

# Public Access to Maine's Private Lands: A Cultural and Economic Asset

Prepared for:

Governor's Council on Maine's Quality of Place

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## **I. Introduction**

The Maine tradition of public access to private land is without parallel in the nation. At the same time, the amount of private land posted to restrict public access in Maine is on the rise. The National Woodland Owners Survey (Butler, 2008) estimates that 18,000 family forest owners in Maine posted their land in 2006, up 200% from 6,000 owners in 2003 (McWilliams et al., 2005). Surveys to members of Small Woodland Owners of Maine indicate a doubling of the number of landowners posting their land since 1991 (15% in 1991; 36% in 2005 (Acheson, 2006)). Personal observations and anecdotal evidence from sportsmen and recreationists corroborate these statistics; the “open-land” tradition, unique to Maine and respected for generations, is increasingly being overruled by “No Trespassing” signs.

This loss of access to private land threatens many traditional outdoor activities that are important to Maine’s culture and quality of life. Furthermore, these activities are vital to the economic health of some regions of the state. Spending by wildlife viewers, snowmobilers, hunters, fishermen, ATV-riders, white-water rafters, and other recreationists supports many regional economies. With 94% of Maine land privately owned, the health and viability of these industries, and, equally important, the well-being and quality of life of Maine’s residents depend upon public access to private land.

This paper has four sections. First is a brief discussion of the economic role that private land owners play by allowing access to their land. Next is a review of the common reasons why landowners restrict access to their land. Public policy solutions will need to address these reasons in order to be successful. The third section is an overview of programs available in Maine and elsewhere to incent landowners to continue to allow public access. And finally, recommendations are suggested that may be effective in continuing, expanding, and improving public access to private land in Maine.

## **II. Economic Value**

Private landowners play a significant role in Maine’s economy by allowing public access to their properties. To illustrate the relationship between Maine’s recreational economies and private land, and to quantify the financial impact on its economy, consider the following.

- In 2001, snowmobiling contributed an estimated \$160 million to Maine’s economy (Vail, 2002). Over 90% of Maine snowmobilers ride on private land (Rubin et al., 2001), relying on 13,000 miles of trails, 94% of which are privately owned (Vail, 2002).
- In 2006, an estimated \$240 million dollars were expended by hunters in Maine (US Census Bureau, 2006). 90% of these hunters hunted on private land in 2001, with an overwhelming 98% of all days hunted spent on private land (US Census Bureau, 2001).

- Mainers and non-Mainers spent \$287 million in Maine on wildlife watching trips and equipment (US Census Bureau, 2001). Over 100,000 residents and non-residents taking part in wildlife watching away from their home did so on private land in 2001.
- In 2004, the ATV industry contributed an estimated \$200 million to Maine's economy and supported 1,975 jobs (Morris et al, 2005). 44% of ATV riders ride on private lands (Rubin et al., 2001), over more than 5,500 miles of ATV trails, much of which are privately owned.
- 38% of Mainers over the age of 16 participate in hiking or backpacking, and 22% in camping (Outdoor Industry Foundation, 2006). Data on expenditures are not readily available for these and other recreational activities such as cross-country skiing or paddle sports; however, it is apparent that these activities contribute substantially to Maine's economy and are critically dependent on private land.

By supporting these recreational activities, private landowners make substantial contributions to Maine's economy. Further, they enhance the quality of life for all Maine residents and visitors. *Access to private land is an important component of Maine's Quality of Place, and critical to leveraging Maine's natural resources as an asset-based economic development strategy.*

### **III. Why do landowners post their land?**

There are many reasons why landowners choose to post signs prohibiting public access to their land. The following section outlines some of the most common based on interviews, survey findings, and anecdotal evidence.

*Past Abuse:* The most important predictor of whether a landowner will post their property is previous experiences with users. Many landowners who post their land are reacting to a negative experience with a user, some to only a single event. Research on landowner attitudes points to past abuse such as dumping of garbage, illegal hunting or fishing, damage to property, and vandalism as a major reason for posting (Jagnow et al, 2006, Siemer et al., 1993, Lauber et al., 2000, Birch et al., 2001, Ruff et al., 1987, Wright et al., 1990, Swenson et al., 2001).

In Maine, the story is the same. Trash dumping, ATV damage, and hunters hunting too close to homes are cited by landowners as the most serious problems they face (Leahy et al., 2008) and as reasons for limiting access to recreationists (Acheson, 2006). The conflicts between ATV users and landowners, often culminating in reduced access for all, are a recent source of concern (Vail, 2002).

*Liability Concerns:* Landowner concerns about liability – that is, a landowner's fear that they would be financially responsible if a user were hurt on their property – is another major reason for posting (Lauber et al., 2000, Birch et al., 2001, Wright et al., 2002,

Jagnow et al., 2006). Maine has a strong landowner liability law that essentially provides complete protection from lawsuits.<sup>1</sup> In fact, there has not been a single successful case against a landowner where the liability law was applied (Department of Inland Fish and Wildlife, 2008), and yet only 20% of landowners in a recent survey believe the law protects them from recreationists using their land (Leahy et al., 2008). Newer owners may have less knowledge of the landowner liability law and assume that posting their land is a necessary precaution.

*Exclusivity:* Some landowners also post in order to retain exclusive use of their land (Snyder et al., 2008). For example, in a study of Pennsylvania landowners, half of those who posted indicated exclusive use of their land as the reason (Jagnow et al., 2006). Other research in Minnesota suggests that, for landowners who feel that other hunters will adversely affect their own hunting experience, the odds of posting increases threefold (Snyder et al., 2008).

Other evidence of the trend towards exclusive recreational practices is seen in the rising prevalence of private hunting leases, where hunters pay for exclusive rights to hunt on private property. Private hunting leases are the norm in many states, Texas and Oklahoma being examples. In Maine, some landowners have recently been approached by hunters offering to enforce a no trespassing policy on their property in return for exclusive hunting rights.<sup>2</sup>

Exclusivity also manifests itself in the form of “kingdom buyers,” individuals who purchase large tracts of land for private recreation. Whether this will lead to less land for public recreation remains open to debate, but it is of concern to many recreators.

Contrary to popular belief, research shows that landowners “from away” are no more likely to post their land than Maine resident landowners (Snyder et al., 2008, Leahy et al., 2008). In fact, a study in Maine estimated that Maine residents were twice as likely as those from ‘away’ to restrict access to hunters (Leahy et al., 2008).

*Respect:* One of the most important things affecting a landowner’s decision to allow access appears to be “respect”. Seventy-eight percent of a sample of Maine landowners agreed or strongly agreed that “Feeling respected by recreationists is an important factor for me to allow access” (Leahy et al., 2008). This sentiment underscores the important role of landowner relations initiatives that serve to educate users on appropriate behavior, mitigate disputes between users and landowners, and work to remedy problems that do arise.

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<sup>1</sup> The landowner liability law does not preclude lawsuits against landowners; however, it makes it unlikely for two reasons: “(1) a person who brings suit and loses because of the landowner liability law must pay the landowner's legal fees and court costs, and (2) the law protects landowners so clearly that there is little opportunity for the injured person to wind.” (IF&W)

<sup>2</sup> Tom Doak, Executive Director, Small Woodland Owners Association of Maine, personal conversation.

#### **IV. Programs to encourage landowners to provide public access**

A variety of programs are available in the United States to incent private landowners to provide public access to their land. Most have as a primary objective landowners' conservation and management of their land, with public access a secondary goal. These range from well-established cost-sharing programs to new, market-based ideas still in development such as carbon-offset trading. Some of these programs do not deal with access issues directly. However, they serve as examples of types of programs that might be adapted to do so. Most landowner incentive programs fall loosely into one of the six categories listed below. Here, we describe and provide relevant state-specific examples of such programs available in Maine and elsewhere.

*Cost Sharing and Technical Assistance:* Most states have well-established cost-sharing and technical assistance programs that work to offset landowners' financial costs to manage and improve the ecological value of their land. For example, Minnesota offers a variety of cost-share programs, including the Forestry Association Program that shares 50% of the costs involved with installation projects to enhance forestland's ecological benefits; and the Deer Habitat Improvement Program that provides up to 100% reimbursement for improving deer habitat. In Maine, the WoodsWISE program uses federal funds to reimburse landowners for forest management plans or for projects designed to restore or improve the overall health of the forest. This program was not designed to address the issue of public access.

Montana offers cost-sharing programs that explicitly address the impact of public access on forestland. For example, their Game Damage Program offers funds to landowners who allow hunting on their land to repair and prevent damage to their property from game animals.

*Landowner Relations Programs:* Landowner relations programs foster positive relationships between users and landowners, educate the public on appropriate and respectful use of private land, and mitigate conflicts between landowners and recreators. These programs can be extremely effective at decreasing the amount of land posted due to abuse by users. Examples nationwide include programs operated by user groups, universities, and state governments. For example, sportsman's organizations like the Oregon Hunters Association have a landowner relations program that repairs damage to property from game animals and helps to patrol lands for poachers and trespassers. In Maine, the Sportsman's Alliance of Maine runs a "Landowner Thank You Program" that provides thank-you notes and gifts from sportsmen to landowners. The Access Montana Program is a conflict resolution program that works with landowners and hunters to resolve differences and come up with solutions to maintain public access.

Some university outreach and extension programs create and distribute landowner - sportsman guidelines and best practices. Examples include "A Landowner's Guide to Working with Sportsmen in Virginia", published by the Virginia Cooperative Extension, a joint effort of Virginia Tech and Virginia State University; and "A Sportsman's Guide to Landowner Relations", published by the Montana State University Extension Service.

Maine has pieces of a state-run Landowner Relations Programs. For example, the Inland Fisheries and Wildlife (IF&W) web-site offers the following services to sportsmen and landowners: guidelines for hunters on accessing private land; an explanation for landowners of the landowner liability law; and a sign assistance program, where landowners can tailor their access preferences, as opposed to simply posting No Trespassing signs. Maine's signage program, in particular, has been effective at curtailing the loss of recreational access by allowing landowners to be more specific in their posting preferences. For example, 178,000 acres previously posted to explicitly prohibit access have been re-signed to allow access by permission (Task Force on Traditional Uses and Public Access to Lands in Maine, 2006). In addition, the state recently created a Director of Recreational Access and Landowner Relations position within the Department of Conservation (jointly funded by DOC and DIFW), responsible for delivering a coordinated response from the state's natural resource agencies to access problems and related issues.

*Tax Incentives:* Tax incentive programs that reduce a landowner's property taxes in exchange for long-term conservation are widely available, although they differ by state in some key characteristics. These programs generally require a long-term commitment to conservation and a forest management plan, and impose penalties for early withdrawal. Many states also offer financial assistance to help with the requirement of a forest management plan.

Public access is generally not a requirement to enroll land in a current-use program, but some states do use current-use tax policy to encourage landowners to permit public access. For example, New Hampshire allows for an additional 20% reduction from the current use valuation if public access is allowed. Wisconsin also allows for additional tax benefits for public access – a reduction from an assessment of \$1.74/acre for closed land to \$0.74/acre for land open to public access. Oregon exempts from taxation land that provides access to public beaches. Until recently, Minnesota's Tree Growth Tax Law required public access for land in current use over 40 acres. That program has been repealed; the new program requires access only for land in current use status over 1,920 acres (3 square miles).

Maine's Tree Growth Tax Law reduces landowner's property tax burden by assessing forestland at its productive value instead of its fair market value. The current law does not require public access. There are frequent legislative proposals to modify various aspects of the Tree Growth Tax Law. Some landowners report that these attempts create a perception of uncertainty that may limit participation in the program.

*Conservation Easements:* The purchase a land's development rights is a common approach to ensure conservation and, in many cases, public access. The federally-funded Forest Legacy Program helps continue traditional uses of forestland, including public access, through conservation easements. Many states also have their own programs to permanently conserve forestland. In Maine, the Land for Maine's Future program is empowered to purchase development rights on eligible forestland. With the exception of

agricultural land, public access is a requirement.<sup>3</sup> Private land trusts are also increasingly taking the lead on the negotiation and purchase of conservation easements. Most large easements require funds from a variety of public, private, and non-profit sources.

*Recreational-Use Leasing Programs:* Some states explicitly compensate landowners for public access to their land. In these programs, states “lease” the recreational aspects of the land. Montana’s Block Management Program pays landowners who allow public access between \$6 and \$10 per hunter per day. Limited liability coverage, livestock reimbursement, and free hunting licenses are also part of the compensation package. Oregon’s Access and Habitat program, funded through a \$2 surcharge on all hunting licenses and an annual raffle of elk and deer permits, has been particularly successful at providing recreational access by compensating landowners. In thirteen years, it has provided hunters access to over 6 million acres of private land. Utah has in place a Walk-in Access Program that pays landowners for providing public access in the range of \$1 - \$5 per acre per year. North Dakota has a variety of use leasing options for farm and forest land, most with public access as a stipulation: for example, their Working Lands Program pays landowners (mostly ranchers) \$1 to \$3 per acre per year in exchange for public access and conservation practices; the Habitat Plot Program provides rental payments to landowners providing wildlife habitat support (\$9 to \$12 per acre per year for existing habitats); the Private Forest Conservation Program pays landowners \$9 to \$12 per acre per year for short-term conservation and public access of their land. Larger payments are available for longer term agreements. Some states also offer other financial incentives for public access including free hunting or fishing licenses.

*Transferable Development Rights:* A potential market-based mechanism to compensate landowners for conservation and public access is transferable, or tradable, development rights (TDR). With TDR programs, a developer “buys” the development rights from a private landowner in a low density area and “spends” them by developing in a high density one. In this way, the right to develop is transferred from one area to another, allowing private landowners to gain some of the potential development value of their land without actually developing it.

Montgomery County, Maryland, and the Pinelands, in New Jersey, are examples of successful TDR programs, conserving over 48,000 and 44,000 acres of (mostly agricultural) land, respectively. These programs are classified as “mandatory” TDR programs, where the municipality designates “sender” and “receiver” areas through zoning ordinances and allocates initial TDR rights. Public access was not generally a requirement of the resulting conservation easement.

Nationally, there are approximately sixty TDR programs in place. However, aside from the two mentioned above, most have not been successful. Only a third have resulted in more than 300 acres of land conserved, and half have not conserved any land. In Maine, TDR programs in Cape Elizabeth and Brunswick have been established but have not been

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<sup>3</sup> Legislation passed in 1999 required public access for all LMF land purchases. The LMF Board has extended this requirement to include all conservation easements as well, with the exception agricultural land (Tim Glidden, Director Land for Maine’s Future, State Planning Office, personal conversation).

responsible for any transactions. Arguable, the best opportunity for a TDR program in Maine, including a public access component, is in the Unorganized Territories where the Land Use Regulation Commission has exclusive zoning authority.

*Carbon Offset Trading:* A second potential market-based mechanism to compensate landowners is carbon offset trading; that is, the bundling and selling of “carbon credits” garnered from the carbon sequestration properties of forestland. For voluntary markets like the Chicago Climate Exchange (CCE), there are a handful of states actively involved in relevant carbon offset projects, mostly afforestation or improved farming techniques. Illinois and Michigan, through their respective Conservation and Climate Initiatives, have partnered with the Delta Institute, a carbon aggregator and trader, to enter and trade carbon offsets from eligible forest and agricultural land through the CCE. Currently the potential return is expected to be around \$2 - \$20 per acre per year for certain types of farmland, and about \$7 per acre per year for forestland. Arkansas, Indiana, and Ohio are exploring partnerships with Delta, as well. The National Carbon Offset Coalition, a group of seven non-profit corporations in Montana also has in place a carbon trading pilot program.

There is also momentum building to ensure that existing forestland, and not just afforestation projects, are represented in emerging carbon markets. Oregon passed legislation in 2001 enabling it to capitalize on future forestry carbon offset markets. California has passed legislation in preparation for future carbon-offset markets. Maine is submitting proposals to expand eligible carbon offset projects recognized by the Regional Greenhouse Gas Initiative to include avoided deforestation and improved forestland management. The challenge is to ensure that carbon offset projects from existing forestland offer real, quantifiable, permanent reduction in emissions. Long-term easements would most likely accompany any eligible forestland carbon offset projects. Ensuring continued or improved public access could be a by-product of these developing markets.

## **V. Recommendations**

Maine has a long-standing and unique relationship between private landowners and public recreators; centuries of tradition and culture have created an open-land expectation of private property. Public access is assumed to be allowed unless the land is posted, in contrast to many other states where the opposite is true. Whether it be creating new trails for hikers, maintaining existing ones for snowmobiling, or providing a place to hunt, public access to Maine’s private lands is critical to Maine’s future prosperity. Individual recreators, user groups, and the state all need to play an active role to ensure that Maine’s unique tradition of open-land continues. This will not be an easy job, but there are some things we can do.

***Recognize and Support Private Landowners’ Crucial Role in Protecting Maine’s Open Space and Quality of Place***

Private landowners deserve to be recognized for the important public benefit they provide by allowing others to use their land. For many land owners, feeling respected – by users and the state – is a prerequisite for allowing access to their land. Respect can be conveyed in a number of ways: by users who ask for permission and thank landowners for the use of their land; and by the state in recognizing landowners, showing respect for the public benefit they provide, and educating the public on appropriate and respectful use of private land.

- 1. Create and implement a public education campaign.** A public education campaign on the benefits and responsibilities that come with public access to private land would serve three important purposes. First, it would showcase Maine’s unique offerings of recreational opportunities on private lands. This open-land tradition is one of the things that distinguishes Maine and deserves to be highlighted. Second, it would educate recreators on what constitutes appropriate and respectful behavior on private property. This would alleviate some of the misuse and abuse that may lead to posting. Finally, it would also show landowners that their concerns and problems are recognized.
- 2. Create new mechanisms for symbolically rewarding landowners.** Currently, 20% of available deer permits are allocated to landowners who hunt and allow public access to their land. This is a worthwhile program that should be expanded to include non-hunters as well. Ways to do this include offering landowners free recreational licenses of their choosing (e.g., hunting, fishing, snowmobile, or boat registration), and/or to offer transferable licenses or permits that the landowner could sell if desired.

### ***Strengthen Maine’s Landowner Relations Program***

Past abuse is the single biggest reason a landowner will decide to post his or her land. There are countless stories of landowners who allow the public to use their land and are then forced to pay for the disposal of garbage (tires, computer parts, etc.) dumped by others. A strong landowner relations program, with the scale and scope to remedy these situations, could potentially save thousands of acres from being posted.

- 3. Secure additional resources for the State’s Landowner Relations Program for education and outreach** Current resource levels have not allowed for important outreach projects such as the creation of a landowner relations web-site or the revision and distribution of important educational materials (for example, the pamphlet “Landowner Liability Explained” was last updated in 2001, since which time significant changes in state law have occurred). Given that only 20% of Maine landowners in a recent survey feel the law adequately protects them (Leahy et al. 2008), there is a significant need to distribute up-to-date materials promptly and widely. Resources might come from public sources, landowners, or user groups.

4. **Continue to focus Warden Service enforcement priorities on trespassing and abuse.** The Maine Warden Service should continue to align its enforcement priorities towards addressing threats to public access. Preventing and prosecuting abuse by recreators is critical to ensuring future public access for sportsmen.
5. **Explore the feasibility of and potential funding for a Mitigation Fund.** The biggest driver of land posting is abuse by users. A mitigation fund, designed to remedy situations where a landowner is financially affected by abuse due to public access, could prevent thousands of acres from being posted. A funding source would need to be explored.
6. **Make the position of Director of Recreational Access and Landowner Relations permanent.** This position, created by LD 1642 and filled in November 2007, directs the Landowner Relations Program, in conjunction with other natural resource agencies, and also works closely with the Landowner and Sportsmen's Relations Advisory Board. It is jointly funded by the Department of Conservation and the Department of Inland Fisheries and Wildlife. The Director works "with both landowners and recreation groups to defuse tension, identify problem areas across the state, and bring a coordinated response from the state's natural resource agencies to incidents or other concerns." No other position is as crucial to the state's effort to maintain access to private land. It is set to expire in 2009.

*Evaluate other states' market-based strategies to secure public access to private lands*

Nationally, the trend towards exclusive recreational practices is increasing. For example, private hunting leases or clubs are now the norm in many states. In addition, high net worth individuals are buying large tracts of land for their personal recreational use. When this happens, the general public loses access to treasured natural areas. In order to stay ahead of this trend, many states, such as Oregon and Montana, have implemented programs that compensate landowners directly for allowing the public to use their land. The State should be prepared to respond to this trend if it spreads to Maine. All parts of a landowner compensation program would need to be carefully considered, specifically how it would be funded, how it would interact with the existing landowner liability law, and what types of landowners would be eligible to participate.

7. **Investigate the effectiveness and appropriateness to Maine of other states' market-based programs that reward private landowners for providing public access.** These should include recreational leasing programs, which provide compensation to landowners for allowing the public to use their land, and have been shown to be effective at maintaining and expanding public access to private land. Funding generally comes from users in the form of a license or permit surcharge. Oregon's Access and Habitat Program mentioned previously, serves as an example.

*Convene a stakeholders group to explore public policy options to ensure continued public access to private land*

- 8. Convene a stakeholders group to explore these issues and make specific recommendations to the Governor and Legislature.** Many of the recommendations listed above need further research, and, equally important, consideration and support from all those affected – private landowners, public recreators, natural resource agencies, and others. Further, all solutions will require a long-term commitment and adequate funding. A permanent stakeholders group, jointly chaired by the Director of Recreational Access and Landowner Relations and the chair of the Landowners and Sportsmen Relations Advisory Board, would give these issues the attention and care that they require. The objective of this group would be to develop public policies to continue, improve, and expand public access to private land.

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