access for recreation through easements.

The presentation can be found on the Task Force website at <http://www.state.me.us/doc/>.

**Mark Scarano** asked if all public purchases utilize policies similar to LMF's. Tim Glidden replied that acquisitions after 2002 do use these policies and projects using federal Forest Legacy funds have similar policies.

There was a follow up question about requirements for public access when federal highway funds are used for land acquisition. Karin Tilberg replied that there are requirements for scenic turnouts and water access at bridges, for example.

**Craig Watt** (Indian Hill Trading Post) addressed the Task Force sharing his experiences as a Greenville community member and business owner and his perspective on the importance of public access to private land.

His remarks can be found on the Task Force website at <http://www.state.me.us/doc/>.

**Colonel Santaguida** (Department of Inland Fisheries and Wildlife) discussed IFW's Landowner Relations Program and the department's sign program to enhance access for outdoor recreation. The Colonel discussed the following statistics IFW is tracking.

**Category 1:**

Acres of land that were previously posted as: NO TRESPASSING, NO HUNTING, ETC. and are now posted with Department signs – ACCESS BY PERMISSION or NO VEHICLES BEYOND THIS POINT.

Total this year: 18,864 acres

Total to date (since inception): 178, 518 acres

**Category 2:**

Acres of land that were previously not posted at all and the landowner was going to post and then reconsidered after discussing sign program options and finally decided to post as ACCESS BY PERMISSION or NO VEHICLES BEYOND THIS POINT.

Total this year: 8,459 acres

Total to date (since inception): 87,788 acres

**Totals:**

Total this year both categories: 20, 323 acres

Total to date (since inception): 266,306 acres

**John Simko** asked if IFW was finding that trespassing and violations are increasing.

**Colonel Santaguida** replied that this is a complicated question. In a time of transition, such as has occurred in York County, as land is divided into smaller tracts and becomes increasingly posted there are often increased complaints because hunters can easily be hunting mistakenly on posted land. However, as more of the land becomes posted, hunters move away from hunting that region and the frequency of complaints goes down. This sequence has occurred in York County.

**John Simko** asked a follow up question about the frequency of ATV related damage and complaints.

**Colonel Santaguida and Commissioner Martin** responded together that the ATV legislation was passed relatively recently so its impacts are just becoming apparent and that there is a regional difference in the interpretation of the ATV challenges.

**Gordon Gamble** asked about the work of the landowner relations coordinator at IFW.

**Colonel Santaguida** replied that the work of this position often mirrors the personality of the individual staff person in this case the current person does significant one on one relationship building, but it is more than a one staffer work load.

The discussion continued with the acknowledgement that there are typically 40 wardens on duty each day.

**Mark Scarano** asked about distinction between the right to post one's land and access granted under the Great Ponds Act.

**Amy Mills and Karin Tilberg** answered that it depends on what types of land is being crossed and the distinction is made if one is just walking to the pond or taking part in an activity (hunting) on the property while walking to the pond.

**George Smith** discussed a Maine Outdoor Heritage Fund grant that the Sportsman's Alliance of Maine (SAM) secured to make progress on addressing the challenges to hunting and land access in southern Maine. He acknowledged that his organization has a lot of work to do in land owner relations and cited the snowmobile clubs as having done the best job to date of fostering positive relationships with landowners.

**Commissioner McGowan** cited George's recent column discussing access and landowner relations and asked if there were ways that the Task Force and SAM could partner on shared goals or objectives.

**George Smith** replied that the grant called for a number of projects including a landowner survey, an all day conference, creating a task force of its own, and utilizing the media to communicate the message of improving landowner relations.

**Rebecca Rundquist** stated that she could not support the Task Force working with SAM through the MOHF grant because George's editorial singled out a specific landowner, perpetuated lies, and disrupted the constructive efforts now underway and that the editorial was driven by untruths. Rebecca questioned why Roxanne Quimby was singled out as the only land owner not allowing motorized recreation.

**Commissioner McGowan** acknowledged that the Task Force was predominantly created in reaction to Roxanne's land purchases and the Task Force is attempting to put all issues and questions on the table. He recognized that land is being posted statewide and the Task Force is working to find answers. He stated that there are other landowners whose policies are being discussed.

**Rebecca Rundquist** questioned why Roxanne Quimby is the only female landowner being challenged. She stated that Roxanne is developing a sustainable management plan and working confidentially to address her responsibilities as a landowner. Rebecca discussed her concern about the personal threats Roxanne has received and that these threats are being perpetuated by the media.

**Commissioner McGowan** acknowledged the challenges of being a public figure as a landowner and recognized that there have been other landowners who have been questioned and targeted for their ideas and policies.

**Rebecca Rundquist** stated that it is difficult to discuss policies and not people with stories in the media such as George's editorial. Rebecca introduced that Roxanne's organization has an office and means to solicit constructive input. She expressed her concern that if there is continued behavior such as the editorial, she could not in good faith continue to participate.

**Jo Pierce** followed up on an earlier comment about the possibility of meeting in southern Maine and encouraged such a meeting citing his experiences in southern Maine as a small woodlot owner and having been approached by people to hunt his land.

**John Simko** stated that he felt it made sense to work in partnership when realistically feasible.

**Tim Glidden** offered to help broaden the scope of work of the MOHF grant.

**Mark Scarano** supports the concept of a southern Maine workshop/conference funded by the MOHF grant.

**Ralph Sarty** picked up on an earlier point about the two Maines and acknowledged that it is an important dimension to be aware of in the Task Force's work.

**George Smith** clarified that the work of this Task Force is separate from the task force as charged in the MOHF grant and that this group's work would only just help to provide information for the work of that group.

**John Simko** encouraged shoring up landowner relations and indicated the need to explain the strengths of Maine's landowner liability laws as he sees many out of state landowners reacting to situations based on out of state laws that are not as strong as Maine's.

**Commissioner McGowan** reiterated the need to stay focused on the task before the group and the need for courteous discussion.

**Rebecca Rundquist** said she welcomes criticism and questions, but does not welcome untruths or media figures who make broad statements to rile people up.

**Commissioner McGowan** transitioned to introducing public comment by stating that the Task Force would have a full meeting of public comment later in the process, but welcomed brief public comments from the meeting's attendees.

**Suzy Hockmeyer** (Northern Outdoors) explained that her perspective is from the hub of the whitewater rafting area in Maine. She addressed the Task Force regarding her concerns about the increase in access fees \$7 IP, \$1 IFW, now \$5 to Wagner, increases are squeezing their ability to do business and they have ideas for the group to consider.

**Joe Christopher** discussed the significance of his business with a \$500,000 payroll and the challenges of the access fees. The only access to the Dead River is across Wagner land. He feels that the outfitters are positive stewards of the land – shepard the public, solve problems. He is just crossing the land, not using the resources. 13-26% of gross is taken up in access fees. The LMF program helped with the Indian Pond Road situation and that help was crucial; Joe expressed his concern that the LMF program has not received renewed funding. He feels that the Tree Growth Tax program is the state's leverage, a tool to benefit landowners that are within the goals of traditional use and public access.

**Charles Fitzgerald** talked about his experiences owning 10-15,000 acre, acknowledged that he is a "tree hugger" and also cuts a little wood for specialty wood products. He had developed policies and a permit system to accommodate multiple uses on his land, although he does not personally like snowmobiles. He expressed his concern the task force has not yet defined "traditional uses." He believes foot access is the best definition of traditional access. Discussed his ideas of diversity through exclusivity – having large areas that allow specific uses, cited the great demand among the public for remote backcountry. He believes the Tree Growth Tax law is a subsidy and that landowners enrolled in the program should not develop profits from recreational use fees. Also, he is concerned about prescriptive use – landowners need protection from eminent domain taking to provide for what has traditionally been done.

**Charles and Sen. Davis** then have a question and answer exchange – Charles reiterated that he believes landowners have an obligation to provide public access and that access should not create profit, i.e. North Maine Woods is a non-profit entity. Sen. Davis stated that the use of eminent domain can cut a very wide swath.

**Bob Meyers** said that there are very few uses/opportunities for prescriptive easements.

**Mark Scarano** suggested that the LMF definition of public access is good.

**Charles Fitzgerald** clarified that keeping out motorized vehicles is not in conflict with traditional uses.

**Roger Merchant** said that non-motorized trails are often overlooked, cited the example of 20,000 volunteer hours have been committed to his local section of the AT. He suggested a number of guide books to look to for trail information. He believes that compatible multiple uses are key, maps to lands are a gift and not an entitlement, reasons for why people and organizations own land are changing, land ownership changes cause uncertainty and anxiety.

**Pat Strauch** addressed the task force on behalf of the Maine Forest Products Council, stating that the Council is supportive of the process of the task force. He talked about the need to balance private landowner rights and public access. He has seen great private and public cooperation for access. He feels that the great change in land ownership has not proportionally affected or reflected in public access problems or changes. He is supportive of North Maine Woods.

**Bob Guethlen** spoke of his support for uncut lands and encourages wilderness and people-powered trails. He would like the task force to consider its charge in the context of the whole state. Cited his understanding that quite a bit of money comes into the Greenville area because of its wilderness characteristics and would like these characteristics to receive equal consideration by the task force.

**Commissioner McGowan** closed the meeting by announcing that the next meeting would be held in Millinocket.