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Public Access to Privately Owned Land in Maine

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Public Access to Privately Owned Land in Maine

by James M. Acheson



In Maine, people have long used private land for recreation. James Acheson points out that this “open land” tradition—unique in the nation—has huge economic implications, especially for the state’s tourism industry. In recent years, there has been a substantial increase in land posting, largely in response to abuses by the public. Although a number of different kinds of institutions have arisen to allow continued public access to private land, Acheson suggests that more needs to be done if Maine’s “open land” tradition is to be maintained. 🐾

INTRODUCTION

Maine has a land-use tradition that is unique in the nation. In Maine, landowners have traditionally allowed members of the public to use their property for a wide variety of recreational activities free of charge. In recent years, this “open land” tradition has been changing, and large amounts of private land are being posted.¹ At the same time, some new institutions are coming into being to ensure access of the public to private land. In this article I describe the open land tradition, the legal and cultural aspects of that tradition, and its economic importance to the state. Then I discuss the reasons that so much posting is occurring and the new institutions to allow public access. Last, I discuss the policy issues involved.

About 90 percent of Maine’s land is privately owned; the state owns 8.7 percent; and the federal government 1.8 percent (Hagen et al. 2005: 9). In the densely populated southern third of the state, most parcels of land in the rural areas are owned by small landowners, some of whom have only a few acres of property. The northern two-thirds of Maine is sparsely populated, and a high proportion of the land is in unorganized territories. The land here is held by a few timber companies and investment corporations, some of which own hundreds of thousands of acres of land. Indeed, 90 percent of the land in Maine is covered with forests, the highest percentage of any state in the nation. The public has a somewhat different set of relationships with the large landowners than it does with the small landowners.

In Maine, landowners have legal title to their land; they are able to get all of the income from farming and forestry activities on that land; and they can sell and pass it on to their heirs. Of course, they have to pay taxes on that land and are liable if they create a hazard that causes someone injury. At the same time, the public uses large amounts of privately owned land as if it were a common property resource owned by everyone. People hunt on land owned by others, run their snowmobiles and ATVs on it, and use the land for activities such as bird watching and cross country skiing. In northern Maine, people take hiking and canoeing trips in which they camp on land owned by others for days on end. Moreover, many Mainers feel

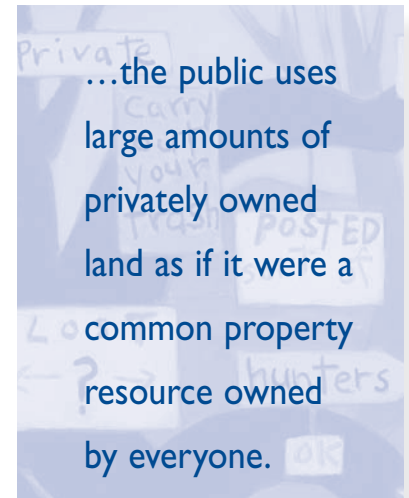
that using the land of others for recreation is one of their traditional rights, and a very large percentage feel little obligation to even ask permission when they go on someone else’s land to hunt or take a nature walk. When land is posted by the owners, they feel unfairly deprived of something that should be theirs. It is not at all uncommon for members of the public to tear down the “No Trespassing” signs.

The widespread use of private land by the public goes by various names. Some refer to Maine’s “open land tradition.” George Smith, Executive Director of the Sportsmen’s Alliance of Maine, in a recent interview with me referred to Maine’s “hunting heritage.” “It is an old tradition in Maine to hunt where you want. It is a unique tradition. In some states, you have a hard time to find a place to hunt.” He makes it clear that this tradition is one greatly valued by sportsmen and one they are willing to defend.

But more than informal tradition is involved. Maine law facilitates the public use of private land. If land is not posted, it is assumed that the public has a right to use it under the doctrine of “implied access.” Moreover, it is the policy of the state of Maine to encourage landowners to continue to allow the public to have access to their land. To this end, Governor John Baldacci set up a task force on “Traditional Uses and Public Access to Lands in Maine” (Baldacci 2004).

RECENT CONTROVERSIES

Since 2005, there have been several cases that have demonstrated the power and pervasiveness of this open land tradition. In the fall of 2005, Roxanne Quimby, founder of the very successful Burt’s Bees company, bought a 24,000-acre piece of land in northern Maine and stated her intent to establish a wildlife sanctuary, and she limited access to roads crossing her property. She ran into a firestorm of criticism. She was vilified for threatening the local economy by reducing the areas where hunting was



permitted, for prohibiting trucks going to and from other plots of land being worked by forest products companies, and for making direct access to some wilderness camps impossible. Her action raised fears that this was just the start of a move to create a national park, which would seriously curtail traditional activities (Austin 2003; Carpenter 2001). The controversy also revealed the outlines of the attitudes of a lot of Maine people about the rights of hunters and the open land tradition. At the 2006 Maine Sportsman's Show I bought a bumper sticker that read:



Roxanne Quimby had posted her land and no one in authority seriously challenged her right to do so, but in the process, she had violated a number of informal rules and expectations of rural Mainers. What was at stake was the old tradition of allowing the public to use private land for recreation and permitting neighboring landowners to travel over privately owned land. Both are direct threats to the forest products and tourist industries, mainstays of the local economy. Why Roxanne Quimby was singled out for vilification is somewhat of a puzzle. After all, other wealthy people have bought large parcels of land and posted them, and their actions have gone largely unnoticed.

In the fall of 2005 another type of controversy came to the fore over the state's policy of stocking turkeys in Aroostook County, the largest agricultural region of the state. The farmers objected both to the turkeys that were eating crops they had planted and to the hunters who came to hunt the turkeys—especially those who hunted using four-wheel-drive trucks and ATVs. From the perspective of the farmers, the state was foisting an unnecessary burden on them. Turkeys are not native to this area of the state, and there is substantial biological evidence that they depend on

food supplied by humans. The farmers were particularly incensed by the fact that the Department of Inland Fisheries and Wildlife did not inform the farming community about the turkey-stocking program, even though the department knew that the turkey population was going to live on farmland, and that the farmers would have to deal with more hunters.

Hunters, as might be expected, strongly favor introducing turkeys, as does the Department of Inland Fisheries and Wildlife, which depends on fees from the sale of hunting licenses to support its operations. Farmers are far less enthusiastic. One Aroostook County farmer said, "For the hunters, it's a win/win situation; for me it is lose/lose. I get nothing out of it."

The Commissioner of the Department of Inland Fisheries and Wildlife has organized a group of stakeholders, including representatives of farmers' and hunters' groups, which will determine protocols for releasing turkeys in the future and for dealing with landowner complaints. It is doubtful if this will mollify the farmers much.

In the spring of 2006, another controversy was caused by a plan to expand Baxter State Park by exchanging land owned by the Gardner Land Company, which would be incorporated into the park, in exchange for land owned by the state of Maine in other locations and land that would be purchased by the state. This deal to expand the park would need to be passed by the Maine Legislature since it involved swapping land owned by the state of Maine.

The proposal to expand the park has run into a good deal of opposition by people in northern Maine concerned about the loss of traditional hunting rights. As long as the land stayed in the hands of the Gardner Land Company, hunters felt assured they would be permitted to hunt there; if it were incorporated into Baxter State Park, where no hunting is allowed, the amount of land that could be hunted would be reduced. The idea that the Gardner Land Company might limit access to its property was not worth considering (Miller 2006a; Smith 2006: 3). The company has always permitted hunting on its property and will likely continue.

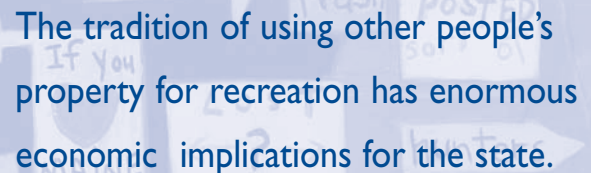
ECONOMIC IMPORTANCE

The tradition of using other people's property for recreation has enormous economic implications for the state. The largest industry in Maine is tourism. However, estimates of the economic importance of this industry vary considerably. In 2001, the Maine Innkeepers Association reported that "tourism directly and indirectly generated 8.9 billion dollars in state-wide business sales." According to this source, tourism brings 344 million dollars in tax revenue to Maine and generates 115,000 jobs (Maine Innkeepers Association 2001). More modest estimates have been made by other organizations. The Maine Development Foundation (2004) estimates that tourism contributes two billion dollars to Maine's gross state product and is responsible for 58,160 jobs.

No estimates have been made of the total value of activities such as hunting, fishing, snowmobiling, ATV riding, cross country skiing, camping, hiking, bird watching, and leaf peeping to the tourist industry. Moreover, it cannot be assumed that most of the revenue from the tourist industry stems from these outdoor sports, since they take place in the inland counties of Maine and are not the primary attraction in the coastal counties and cities that are visited by a high percentage of tourists. However, some pertinent data do exist. In 2004, it was estimated that hunting was worth \$325 million to the Maine economy (Sportsmen's Alliance of Maine 2005); a 1998 study showed that snowmobiling produced \$176 million dollars in income (Reiling 1998); while another study done in 2002 puts the figure for snowmobiling at \$160 million (Vail 2002: 132). No comparable studies have been done on the value of wilderness camping, cross country skiing, or bird watching, but they clearly produce hundreds of millions of dollars more.

These activities depend, in large measure, on tourists and sportsmen having access to other people's land. In one study, ATV owners in Maine were asked where they rode their machines. Thirty-nine percent said they "often" rode on private land belonging to someone else; another 44.3 percent said they "sometimes" rode on private land belonging to someone else (Rubin et al. 2001a: 3-6). In another study of snowmobile users, 92 percent said they rode on private land that belongs

to someone else, but almost all (93 percent) ride on designated snowmobile trails (Rubin et al. 2001b: 10). These figures make it quite clear that if access to private lands were cut off, the area that could be used by snowmobilers and ATV users would be greatly reduced. The same is true of hunting, bird watching, and cross country skiing. Reducing access to private lands almost certainly would result in far fewer people coming to Maine for these activities, which would result in a substantial loss to the businesses in inland areas serving these tourists. Towns such as Grand Lake Stream, Greenville, and Rangeley, which are so dependent on such sports and activities, would certainly feel the pinch.



The tradition of using other people's property for recreation has enormous economic implications for the state.

LEGAL RIGHTS OF THE PUBLIC AND LANDOWNERS

The open land tradition is very old in New England, and the law and policies of Maine government encourage public access to private land. The public's right to use private land was first encoded in the "Great Ponds Law," which stems from a Massachusetts law of 1641, revised in 1647. The Colonial Ordinance states [spelling as in original], "and for great Ponds lying in common...it shall be free for any man to fish and fowl there, and may passe and repasse on foot through any mans propriete for that end, so they trespasse not upon any man's corn or meadow" (Mills 2004). (The idea of not trespassing upon "any man's corn" is now interpreted as not doing damage to someone else's property.)

When Maine became a state in 1820, the Great Ponds law was accepted as part of Maine law. Since then, a number of Maine court cases have modified and clarified the Great Ponds doctrine. Several cases make it clear that "Great Ponds" (i.e., over 10 acres)

are public ponds. The “state holds them in trust for the public and the public has a right to fish, and fowl and cut ice upon them” (Supreme Judicial Court of Maine 1952). Another case makes it clear that the public has a right to access such ponds through unimproved land, but not by crossing improved agricultural lands (Supreme Judicial Court of Maine 1950). Maine law sets penalties for landowners who “deny access or egress over unimproved land to a great pond.” Since virtually all large landowners have big ponds on their land, these landowners do not have a clear-cut right to keep the public out of their property completely if that means cutting off access to a great pond. Small landowners, who presumably do not have a 10-acre pond on their property, are in a different position of course.²

Moreover, Maine has a strong landowner liability law, which protects landowners from suits by people who get hurt on their land while they are engaged in some recreational activity. The landowner is protected whether or not permission is given to use the land (Maine Revised Statutes Section 159A). This protection removes a strong motive for landowners to forbid people to use their land.

The state holds all wildlife in trust, and retains the right to manage stocks of those animals. Landowners do not have a right to take animals on their own property unless they obey all of the laws governing hunting, just like any other hunter. Nevertheless, the Department of Inland Fisheries and Wildlife has a policy of getting landowner permission before its staff accesses private property.

The state of Maine has a longstanding policy of encouraging the public to use private property. The Department of Inland Fisheries and Wildlife encourages landowners to permit the recreational use of their property and has a landowner relations program dedicated to this end (Vanderweide 2006). This program was begun on the recommendation of the Legislative Joint Standing Committee on Fisheries and Wildlife, which recommended the landowner relations program be initiated to “1. Foster public use of private land for hunting and fishing; 2. Promote high standards of courtesy, respect and responsibility by hunters and anglers for private land; and 3. Prevent abuse of private lands by hunters and anglers” (Vanderweide 2006). However, the program currently has no full-

time warden to field complaints from landowners about the behavior of recreational users of their property. An open land policy is being recommended for all of the New England states and beyond. The Northern Forest Lands Council, composed of representatives of government and industry in New England, has urged that “The Congress and State legislatures should enact legislation and promote public policy to provide forest-based recreation opportunities to the public. Such initiatives would encourage landowners to keep their land open and available for responsible public recreation” (Northern Forest Lands Council 1994: 74).

Despite these traditions and laws, landowners do have a right to control access. There is a well-developed body of common law specifying the rights of private property owners to keep uninvited people off their property. There is a criminal statute in Maine that prohibits trespassing on posted land. Small landowners can post their property, and if the posting meets standards prescribed in law, they can have trespassers prosecuted (Maine Revised Statutes Section 402, Supreme Judicial Court of Maine 1996). However, while there may be a legal right to keep uninvited users off private property, there are practical problems in doing so. One problem is that there are more than 100 trespass laws scattered throughout the statutes, which makes it difficult for landowners to know which laws apply and what their rights are. Then, wardens will not prosecute trespassers unless the landowner is willing to go to court to testify about the nature of the violation. This means that enforcement involves costs in terms of time lost, money for an attorney, and the psychic costs of being in conflict with other people.

Large Landowner Rights

The Great Ponds law complicates the legal rights of large landowners. What are the rights of large landowners *vis à vis* trespassing? Can they forbid recreational users from using their lands if that means closing off the public from large bodies of water? The issue is far from clear because there is very little case law pertaining to the Great Ponds law and public trust doctrine. The rights of the public to use private property have never been adequately tested in court; and as long as most large landowners maintain the open access policy and the state keeps its landowner relations

efforts, it probably will not be tested.

I believe that the law of trespass and the Great Ponds law is a case of conflict of laws. The Great Ponds law and “tradition” work to keep privately owned wild lands open to the public, while a well worked out body of common law gives landowners the right to forbid any access. If the issue ever were tested in court, it is possible that the rights of the public to use private property would be strengthened. It also is possible that the rights of landowners to control access to their property might well be upheld. Another possibility is that the issue might have to be settled on a pond-by-pond basis. However, I suspect that if the issue were ever tested thoroughly in court, the rights of private landowners would be upheld. Roxanne Quimby is probably on solid legal ground in closing her land to public use.

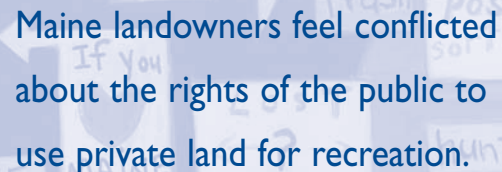
Is Maine Unique?

Maine’s situation may be unique. In virtually all other states, the legal rights of landowners to control access to their land are much stronger, and there is no tradition of using the land of others for recreation without permission. In Minnesota, hunters must obtain permission of landowners before hunting on agricultural land, even if it is not posted. Failure to get permission constitutes a misdemeanor. In Kansas, hunters must have permission of the landowner to hunt on any kind of land, posted or not. In Michigan it is illegal to trespass on the land of another “after having been forbidden to do so.” In that state, the landowner’s ownership rights extend to the middle of lakes. Hunters from other states are fully aware of the rights of landowners, and some are loathe to trespass on private property when they come to Maine. One interviewee knows of a Maine guide whose out-of-state client would not even get out of the guide’s truck to go hunting when he found out the guide did not have permission from the landowner

A CULTURAL BIND

Maine landowners feel conflicted about the rights of the public to use private land for recreation. They are aware that the law allows them to close off their land. But the vast majority of these landowners

grew up in Maine and have been well socialized in the open land tradition. A study done in the summer of 2005 showed clearly the conflicting values and ideas Maine people have about rights of the public and of landowners.³ One question in our interview was, “Suppose a person bought a large piece of land which had been open to the public for recreation and then stopped the public from using it. How do you feel about that situation?” The answers revealed no clear consensus about the rights of the public, and a good deal of ambivalence. Forty-four respondents out of the 107 who answered the question (41 percent) said they did not see any problem with a landowner prohibiting the public from using his/her property; these people were concerned about the rights of landowners. One person said, “They bought the land and they have the right to do anything they want with it.” Another said, “It is private property and the rights of private property owners need to be protected.”



Maine landowners feel conflicted about the rights of the public to use private land for recreation.

Thirty-one respondents (29 percent) said that large landowners should not close their land to the public. These people gave answers indicating that they hated to see the end of a long tradition of open land, and some clearly thought the public had a right to use privately owned land, especially large pieces of land. “It’s [i.e., posting] not right,” said one. Another said, “It’s sad. It’s very sad.” Still another said, “I do not agree. It is taking away public use.” “It’s just greedy and selfish,” said still another.

Another 23 respondents (22 percent) gave ambivalent answers. Many of those saw the cultural bind clearly, and some were quite articulate in expressing it. “Posting should be allowed, but I hate to see it,” was one comment. Another said “a bit of as shame, but I can understand why they might do it.” I see the “pros and the cons,” said a third person.

Still, the overwhelming majority of those interviewed

did not question the right of landowners to post their property. In this regard, respondents were asked “Landowners have a right to post their property. But should they do it? If so, under what conditions?” Ninety-seven of the 119 people who answered this question (82 percent) said that landowners could post their land and could be expected to do so under certain conditions. Only five said they should not post under any conditions. One who speaks for the vast majority of these people said, “They have the right to post their land and should do so if their land is abused or damaged.” What constituted abuse? Several respondents mentioned the ATV problem, and another mentioned “timber stealing,” while others talked about people dumping trash on their property. Some of the respondents mentioned that landowners were posting to keep their land safe. Most of these people were concerned about hunters shooting in settled areas or around houses. One person who is against hunting said, “If you don’t post, it is like a war zone.”

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One cannot read these responses without concluding that many landowners had experience with irresponsible members of the public. Many gave information on the problems they had had with trespassers. A number said that recreational users should ask permission before using other people’s land. Interestingly, however, many of these respondents expressed the idea that land should not be posted unless the landowner had experienced problems, and many of these landowners who have experienced problems do not post their land. I can understand this reaction. I’m a landowner whose land has been abused by recreational users and dumpers. I have not posted my land. I’m a Mainer, after all.

Other facets of the beliefs and values of landowners were revealed by the question, “Does the public have the right to expect to use private land for recre-

ation?” Of the 95 people who answered this question, 80 (84 percent) said “no.” Several said that using the land of others for recreation is a “privilege not a right.”

The landowners surveyed clearly felt that there was a difference in what was expected of small landowners and the rights of large landowners. Many expressed the idea in one way or another that the public should be able to use large pieces of privately owned land, but that they do not have the same expectations of small landowners, especially in settled areas. Many respondents expressed varying degrees of dismay that the owner of a “large piece of land” would close it off to public use. Seven people in the sample volunteered the idea that the public has a right to use “large pieces of land” for recreation. No one mentioned any right to use the land of all landowners or of small owners. I suspect that there would have been no outcry against Roxanne Quimby at all if she closed off a small parcel of land to public use. The fact that she closed off 24,000 acres puts the problem in a different category as far as Maine people are concerned.

Large landowners are in a different position. The Great Ponds law complicates the process of controlling access to large tracts of privately owned land in the northern part of the state. Large landowners take the position that they do have the right to control access to their land. Nevertheless, they usually do not keep the public off their land, and in fact, have a policy of maintaining open access. Some of the large landowners allow the public access to their lands to further “public relations” (Killian 1991), but they do want the state to recognize their right to control access to their property. The Maine Forest Products Council, a lobbying group for industry, has recommended that “Maine forest policies should support traditional recreational opportunities and respect landowners’ rights to manage recreational use and to control access to their forest lands” (Griffin 2004).

In summary, most of the landowners in our study sample have some conflicting beliefs about rights over Maine land. They think that landowners have the right to keep the public off their land, but they also feel that landowners should not exercise these rights unless forced to by very irresponsible behavior. Members of the public should be allowed to use private land for recreation, but they have no automatic right to

do so and it would be nice if they asked permission before they traipsed all over other people's property. It is important to note that a small minority of the landowners felt that the public does have rights to use private property for recreation, especially large tracts of land, and that landowners should not post their land. Almost certainly a survey of the general Maine public would find an even larger percentage of people with similar ideas.

CHANGING TIMES

Posting

The attitudes of Maine landowners have been changing for the past several decades. In the early 1990s, it was recognized that conflicts between recreational users and landowners were on the rise, and it was predicted that more and more landowners would post their land in the future (MDIFW 1992: 48). The prediction has proven to be quite accurate. A study by the Small Woodland Owners Association of Maine (SWOAM) showed that in 1991, 14.9 percent of those surveyed said they were posting their land, although some of these landowners said they would allow recreational users on the property with permission to do certain activities. In 2005 another study of small forest landowners that I conducted showed that 39.4 percent of respondents said they were posting their land. While the information collected in these two studies was not exactly the same, it is very clear that there has been an enormous increase in posting in the past 15 years. Moreover, in both cases these studies involved very large samples.⁴

What has caused the change of heart about the open land tradition and has led an increasing number of landowners to post their land? First, there are several basic demographic changes at work. A larger population and more suburban sprawl have reduced the amount of sparsely populated rural areas, while an increase in rural sports has brought more people to rural areas seeking recreational opportunities. These trends have brought those using other people's land into close proximity with those who own the land. It is one thing to have people doing recreation a mile back in the woods; it is another to have them close

to your house. Second, the decline in the proportion of the Maine population who hunt and the increase in the number of people interested in nature and in the animal rights movement has undoubtedly made a growing proportion of people less tolerant of hunters (MDIFW 1992). Some landowners want no hunting on their land at all. They want to preserve the birds and wildlife, and do not want any hunting even if the hunters are very responsible.

But there are more immediate issues that have increased conflict between landowners and the public and have motivated more landowners to post their land. The most serious problem at present is ATVs, motorized vehicles designed to go anywhere at any time. These machines can make a lot of noise and, if the ground is soft, can make huge ruts. In our 2005 survey, we asked people whether hunters, ATV owners, birdwatchers, or others were a "big problem," "somewhat of a problem," or "no problem." Twenty-three percent of the 1,323 respondents answering this question identified ATV owners as a big problem, whereas only 4.6 percent identified hunters as a big problem and 0.3 percent identified bird watchers as a big problem. Of all of those people who identified a big problem, 81.5 percent pointed to ATV owners.

In addition, posting tends to be self reinforcing. When a number of people in a small area post their land, others will follow suit to avoid excess use of their property. As one respondent put it, "If I am the only person with unposted land on the peninsula, my land would get all of the hunters and [the] others who used to be on a thousand acres." In addition, some of the guides are making deals with landowners for exclusive hunting rights on their land. The deal works well for both. The guide promises to keep everyone else off a landowner's property in exchange for the right to bring parties of hunters there. The landowner knows the land will be treated well by a responsible person, and there will be few people using the land; the guide gets a private hunting estate for his or her clients.

Those who want to restrict the rights of the public to use their land are becoming increasingly vocal. Perry Lamb, who owns a large tree farm, takes issue with the idea that there is an "implied access" to private land and defends the rights of landowners who want to exclude people from using their land for recreation.

In this regard he writes “conditions have changed since yesteryear when it was acceptable to shoot buffaloes from train windows. Maine has a complete set of statutes since statehood preventing uninvited access to private property. Reference to ‘implied access’ was never included therein” (Lamb 2005).

Limiting Water Access

Great Ponds law aside, owners of shorefront property are increasingly refusing to let members of the public cross their property to gain access to lakes. Even those who use publicly owned boat ramps are being made to feel unwelcome by some landowners (Associated Press 2006). Some lakefront property owners are bothered by noise and the dangers posed by speeding watercraft. Others want to prevent milfoil, an invasive plant, from being introduced into their lake by watercraft coming from infested lakes. Some landowners are posting their property, and others are gating roads through their property leading to the water.

NEW INSTITUTIONS

The Maine public is becoming increasingly concerned about preserving the environment and maintaining access to recreational spots. Not only are private landowners posting their land in increasing numbers, but the price of land is skyrocketing, with the result that most shorefront property is being purchased by wealthy people from out of state. In response to these concerns and changes, a number of different kinds of institutions are coming into being to allow public access to private land. They appear to have good support from the public.

Conservation Easements

In the past 10 years, Maine has moved to a program of conservation easements, which are designed to permit recreational access to private land, conserve sites of special environment value, and still allow timber harvesting. Most of these easements are taking place in the northern part of the state where some 8.5 million acres of land have been sold by paper companies to corporations running retirement funds (REITs) and timber investment management organizations (TIMOs). Under this program, the development

rights to this land have been purchased by conservation organizations or the government. Generally, the contracts specify the landowner will be able to harvest the forest, but that recreational development activities (e.g., summer homes and hotels) will be controlled or curtailed completely, and that “traditional recreational activities” such as hunting will continue. One federal government program alone (i.e., the Forest Legacy Program) “has protected over 1 million acres of Maine land with easements” (*Bangor Daily News* 2006). Some conservation organizations have purchased only easements (e.g., the Conservation Fund), while others buy both easements and land. For example, The Nature Conservancy has purchased easements and has also bought 180,000 acres of land in northwest Maine. Currently, the Land Use Regulation Commission, which functions as a kind of planning and zoning board for the unorganized territories of Maine, is considering the largest development proposal in its history—namely a proposal by Plum Creek Corporation to develop 975 house lots and two resorts on its land near Moosehead Lake. Under the plan, 330,000 acres of land would be permanently protected from development and open to the public (Miller 2006b).

North Maine Woods

The NMW is an organization of large forest landowners, whose members allow the public use of their lands for a fee. The program was established in 1972 and now involves 3.5 million acres, which are located in the still undeveloped northwest quadrant of the state (North Maine Woods 2006). This organization not only has permitted public access to a large portion of undeveloped forest land; it also has established a long-standing precedent permitting public access to private lands for a fee.

Maine Snowmobile Association

The Maine Snowmobile Association coordinates efforts of the 285 local snowmobile clubs in maintaining a large network of snowmobile trails all over the state. These trails, which are largely on private land, are built with the permission of the landowners. They are used by some 30,000 snowmobile club members (Maine Snowmobile Association 2006).

Land for Maine's Future

This state government program provides funds to purchase sites for public recreation and areas of importance for conserving the environment. Usually the Land for Maine's Future Program cooperates with other private conservation organizations or state and federal agencies in raising funds. The land, once it is bought, is ordinarily donated to a state agency, which manages the site. Recently, the Land for Maine's Future, together with the U.S. Salmon Commission, the Maine Department of Conservation, and The Nature Conservancy combined forces to buy conservation easements on 18,400 acres and to purchase outright another 6,400 acres along the Machias River in eastern Maine (Land for Maine's Future 2006). To date, this program has protected 215,000 acres.

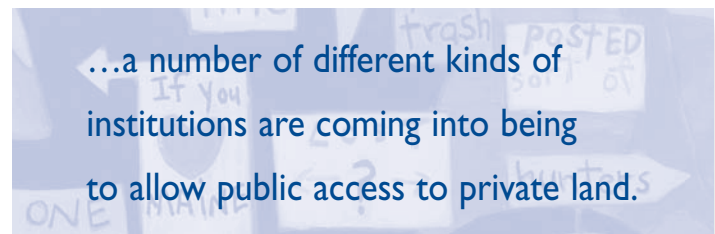
Land Trusts

There are 88 land trusts in Maine, most of which were established by bequests from individuals or families. The property is administered by a person or organization designated as trustee. Most of the documents establishing the trust stipulate that the land and its resources are to be protected or preserved for certain purposes. The public is generally allowed access. Some of these trusts involve only a single small parcel of land. Others, such as the Maine Coast Heritage Trust, Maine Wilderness Watershed Trust, and the Appalachian Trail Land Trust own thousands of acres (Maine Land Trust Network 2006).

POLICY ISSUES

In the past few years a number of legislative changes have been seriously discussed that would greatly change the rights of landowners and the public. In 2004 a bill to abolish the century-old law prohibiting Sunday hunting was introduced into the legislature. It proved to be quite contentious. It was supported by the Sportsmen's Alliance of Maine and was endorsed by Governor Baldacci and the Department of Inland Fisheries and Wildlife as a means to "placate Maine sportsmen by giving them something in exchange for the continuation of a \$3.00 license and registration surcharge imposed two years ago" (Carrier 2005). It also would bring Maine into alignment with the vast

majority of states where Sunday hunting is allowed. The Sunday hunting law was opposed by a coalition of groups, including many landowners, SWOAM, farmers, the Maine Professional Guides Association, the Maine Bowhunters Association, the Maine Trappers Association, the Issac Walton League, the Maine Snowmobile Association, and others. Tom Doak of SWOAM suspects that many landowners opposed Sunday hunting because they were increasingly unhappy with an uncaring public using their property and wanted to take a stand to reassert some control. The Sunday hunting bill was defeated in the legislature.



In 2004, a law was passed requiring ATV owners to get written permission before riding on anyone else's land. In 2005, an attempt was made to do away with the requirement to get written permission, but this effort did not succeed (SWOAM 2005). As might be expected, SWOAM and many landowners were very much in favor of making ATV owners get permission to use their land and against the more recent effort to rescind this section of the law.

In 2005, a bill was introduced into the legislature entitled "LD 1328, An Act to Amend the Tree Growth Tax Law," which would have required that landowners whose land was enrolled in the Tree Growth Tax Plan open that land for public access. This was opposed by many landowners and SWOAM because it would limit the rights of landowners to post their property if they deemed that necessary (SWOAM 2006). The legislature voted this measure down in 2006.

The defeat of the Sunday hunting bill, the defeat of the bill to require landowners in the tree growth tax plan to open their land to the public, and passage of the bill requiring ATV owners to get permission before using someone else's land all increase the power of landowners to control access to their property. More restrictions on the public's right to use private property

may be in the offing. In recent years, there has been a movement to make it illegal to hunt on private property unless that property is “posted for hunting” (Clifton 1992). The position of the Sportsmen’s Alliance of Maine and other hunting groups is that passage of such a law in Maine would end hunting in the state. I agree that it would certainly curtail hunting considerably. It also would virtually end the open land tradition.

Sportsmen’s groups are aware that recreational users are having problems with landowners and that the open land tradition on which their various sports depend is being threatened. They have made serious attempts to stem the problem. The snowmobile clubs have built thousands of miles of trails across the state, with the permission of the landowners. ATV Maine is expanding its membership and is taking steps to rein in the most irresponsible behavior of ATV owners, and the Sportsmen’s Alliance of Maine and other hunting groups are strongly urging hunters to get permission before hunting on someone else’s land. The Maine government has recognized the importance of the open land tradition to the state, and the legislature has established a legislative advisory board to review and make recommendation on policies and laws pertaining to landowner relations (Van Husen 2005). And, the governor has created a task force to advise him on ways of maintaining access to land for traditional uses (Leach 2004). All of these are moves in the right direction.

What can be done to help maintain the open land tradition? Given our survey results, a major reason people are posting their land is abuse by the public. Landowners are still cleaning up after people who dump trash on their property, and are finding people hunting close to their homes, who have not had the courtesy to ask permission. All too many still have to contend with the roar and ruts of run-amok ATV users. This is not to argue that all sportsmen are irresponsible. However, some sportsmen—it is hoped a small minority—are quite irresponsible and these are the ones who have caught the attention of the private landowners. The only solution that many landowners see to curb irresponsible public behavior is to post their land. They are doing that in increasing numbers.

One solution is additional enforcement. To be sure, the Department of Inland Fisheries and Wildlife

recognizes the problem and has a warden whose job it is to deal with landowner complaints, but one warden, regardless of how hardworking and effective, cannot be expected to investigate and enforce all instances of dumping, hunting close to homes, and trespassing on posted land. Perhaps most important, it is critical to curb the irresponsible use of ATVs and four-wheel drive trucks. Anything that the state could do to help curb abusive ATV use through legislation or by facilitating the efforts of ATV Maine would do more to mollify landowners than anything else.

Unfortunately, I strongly suspect that there is nothing that can be done to completely stop or reverse the increase in posting, especially in the southern third of the state where sprawl is rampant and more residents of rural towns live on tiny parcels of land. Perhaps the best and only way to preserve the ability of the public to use large amounts of forest and undeveloped land is to strengthen programs such as Land for Maine’s Future and conservation easements, as well as to facilitate the efforts of organizations such as North Maine Woods, the land trusts, and the Maine Snowmobile Association. These are wonderful programs, and they have done a great deal to preserve our wild places and maintain public access to them. The time may come when we want to consider other even more innovative programs, such as a public utility that would own a large amount of land and manage its forests for multiple uses, including sustainable forest management and recreation.

However, it should be recognized that the land currently in easements, trusts, and owned by the government is far smaller than the land to which the public has access through the open land tradition. If Maine wants to maximize public access, it would be wise to maintain the open access tradition as far as possible. That tradition and the future of outdoor sports in Maine are hanging in the balance. 🐾

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ENDNOTES

1. "Posting" refers to legally serving notice on members of the public that trespassing in general, or certain activities, will not be permitted on the land. The most common means of posting is to place signs around the perimeter of the property.
2. In the recent past, the Maine Supreme Court has ruled that the "intertidal zone" also is held by the state under the public trust doctrine.
3. In the summer and fall of 2005, a study was done of small woodlot owners in Maine. This study was entitled the "Maine Forest Landowner Study" and was financed by the Cultural Anthropology Program of the National Science Foundation (Grant No. 0449529). All told, 1,368 small landowners participated in the study. Nine interviewers conducted interviews with 154 respondents; the other 1,214 landowners responded to a mail survey.
4. The 1991 survey was done for SWOAM by "Maine Tomorrow," which mailed questionnaire forms to 943 Maine landowners selected at random. Two hundred and forty-three or 31.1 percent of these forms were returned. The 2005 "Maine Forest Landowner Study" mailed out a total of 2,280 forms to a random sample from four different landowner groups; 1,214 forms were returned or 53.2 percent.

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