



COMMUNITY ♦ ADVOCACY ♦ KNOWLEDGE ♦ LEGACY

Board of Directors

Jessica Leahy
President

Paul Sampson
1st Vice-President

Doug Baston
2nd Vice-President

Tom Allen
Secretary

Richard Nass
Treasurer

John Bozak

Erik Carlson

Terri Coolong

Dan Crocker

Mike Dann

Seth Sprague

Bill Weary

Nathan Webb

Jeff Williams

Chapter Leaders

Si Balch

Larry Beauregard

Kyle Burdick

Patty Cormier

Dan Jacobs

Randy Lagasse

Rich Merk

Gordon Moore

Paul Sampson

Jeff Williams

Testimony of Tom Doak

Executive Director

Maine Woodland Owners

In Support of

LD 1415 An Act To Improve the Laws Regarding
Discontinued and Abandoned Roads

Senator Claxton, Representative Martin and members of the Joint Standing Committee on State and Local Government, my name is Tom Doak, Executive Director of the Maine Woodland Owners speaking today in favor of "LD 1415 An Act To Improve the Laws Regarding Discontinued and Abandoned Roads".

You have already had some discussion of discontinued and abandoned roads this session, so you are aware there are issues concerning these roads.

I have attached a chart to my testimony explaining the differences between discontinuance and abandonment. These terms are often used interchangeably, but they are very different.

This bill deals only with the statutory abandonment of roads and does two things:

- First, it eliminates the use of abandonment for any municipal road which does not meet the requirements (no maintenance for the last 30 years) by January 1, 2020. It does not impact any road that already meets the definition of abandonment, whether or not it has been identified as such.
- Second, it requires that when a municipality reaches a finding that a road has been previously abandoned, it must identify the basis for that finding.

What is abandonment of a road?

In 1976, the Legislature enacted a statute that declared all municipal roads, without maintenance for 30 years, to be automatically abandoned. The logic behind this change was that there were long forgotten roads, probably grown up with trees that had been lost to history. This was a well-intended act and made sense. But abandonment has remained on the books since then – for the last 43 years. All those forgotten roads have long since meet the standard of abandonment and are gone. Under the provisions of this bill, any municipal road that has had no maintenance since 1990 would still be considered abandoned.

There was some logic to creating abandonment. But it also caused many problems including:

- There is no clear date or record of when abandonment actually occurs.
- Abandonment is automatic - there is no notice to people impacted.
- There is no public process or vote by the municipal governing body (like there is for discontinuance).
- Abandonment is not considered a municipal action. Municipal officials can make a determination of assumed abandonment, which is binding unless overturned by a court. There is no local appeal or appeal allowed to county commissioners of that assumption.

Why eliminate statutory abandonment?

- First, there is a clear, straightforward way, with a full public process for a municipality to rid itself of any road it chooses - the discontinuance process. In the 2016 legislation, this Committee did an excellent job of clarifying that process.
- Second, there is no public process required for statutory abandonment. There should be a chance for anyone impacted by the elimination of a municipal road to have their say.
- Third, having two processes - discontinuance and abandonment - is confusing. Most people confuse the two terms.
- Fourth, the reason for abandonment has long passed.

The 2016 legislation addressed many of the issues with discontinuance, but did not address abandonment. But, that legislation urged (originally the language required) municipalities to develop over the next two and a half years, an

inventory of all existing town roads as well as all discontinued and abandoned roads. This was meant as a positive step in sorting out the confusion regarding old roads, particularly those caused by abandonment. There was an expectation that at least some municipalities would respond.

Municipalities were asked to submit the information to the Maine Department of Transportation (MDOT). MDOT was required to update this Committee by November 1, 2018 regarding how many municipalities have voluntarily completed road inventories as well as any noted challenges or obstacles. MDOT submitted that report, which is attached. Unfortunately, not a single municipality participated. So the confusion continues.

The second section of the bill, would require that when a municipality makes a finding that a road has been abandoned (those that qualify by January 1, 2020), it needs to state the basis for the findings. This could include:

- Records at past town meetings.
- Records of expenditures for a particular road.
- Road Commissioner logs.
- Conversations with longtime residents.
- Whatever the municipality has used to arrive at the conclusion that the road has been abandoned.

This is not meant to be a new requirement or mandate, as municipalities are required to file a notice of abandonment for any new finding (after 2016) at the registry of deeds - though failure to do so does not invalidate abandonment. However, it is not clear that there has to be a public disclosure of the justification of determination of abandonment.

This issue of abandonment has caused so much confusion and conflict. Its original intentions were understandable, however, the change made in 1976 has resulted in many of the problems with old roads we have today.

Our support of this bill is not about trying to get municipalities to hold onto or maintain roads they don't want. It is not about undoing past problems created by current statutes. Repealing abandonment does not impact any roads already abandoned. It would simply stop creating more problems, confusion and uncertainty going forward.

Three ways a municipality can dispose of a public road

Statutory Discontinuance	Statutory Abandonment	Common Law Abandonment
Can be used for any municipal road	Road must not have been maintained at the expense of the municipality for any 30 or more consecutive year period. Isolated acts of maintenance don't count	Must have 20 years of non-use by the public
Municipality must notify all abutting owners and hold a public hearing	No public process or notice required	No public process or notice required
Recording in registry of deeds required - effective 2016	Recording in registry of deeds required effective 2016, but failure to record does not invalidate abandonment	No recording requirement
Public easement is automatically retained unless expressly denied. (Prior to September 3, 1965 no public easement was retained)	Public easement is automatically retained unless expressly denied. (Abandonment prior to September 3, 1965 no public easement retained)	No public easement is retained by the municipality
May be liable for damage to landowners for loss of value	No damage provision for loss of property value	No damage provision for loss of property value
All remaining rights pass to the abutting property owners to the centerline of the road	All remaining rights pass to the abutting property owners to the centerline of the road	All rights revert to the abutting owners
	Determination of status by municipal officials is binding unless overturned by a court No local appeal process	

"Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to the effective date of this Act".

November 15, 2018

A REPORT TO
THE JOINT STANDING COMMITTEE ON STATE & LOCAL GOVERNMENT
AS REQUIRED UNDER
PUBLIC LAW 2016, Chapter 464, Section 10
CURRENT DIRECTIVE

Pursuant to PUBLIC LAW 2016, Chapter 464, Section 10, states,

Sec. 10. Municipality to develop or supplement list of town ways. *A municipality may develop or update publicly available inventories relating to all known town ways or former town ways, or segments of town ways, discontinued and discontinued by abandonment within its municipal borders and share such inventories with the Department of Transportation, Bureau of Maintenance and Operations. Information pertaining to discontinued town ways may include a sufficient description of the town way or former town way, any known judicial determination regarding the status of a public easement on the former town way, the date of discontinuance and the governmental entity effecting the discontinuance. Information pertaining to town ways discontinued by abandonment may include a sufficient description of the town way or former town way, any known judicial determination regarding the status of a public easement on the former town way and the last known date of regular, publicly funded maintenance of the town way or former town way or segment of the town way. Boards of county commissioners, landowners, road associations, surveyors and other interested parties may share relevant information with municipalities and the Department of Transportation, Bureau of Maintenance and Operations. By November 1, 2018, the Department of Transportation shall share with the joint standing committee of the Legislature having jurisdiction over state and local government matters an update on the status of any road inventories developed by municipalities, including any noted challenges or obstacles associated with determining the status of roads discontinued for public maintenance by units of government other than the municipalities' legislative bodies.*

RESULTS

The Department received no inventories from any of Maine's 485 towns & cities, 3 Indian reservations, and 10 counties. The operative words of "may develop" gave the option for municipalities to choose to develop and update road inventories, one that was not exercised by any town. In checking with the MMA Legal Office, they also hadn't received any detailed questions or input from towns on the subject.

As a matter of routine practice, the MaineDOT Community Services Division Office coordinates voluntary local road inventory reviews with town officials. Usually they are done in coordination with the PUC's E9-1-1 Bureau staff so that our road maps and inventories are aligned with each other. However, none of these reviews include an attempt to document old discontinued or abandoned ways.

By: Peter M. Coughlan, P.E.
MaineDOT , Director, Community Services Division