



March 13, 2023

Senator Eloise Vitelli  
3 State House Station  
Augusta, ME 04333

Representative Allison Hepler  
417 Montsweag Road  
Woolwich, ME 04579

Re: Legislative Doc. No. 461, proposed amendments after meeting with Attorney John Cunningham

Dear Senator Vitelli and Representative Hepler,

Thank you for your guidance in your email of February 8.

MARA believes the interchangeable use of the terms “private way” and “private road” needs to be clarified and proposes the below edits for your consideration. We have also been advised by our attorney consultant to expand our search in the MRS for uses of the term “private way” and are in the process of preparing Addendum 1 for possible use by the Office of the Revisor of Statutes in this regard.

This Addendum lists between 30 and 40 statutes amended to eliminate the term “private way”, replacing it, when necessary, with the terms “public easement” or “private road”. This list may be available in mid to late April.

In the amendments below we have used strike through text for language to be deleted and underline text for language to be added. We are also proposing clarification of the term “public easement.”

MARA recommends the following amendments to LD 461:

1. Page 1, Lines 4 and 5:

MARA believes this section would be improved by eliminating the current definition and replacing it with the definition used in our original proposal of September 8, 2022, as follows:

**10-A. Private way.** The term “private way” has been superseded by the term “public easement” as defined in 23 MRS 3021 (2) and 23 MRS 3022.

*[MARA Rationale: Our intent is to “sunset” the term “private way” and, when necessary, replace it with the terms “private road” or “public easement”. “Private way” currently has these two meanings in common use which may lead to confusion in interpretation. Section 3021 and section 3022 both establish the terms “private way” and “public easement” to be synonymous for the purposes of public access.]*

2. Page 1, Lines 6 through 8:

MARA recommends withdrawal of the definition of the term, “private road” and therefore the entirety of Lines 6 through 8.

6 ~~Sec. 2. 23 MRSA §1903, sub-§10-D~~ is enacted to read:

7 ~~10D. Private road. “Private road” means a privately owned and maintained road.~~

8 ~~over which the owner may restrict passage.~~

*[MARA note: We have been advised the term “private road” encompasses too broad a scope to define simply. Better to let municipalities develop their own definitions.]*

3. Page 1, Lines 9 through 17:

These lines were not in MARA’s original proposal. MARA recommends that all references to the term “private way” in Lines 9 through 17 be deleted (see strike through text below) so that there is consistency with the clarification made in 10-A. Private Way (as noted above).

9 ~~Sec. 3. 23 MRSA §1914, sub-§10~~, as amended by PL 2013, c. 529, §9, is further  
10 amended to read:

11 ~~10. Approach signs.~~ Any business or facility whose principal building or structure,  
12 or a point of interest, which is located on a private way ~~or private road~~ more than 1,000 feet  
13 from the nearest public way, or is not visible to traffic from the nearest public way, ~~private~~  
14 ~~way or private road~~, may erect no more than 2 approach signs with a total surface area not  
15 to exceed 100 square feet per sign. These signs are to be located outside the public right  
16 of-way limits within 300 feet of the junction of the public way and private ~~ways or private~~  
17 roads road.

*[MARA note: The above sections in LD 461 regarding approach signs are contained in the existing statute and were not suggested by MARA. We believe the revisions were made by the Office of the Revisor of Statutes and meant to bring existing wording in conformance with the intent of cleaning up the Private Ways/Public Easement wording.]*

4. Page 1, after line 23:

MARA recommends inserting **Sec. 4A** to include **23 MSRA §3101**, as amended by PL 2013, c. 198, §1 (AMD) and **§3103**, as amended by PL 2013, c. 198, §9 (AMD). Both §§ are further amended to read:

### **§3101. Call of meetings; maintenance; repairs**

#### **1. Definitions.**

B. "Repairs and maintenance" does not include paving, except in the following circumstances: (i) in locations where paving has been approved, at a meeting in accordance with subsection 5 below, by the affirmative vote of owners of at least three-fourths of all of the parcels of land benefited by the private road, public easement, or bridge and/or (ii) in locations where limited paving is demonstrated to be a cost-effective approach for fixing an erosion problem or to repair and maintain pavement existing as of July 1, 2007. "Maintenance" includes, but is not limited to, snowplowing, snow removal, sanding and ice control; grading and adding gravel and surface material; installing "reclaim" or grinding existing pavement for reclaim; installing, cleaning and replacing culverts; creating and maintaining ditches, drains and other storm water management infrastructure; creating and maintaining sight distances on curves and at intersections; and cutting brush, trees and vegetation in the right-of-way.

*[MARA note: There needs to be some way to allow a road association to pave (or at least to repair pavement) if that is what the members want to do. However, there also needs to be some way to protect those of modest financial means from being forced to bear the cost of installing and/or maintaining pavement. In the extreme, no one should have to choose between paying their assessment or selling their property. If the vote to approve paving is simply put to a majority vote, the legitimate needs of many may be trampled; the supermajority best still carefully consider the financial ability, as well as concerns about the environment and potential speed increases voiced by their dissenting neighbors.]*

### **§3103. Contracts for repair and reserve accounts**

The owners, at a meeting held under section 3101, may by a majority vote of the owners present and voting in person or by written proxy or absentee ballot authorize:

A. a contract to be made for making repairs to and maintaining the private road, ~~private way~~ public easement, or bridge by the year or for a lesser time, and/or

B. a reserve account or accounts to be created to hold funds to be used for future maintenance expenses that are anticipated to exceed the amount that would be appropriate to assess in a single year,

and may raise money for ~~that~~ either or both of those purposes pursuant to section 3101, subsection 5.

*[MARA note: The ability of road associations to assess for "reserve accounts" is necessary to have funds available for future repairs and maintenance expenses. The ability of the road association to assess for such funding best be clearly stated in the statute to avoid potential misunderstanding.]*

#### **5. Page 1, Lines 38, 39, and 40; Page 2, Line 1:**

MARA recommends extending the period a duly recorded notice of claim remains in force from 18 months to 6 years by striking the language used to describe the 18-month extension and adding the extended 6-year expiration period. The stark complexity and effort of following through on each of the "living organisms" created by the 18-month extension may be seen in the attached Addendum 2. Six years in force is the same interval allowed by statute for condominium owner associations in Maine.

After the sentence on Page 2, Line 1 ending with “~~claim is paid.~~” Add 2 new sentences as follows:

38 in the county’s registry of deeds prior to transfer. ~~A notice of claim filed in the registry~~  
39 ~~of deeds expires 18 months from the date of recording unless extended prior to the~~  
40 ~~expiration of a notice of extension of the notice of claim. A recorded notice~~  
of claim may be extended for additional 18-month periods until the claim is paid. A notice of claim filed  
in the registry of deeds expires 6 years from the date of recording unless extended prior to the  
expiration by recording of a notice of extension of the notice of claim. A recorded notice of claim may be  
extended for additional 6-year periods until the claim is paid.

*[MARA note: With the current 18-month notice of claim renewal interval, the number of recordings (and costs) increase substantially with time. For the long-term delinquent owner that many of us have encountered, annual meeting assessments, left unpaid for 10 years, will require 82 recordings, including the final releases, be placed in the county registry in order to keep the original notice of claim in force. Costs for all 82 filings would be between \$1444 and \$1804 depending on whether the releases were all filed separately or in various combinations.]*

6. Page 2, after Line 11:

MARA recommends inserting **Sec. 5A. 23 MRSA § 3105-A**, as amended by PL 2009, c. 501, §2, amended by deleting “private ways” and replacing with “public easements” as shown in Section 3105-A in its entirety below:

**§3105-A. Use of town equipment**

The inhabitants of any town or village corporation at a legal town or village corporation meeting may authorize the municipal officers of the town or assessors of the village corporation to use its highway equipment on ~~private ways~~ public easements within such town or village corporation whenever such municipal officers or assessors consider it advisable in the best interest of the town or village corporation for fire and police protection.

7. Page 2, Lines 12 through 16:

MARA recommends that Lines 12 -16 and §3107 be withdrawn in its entirety from LD 461.

12 ~~Sec. 6. 23 MRSA §3107.~~

13 ~~§ 3107 Standards~~

14 ~~A municipality shall establish minimum standards for private road construction in the~~  
15 ~~municipality. The standards must include a requirement for inspection of the road base by~~  
16 ~~the municipality prior to construction.~~

*[MARA note: MARA’s original proposal called for creating statutory standards for private road construction seen now in §3107. We have been advised that most municipalities have private road standards and that these standards should continue to be developed at a municipal level because of the great variability of use and situation of private roads.]*

8. Page 2, Lines 17 and 18. At Line 18, ending with the phrase, “is repealed.”, strike “repealed.” and amend as follows:

17 **Sec. 7. 29-A MRSA §101, sub-§58**, as enacted by PL 1993, c. 683, Pt. A, §2 and  
18 affected Pt. B, §5, is ~~repealed.~~ amended to read:

**58. Private way.** The term “private way” has been superseded by the term “public easement” as defined in 23 MRS 3021 (2) and 23 MRS 3022.

9. Page 2, Lines 19 through 21:

MARA recommends withdrawal of the definition of the term, “private road” and therefore the entirety of Lines 19 through 21.

~~19 Sec. 8. 29-A MRSA §101, sub-58-A~~ is enacted to read:

~~20 58-A. Private road. “Private road” means a privately owned and maintained road.~~  
~~21 over which the owner may restrict passage.~~

*[MARA note: We have been advised the term “private road” encompasses too broad a scope to define simply. Better to let municipalities develop their own definitions.]*

10. Page 3. Lines 12 to 22:

MARA recommends omitting the controversial term, “private ways” and adding the road maintenance information underlined below:

12 **Sec. 12. Municipalities to develop or update list of town ways, ~~private ways~~ maintained by the town**

13 **and private roads with 4 or more parcels maintained privately.** Each municipality shall develop or update publicly available

14 inventories relating to all ~~known~~ town ways maintained by the town ~~private ways~~ and private roads with 4 or more parcels maintained privately within its

15 borders and share such inventories with the Department of Transportation, Bureau of  
16 Maintenance and Operations by November 1, ~~2023~~ 2024. Boards of county commissioners,

17 landowners, road associations, surveyors and other interested parties may share relevant

18 information related to town ways maintained by the town ~~private ways~~ and private roads with 4 or more parcels maintained privately with municipalities and

19 the Department of Transportation, Bureau of Maintenance and Operations. By January 1,

20 ~~2024~~ 2025, the Department of Transportation shall provide to the Joint Standing Committee on

21 State and Local Government an update on the status of road maintenance inventories developed by  
22 municipalities under this section.

*[MARA note: We believe using road maintenance requirements to develop the lists will simplify and facilitate compilation of the lists. Private roads are proliferating statewide. The information will be*

*helpful for providing necessary funding to municipalities and appropriate legislation for private road associations and inhabitants. The November 1, 2023 (Line 16) and January 1, 2024 (Line 19) dates may give too short notice and MARA recommends identifying later dates (shown above). Or, if these are too far out, perhaps Dec 31, 2023 and Feb 28, 2024?]*

11. Page 3, Lines 23 through 28:

MARA recommends that Lines 23 through 28, Sections 13 and 14 be withdrawn from LD 461.

23 ~~Sec. 13. Guidance.~~

24

25

26

27 ~~Sec. 14. Private road construction standards.~~

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*[MARA note: MARA's original proposal called for creating statutory standards for private road construction seen now in §3107. We have been advised that most municipalities have private road standards and that these standards should continue to be developed at a municipal level because of the great variability of use and situation of private roads.]*

Thank you both for your consideration of the above and for your time and attention to this very important bill. Please let us know if you have questions or require more information.

Sincerely,

*Sandy*

Andrew L. Allen, Administrator

Maine Alliance for Road Associations

207-449-0362

Attachments: Addendum 2