

**STATE OF MAINE 131st LEGISLATURE
SECOND REGULAR SESSION**

**2024 REPORT OF
THE ABANDONED AND DISCONTINUED ROADS COMMISSION
TO THE
JOINT STANDING COMMITTEE ON STATE AND LOCAL
GOVERNMENT**

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TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	1
I. INTRODUCTION.....	2
II. COMMISSION PROCESS	
III. DISCUSSION.....	
A. Terms.....	
B. Priorities.....	
IV. RECOMMENDATIONS.....	
V. CONCLUSION.....	

APPENDICES

- A.** Authorizing Legislation: PL 2021, chapter 743
- B.** Authorizing Legislation: PL 2023, chapter 387 (LD 461)
- C.** Membership, Abandoned and Discontinued Roads Commission
- D.** Proposed Legislation
- E.** Commission Meeting Minutes
- F.** Terms Subcommittee Meeting Minutes
- G.** Priority Subcommittee Meeting Minutes
- H.** Public Hearing Written Comments

EXECUTIVE SUMMARY

During 2023 and 2024, the twelve-member Abandoned and Discontinued Roads Commission has met eight times as a full Commission and its Terms, Priorities, and Title 12 Subcommittees have met a half dozen times to carry out the duties established by PL 2021, chapter 743, “An Act to Establish the Maine Abandoned and Discontinued Roads Commission” and by PL 2023, chapter 387 (LD 461) “An Act Regarding Private Ways and Roads.”

Maine local road law, particularly the law of abandoned and discontinued roads, is complex and raises both legal and policy issues, several of which the Maine Legislature has directed the Commission to consider. Most recently, PL 2023, chapter 387, stated that the Commission “shall review the following terms in the Maine Revised Statutes: ‘private way’; ‘public way’; ‘private road’; and ‘public easement’” and “shall determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.”

The bullet points below summarize the Committee’s recommendations:

- **Private Way.** This term is defined and used interchangeably with “private road” in several Maine statutes, and yet these terms often have very different meanings, leading to confusion when working with those statutes. The Commission was unable to comprehensively review all of the many instances in Maine statutes in which “private way” is used and to reach agreement upon which instance truly means “private road” and which means “public easement.” However, it did agree upon a set of changes to the Title 23 road association provisions in order to begin the process of achieving greater consistency of definition and usage of both terms throughout Maine statutes.
- **Public Way.** No changes necessary.
- **Private Road.** The Commission began to consider repeal of the definition of “private way” at 29-A M.R.S. §101(58) and its replacement with the term “private road” along with several related changes to statutes that refer to “private road,” but is not ready to recommend these changes until it is reasonably sure this will not lead to unintended consequences.
- **Public Easement.** Title 23 creates slightly different sets of “public easement” users, which is difficult for law enforcement. The Commission considered amending Title 23 M.R.S. §3022 and the statutory abandonment law and placing regulations on the operation of ATVs on public easements in Title 12, but needs additional time to consider the effects of such changes.
- **Public Roadway.** The Commission recommends repealing the definition of the term “Public roadway” in 29-A M.R.S. § 2322(9), and replacing the term “Public roadway” in §2323 with “Public way.”

In addition, the Commission considered legislation to address priorities it had identified in its report to the Maine Legislature of February 1, 2023, including enactment of a limitation on property owner liability for maintenance of public easements where the municipality does not plow, maintain, or repair them, but the Commission did not approve a recommendation.

I. INTRODUCTION

The 130th Maine Legislature enacted PL 2021, chapter 743, “An Act to Establish the Maine Abandoned and Discontinued Roads Commission.” That law directed the formation of the Abandoned and Discontinued Roads Commission (the “Commission”) as a standing body that would consider specific topics, prioritize additional issues and matters of importance to listed parties, and would submit a report to the Legislature by February 1, 2023, and annually thereafter. Chapter 743 requested the Commission to consider a wide range of abandoned and discontinued road issues:

A. Consider the following:

- (1) Property owner liability, including personal injury, property damage and environmental damage liability resulting from public use of an abandoned or discontinued road;
- (2) Public easement retention over an abandoned or discontinued road, including the scope of permitted and actual public use;
- (3) Statutory terminology related to abandoned or discontinued roads; and
- (4) The statutory process for the abandonment or discontinuation of a road, including barriers to determining the legal status of a road;

B. For matters relating to abandoned and discontinued roads other than those described by paragraph A, prioritize matters for consideration by the commission by determining which matters related to abandoned and discontinued roads have a significant negative impact, qualitatively or quantitatively, on:

- (1) Owners of property that abuts an abandoned or discontinued road;
- (2) Owners of property accessible only by traveling over an abandoned or discontinued road;
- (3) Recreational users of an abandoned or discontinued road;
- (4) Members of the public;
- (5) Municipal, county or state governments; and
- (6) The physical integrity of an abandoned or discontinued road and surrounding land;

C. Develop recommendations on ways to address matters considered by the commission, including recommendations for statutory changes; and

D. Review legislation affecting abandoned or discontinued roads and provide information to

joint standing committees of the Legislature upon request.

The Commission followed this charge and met several times in 2022 and 2023 to prepare and submit a report by February 1, 2023 recommending potential statutory changes. The Commission presented that report to the Committee on State and Local Government, and in Spring 2023, also provided the Committee with its perspectives on LD 461, “An Act Regarding Private Ways and Roads.”

This year, the 131st Maine Legislature enacted PL 2023, chapter 387, “An Act Regarding Private Ways and Roads” (LD 461). This new law directs the Commission to review the use of the following terms in the Maine Revised Statutes: "private way"; "public way"; "private road"; and "public easement," and to “determine whether changes to current law would improve understanding and use of these terms throughout the Maine Revised Statutes.” The Commission is to submit a report by January 4, 2024 to the Joint Standing Committee on State and Local Government, which Committee may report out legislation relating to the report to the Second Regular Session of the 131st Legislature. Chapter 743 authorized the Commission to meet more than 6 times in 2023 to complete the work described in this section, notwithstanding Title 23, section 3036, subsection 5.

The Commission and its Subcommittees have held fourteen meetings since March 2023, and its work to date is summarized in this Report. As the Commission previously has noted, this is a complex area of law and policy, and there are wide disagreements within the Commission on some of the matters it is charged with reviewing and making recommendations upon. The Commission hopes the recommendations it could find agreement upon and the suggested legislation to implement them contained in Appendix D to this Report are helpful to the Committee and ultimately, to the Legislature.

II. COMMISSION PROCESS

A. Commission Meetings

1. First Meeting, March 24, 2023. Discussed and reviewed LD 461 Amendment “C.” The Commission made recommendations to the draft of LD 461 and testified before the State and Local Government Committee their recommendations on the update of language.

2. Second Meeting, August 3, 2023. Discussed the recently passed LD 461 and charge for the Commission, and created two subcommittees to work separately on issues so as to be able to streamline and focus on the terms and priorities of the and report back to the Commission. Continued discussion of Commission’s duties, including planning and scheduling of future meetings: to obtain background information and public comment; to evaluate public comment; prioritize issues and reach consensus on concerns, issues and potential resolutions of same; and to prepare and adopt report to Legislature.

3. Third Meeting, September 12, 2023 Discussed the progress and issues that the subcommittees had made, looked at the proposed Website from InforME.

4. Fourth Meeting, October 19, 2023. The Commission opened its public hearing and

left the public hearing open for written comment from the public and from municipal officials.

5. Fifth Meeting, November 30, 2023. Prioritized issues, and reached consensus on several concerns, issues, and potential resolutions of same.

6. Sixth Meeting, December 6, 2023. Review and revised draft Report to Legislature.

7. Seventh Meeting, December 19, 2023. Held hearing for public comment, reviewed and revised draft Report to the Legislature.

8. Eighth Meeting, January 3, 2023. Reviewed draft Report to Legislature and approved final draft Report to be submitted to the Legislature.

B. Subcommittee Meetings

1. Terms Subcommittee Meetings

a. **First Meeting, August 24, 2023.** Discussed and reviewed LD 461 and how to research MRSA Titles of where the terms Private Way, Public Easement, Private Road appear and conflict.

b. **Second Meeting, September 7, 2023.** Divided up Terms for Commissioners to review and to recommend changes.

c. **Third Meeting, September 26, 2023.** Commissioners agreed to work on putting forth changes to conflicting and confusing language and to recommend legislative language and changes.

2. Priorities Subcommittee Meetings

a. **First Meeting August 10, 2023.** Received public comments, discussed priorities of how to correct statutes that impinge on Abandoned and Discontinued Roads.

b. **Second Meeting, August 28, 2023.** Discussed and reviewed priorities that the Commission had looked at previously.

c. **Third Meeting, September 29, 2003.** Discussed Limited Liability for maintenance of public easements, Private Ways, Discontinuance and Abandonment Statute, access to roads even after discontinuance by the municipality, more time to file appeals for Discontinuance of Road and Alternative Dispute Resolution.

III. DISCUSSION

A. **Terms.** The Commission identified and reviewed laws throughout Maine's statutes that contain the terms the Legislature has asked it to review and consider as possible sources of any conflicts and confusion. The Commission also reviewed and considered similar terms to ensure these too did not contribute to any misunderstandings in Maine road law. The Commission's

discussion of these terms is summarized below; the reader may consult the Commission and Subcommittee meeting minutes in Appendices E, F and G for additional details.

1. **Way.** The definition for this term is at 29-A M.R.S. §101(92) in the State’s highway laws.

92. Way. "Way" means the entire width between boundary lines of a road, highway, parkway, street or bridge used for vehicular traffic, whether public or private.

By vote of 10 in favor, 1 opposed¹ and 1 absent, the Commission did not find any confusion or issues raised by this term, its definition, or its usage, and so recommends **no** statutory changes related to this term.

2. **Private way.** Throughout Maine statutes, this term is defined and used interchangeably with “private road,” but these terms have very different meanings, leading to confusion. One of the most helpful sets of changes that could emerge from this Commission’s work would be more careful and consistent definition and usage of both terms across the several statutes where they appear.

Probably the best description of this duality of definition and of the concept of “private way” in Maine statutes is found in the Maine Supreme Judicial Court’s opinion in *Franklin Property Trust v. Foresite, Inc.*, 438 A.2d 218 (Me. 1981). In that case, the question was who owned the way that served as an entrance to the Promenade Mall in Lewiston, Maine. Franklin Property Trust argued that it owned the land on which Foresite had placed a sign in fee, subject to Foresite’s nonexclusive right-of-way. Foresite claimed title because the land was a private way and Franklin Property Trust had failed to reserve title to it under 33 M.R.S. §§ 461 and 462. Under 33 M.R.S. § 461,

Any conveyance made prior to October 3, 1973 which conveyed land abutting upon a town or private way, county road or highway shall be deemed to have conveyed all of the grantor's interest in the portion of such road or way, which abutted said land unless the grantor shall have expressly reserved his title to such road or way by a specific reference thereto contained in said conveyance. This section shall not apply to any conveyance of a lot or lots by reference to a recorded plan.

Franklin Property Trust argued that this statute applied to “private ways” created by public authority and not to those created by private agreement. *Franklin Property Trust*, 438 A.2d 218, 221. The Law Court noted that the Massachusetts Supreme Judicial Court had explained that “private way” can be defined in different ways:

The words "private way" are susceptible of different meanings. . . . They commonly mean ways of a special type laid out by the public authority for the use of the public. Such "'private ways' are private only in name, but are in all other respects public." . . . The words [also] may well mean or include defined ways for travel, not laid out by public authority or

¹ Commissioner Black voted in opposition to all proposals, registering Maine Woodlot Owners’ deep concern for the unforeseen and unintended consequences of the proposed legislation.

dedicated to public use, that are wholly the subject of private ownership of the land upon which they are laid out by the owner thereof, or by reason of ownership of easements of way over land of another person. *Id.* at 221-222, citing *Opinion of the Justices*, 313 Mass. 779, 782, 47 N.E.2d 260, 262-63 (1943).

The Law Court in *Franklin Property Trust* then reviewed the background of the term “private way” and the legislative history and effect of changes in Title 23 M.R.S. on the meaning and usage of “private way.”

In Maine, pursuant to former 23 M.R.S.A. § 3001 (repealed effective July 29, 1976) [and replaced by 23 M.R.S.A. § 3021(2)] municipal officers were authorized to “lay out, alter or widen town ways and private ways . . .” 6. The rights of the public in these “statutory” private ways are the same as those in the public highway system. *Browne v. Connor*, 138 Me. 63, 67, 21 A.2d 709, 710 (1941). The term private way is used “not because the easement is the private right of the person benefited but rather to distinguish it from that class of ways the cost of which is met entirely from public funds.” *Id.*; *See Orrington v. County Commissioners*, 51 Me. 570, 573 (1863) (Kent, J., concurring, noting distinctions between town and private ways). The term private way has also been used in reference to other than the statutory private ways established under the former 23 M.R.S.A. § 3001. *See e.g.*, 29 M.R.S.A. § 944 (Rules of the Road, private road includes private road, a private way of any description, an alleyway or a driveway); 17-A M.R.S.A. § 104(5)(B) (use of force in defense of premises; premises includes lands, private ways, and any buildings thereon); *Richardson v. Richardson*, 146 Me. 145, 78 A.2d 505 (1951) (common law presumption that conveyance to side of highway includes grantor's interest in highway not applicable when land bounded by private way); *Hultzen v. Witham*, 146 Me. 118, 123, 78 A.2d 342, 344 (1951) (common easement of passage referred to as private way to distinguish from public way); *Graham v. Lowden*, 137 Me. 48, 50, 15 A.2d 69, 71 (1940) (distinguishes between common law and statutory nuisance on basis of whether right-of-way obstructed is a private way established by statute); *State v. Clements*, 32 Me. 279, 282 (1850) (road to mill which public had no right to use referred to as a private way) overruled on other grounds *Young v. Braman*, 105 Me. 494, 75 A. 120 (1909). *Id.* at 222.

The Law Court noted that when the Legislature amended the State’s roads and ways laws in 1976, “private ways” created under the former 23 M.R.S.A. § 3001 became “public easements” – a term that “eliminated and replaced” the term “private way.” *Id.* at 223-224. It held that 33 M.R.S. § 461 did not apply to the Franklin Property Trust/Foreside dispute, because it concluded “that the Legislature did not intend to include within the provisions of the Roads and Ways Act private ways created by private agreements such as the one over the Sign property.” *Id.* at 225. Other historical reviews of the term “private way” in Maine law may be found in *Browne v. Connor*, 138 Me. 63, 21 A.2d 709 (1941), *Brown v. Warchalowski*, 471 A.2d 1029 (Me. 1984), and *Fayette v. Manter*, 528 A.2d 887 (Me. 1987).

In sum, the term “private way” as defined in 23 M.R.S. § 3021(2) and used in the Title 23 Maine

road and highway statutes and in the Title 33 Roads and Ways Act means a way laid out and accepted by the municipality under State law in which the public has the same rights of access as it does in town ways, and is now referred to as a “public easement.” It also means the public right of access automatically retained upon discontinuance under the former 23 M.R.S.A. § 3001, now 23 M.R.S.A. § 3026-A, which also now is referred to as a “public easement.” This is the approach the Commission takes in its recommendations to clarify the use of the term “private way” in Maine statutes.

a. Title 23.

1) The Commission observes that the definition of “private way” at 23 M.R.S. §1903(10-A) illustrates the confusion caused by these road terms—it defines “private way” to include **both** roads with solely private rights of access, and roads with public rights of use:

10-A. Private way. "Private way" means a private road, driveway or public easement as defined in section 3021.

While this definition of “private way” is solely for purposes of the Billboard Act, this definition is at odds with usage of the term in Maine statutes since 1821, which does not include a solely private road or driveway. A change to 23 M.R.S. §1914(10) to repeal the use of this term and to change the requirement that on-premises signs be located outside the public right-of-way limits within 300 feet of the junction of the public way and private **roads**, driveways, or public easements as defined in section 3021 would achieve the desired end and would be consistent with the Commission’s overall goal of using these road terms more precisely and consistently. However, the Commission is not prepared to make a recommendation in this regard without further investigation of the possible impacts of this change.

2) The Commission also observes that the term “private way” as used in the road association statutes that permit the creation of a road association to maintain and repair ways (Title 23 M.R.S. Chapter 305, Subchapter 2) initially meant “private road” in 23 M.R.S. §§ 3101-3104, and “public easement” in § 3105-A. A more recent amendment to §§ 3101-3104 to add “private roads” to these statutes may have made the statutes more understandable, in that road associations clearly now are authorized to be created to repair and maintain private roads, but raises the question of what “private way” means in that context.

By vote of 8 in favor, 2 opposed, 1 abstention and 1 absent, the Commission recommends 1) replacing the term “private way” with “public easement,” 2) adding a definition for “private road,” and 3) permitting landowners with land abutting a public easement that the municipality does not repair or maintain to form a road association under this statutory road association structure; this would provide another option besides individual or informal private maintenance and repair efforts for those who rely on such a public easement for access. (Appendix D, Draft Proposed Legislation, Section 1)²

² Although voting in favor of these changes, Commissioner Manter raises the concern that allowing the option of establishing a road association to maintain a public easement that the municipality does not plow, repair, or maintain creates the possibility that a landowner on that road could be forced to pay for maintenance of the public easement. It is well established that under Maine’s “public purpose doctrine” cases that public funds cannot be spent for

b. Title 29-A.

The Commission also discussed, as part of the introduction of greater consistency and clarity to Maine road law, the concept of repealing the term “private way” in 29-A M.R.S. §101(58). This term and its definition undoubtedly are sources of confusion since the term mixes the concepts of private roads and public easements together:

(58) Private way. “Private way” means a way privately owned and maintained over which the owner may restrict use or passage and includes a discontinued way even if a public recreation easement has been reserved.”

This definition, with its combination of private road ownership, maintenance and control, and a public easement over which the public has “unfettered right of access” (*Fayette v. Manter*, 528 A.2d 887, n.1 (Me. 1987)) is internally contradictory and so the Commission considered recommending its repeal and replacement by a definition of “private road” as described below in this Report. However, the Commission is not prepared to recommend this change without further investigating and considering the many instances in which this term appears in Maine statutes to avoid unintended consequences.

3. Public way. The definition of this term for purposes of the State’s motor vehicle operation laws is found at 29-A M.R.S. §101(59):

59. Public way. “Public way” means a way, owned and maintained by the State, a county or a municipality, over which the general public has a right to pass.

The Commission considered this definition, which appears satisfactory 1) for its location, in the title that governs operation of motor vehicles on State, county and municipal roads and highways, and 2) for its function, to distinguish these ways from private roads where there is no public right to pass. (There is, however, an open question whether a “public easement,” where there is a public right to pass and municipal government has the right but not the obligation to maintain the way, is a “public way.”)

The Commission recognizes that the term “public way” is defined differently in a section of Title 23 and in other titles, but the Commission does not believe this causes any confusion because these other definitions are limited to the purposes of the particular title or chapter in which they appear:

- Title 23 M.R.S. §1903. A different definition of “public way” appears in the Maine Highway Traveler Information Act, or the Maine “Billboard Law” (at 23 M.R.S. §1903(11)), which reads:

11. Public way. “Public way” means any road capable of carrying motor vehicles,

private purposes, such as plowing, maintaining, and repairing private roads. See *Opinion of the Justices*, 560 A. 2d 552 (Me. 1989). Commissioner Manter asks whether the converse is constitutional – can State government require a person to spend private funds for a public purpose? She urges that the Maine Legislature declare this a “solemn occasion” and ask the Maine Supreme Judicial Court to provide its opinion on this question.

including, but not limited to, any state highway, municipal road, county road, unincorporated territory road or other road dedicated to the public.

This Title 23 definition is used only in the Billboard Law chapter (in 23 M.R.S. §1914 (10)); this chapter is devoted to the regulation of signs visible from public ways in order to prevent driver distraction, which is the reason for mentioning motor vehicles. (This definition, with its “dedicated to the public” language may be broad enough to encompass “public easements,” where there is a public right to pass, but the road is owned privately);

- Title 25 M.R.S. §2905. Department of Public Safety statutes, where “public way” is used to mean “all roads and driveways on lands maintained for the State Government at the capital area or other state-controlled locations in Augusta”;
- Title 34-A M.R.S. §1001(15). Department of Corrections statutes, where “public way” is used to mean a road or driveway on land maintained by the State at the correctional facilities; and
- Title 34-B M.R.S. §1001(6). Department of Health and Human Services statutes, where “public way” means a road or driveway on land maintained by the State at the state institutions under the jurisdiction of DHHS Behavioral and Developmental Services property.

For the reasons stated above, by a vote of 10 in favor, 1 opposed and 1 absent, the Commission does **not** recommend any statutory changes related to this term. No confusion or issues are raised by this term or its different definitions and usage in other titles, and so the Commission recommends no statutory changes related to this term.

4. Private road. As discussed above, the term “private road” is used in Maine statutes interchangeably with “private way,” when these actually are very different terms. A “private way” under Maine law references a way that is privately owned, but over which the public has rights of access and that the municipality may maintain. The Commission considers a “private road” to mean a way privately owned and maintained over which the owner may restrict or control use or passage.

As noted above, as part of the introduction of greater consistency and clarity to Maine road law, the Commission arrived at the concept of repealing the term “private way” in 29-A M.R.S. §101(58). This term and its definition undoubtedly are sources of confusion since the term mixes the concepts of private roads and public easements together:

(58) Private way. “Private way” means a way privately owned and maintained over which the owner may restrict use or passage and includes a discontinued way even if a public recreation easement has been reserved.”

The Commission considered replacing the definition of “private way” at §101(58) with this definition of the term “private road,” taken in part from the “private way” definition:

“Private road” means a way privately owned and maintained over which the owner may restrict use or passage.

(Commissioner Manter prefers this formulation of a “private road” definition:

“Private road” means a way that is privately owned and over which there are no public rights of access and passage.)

The Commission also considered employing this definition of “private road” to replace “private way” where it appears in various Title 17 and 17-A criminal statutes and in Title 29-A motor vehicle operation statutes, such as the following.

a. Title 17

1) 17 M.R.S.A. § 3853-C, “Trespass by motor vehicle,” uses the term “private way” as part of a prohibition against parking a motor vehicle within a way to prevent passage on that way, and along a public highway to prevent entry and passage to that way. Is this intended to protect access to and within purely private driveways and private roads, or also to and within “public easements” over which the public has a right of access and which the municipality has the right but not the obligation to maintain? The Commission considered that if it is the former, changing the term “private way” the term to “private road as defined in title 29-A, section 101(58),” but if it is the latter (as is likely, since the municipality has no authority to enforce parking on private roads) the changing the term “private way” in § 3853-C to “public easement” to avoid any confusion.

b. Title 17-A - Maine Criminal Code

1) 17-A M.R.S.A. § 104, “Use of force in defense of premises” uses the term “private way,” including it in subsection 5 as part of the “premises” a person may defend. The authority given here under this statute is to “A person in possession or control of premises,” indicating that the authority to use force is to defend private property. However, the term “private way” in Maine road and highway law in Title 23 is recognized as an antiquated term that was replaced by “public easement” over which the public has a right of access passage and which the municipality has the right but not the obligation to maintain – it is not purely private property. Therefore, the Commission considered changing the term “private way” in subsection 5 to “private road as defined in title 29-A, section 101 (58)” to ensure that the term does not include roads with public access rights and possibly public maintenance.

2) 17-A M.R.S.A. § 361-A, “Permissible inferences against accused” in subsection 2 establishes the inference that a defendant had stolen property if the defendant had “concealed unpurchased property stored, offered or exposed for sale while the defendant was still on the premises of the place where it was stored, offered or exposed or in a parking lot or public or private way immediately adjacent thereto” If the term “private way” as used here means a privately owned and maintained road and not the antiquated term equivalent to a “public easement” over which the public has a right of access and which the municipality has the right but not the obligation to maintain, then the reference to “private way” in subsection 5 perhaps should be changed to “private road as defined in title 29-A, section 101 (58).” If, however, the term “private way” as used here means a “public easement” over which the public has a right of access and

which the municipality has the right but not the obligation to maintain, then the reference to “private way” in subsection 5 could be changed to “public easement as defined in title 23, section 3021.”

c. Title 23.

1) As previously discussed in the “private way” discussion above, the Commission also reviewed the definition of “private way” at 23 M.R.S. §1903(10-A), which illustrates the confusion of these road terms by defining “private way” to include both roads with solely private rights of access and roads with public rights of use:

10-A. Private way. "Private way" means a private road, driveway or public easement as defined in section 3021.

This “private way” definition is solely for purposes of the Billboard Act. Repeal of §1903(10-A) and a change to 23 M.R.S. §1914(10) to require on-premises signs to be located outside the public right-of-way limits within 300 feet of the junction of the public way and **private roads**, driveways, or public easements as defined in sections 3021 and 3022 would achieve the desired end while eliminating the term "private way."

d. Title 29-A Motor Vehicles and Traffic

1) In Title 29-A M.R.S. § 2053, “Right of way private to public intersection,” subsection 4 provides as follows: “4. Private to public intersection. An operator of a vehicle entering a public way from a private way must yield the right-of-way to a vehicle on the public way or to a pedestrian. After yielding, the operator of the vehicle must proceed cautiously. For the purposes of this subsection, "private way" means any way or road access onto a public way, including an alley, driveway or entrance.” Because the term “private way” carries with it the concept of public rights of access and passage which are not consistent with the intent of this subsection, the Commission discussed changing “private way” to “private entry,” and adding that “For the purposes of this subsection, "private entry" means any way or road access onto a public way, from a private road, alley, driveway, or entrance.” to eliminate confusion.

2) In Title 29-A M.R.S. § 2063, “Bicycles, roller skis, toy vehicle and scooters,” the last sentence now reads: “This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the owner's private way or private property.” The Commission believes the intent is to allow the owner of a private road over which there is no right of public access and passage to control the operation of electric bicycles on that private road, and so considered changing the term “private way” with “private road.” Otherwise, if “public easement” were substituted for “private way” here, a private landowner would be permitted to block access to a way over which a public easement exists; generally, it is the municipality holding the public easement that has the right to regulate public access over that public easement, not an abutting private landowner.

3) In Title 29-A M.R.S. § 2356, “Operation of a vehicle exceeding registered weight,” authorizes imposition of vehicle weight restrictions on public ways. Subsection 6 now

exempts “private ways” from this authority (“6. Private ways exempted. This section does not apply to operating on private ways.”). However, this would exempt public easements from vehicle weight restrictions, and yet these are open to public rights of access and passage and may be maintained by a municipality. The Commission considered replacement of “private ways” with “private roads” to read as follows: “(6) Private roads exempted. This section may not be construed to limit the authority of the owners of a private road or the owner of private property to restrict or allow overweight vehicles on the owner’s private road or private property.”

Again, Commission members believe one of the most helpful sets of changes that could emerge from its work would be the consistent definition and usage of both terms across the several statutes where the terms appear, and so this was the intent of the Commission’s review here. However, after identifying several problem areas listed above resulting from inconsistent and perhaps erroneous use of the terms “private road” and “private way” in State statutes, the Commission is unable at present to make recommendations to eliminate those errors and inconsistencies for fear of generating new and unintended problems. The Commission will resume its consideration of these terms in the future.

5. Public easement. Public easements are created or arise through three major ways: termination of municipal town way rights (through discontinuance or statutory abandonment); reclassification of what formerly were called “private ways” provided to and accepted by municipalities to connect uncultivated lands to public ways; and most recently, creation of ways to provide recreational access. These are summarized in Title 23 M.R.S. § 3021. Municipalities and village corporations have the right, but not the obligation, to maintain public easements to whatever level the municipality’s or village corporation’s legislative body may vote. 23 M.R.S. § 3105-A.

Because of concerns over potential All-Terrain Vehicle (ATV) damage to public easements, particularly where the public easements are not maintained by a municipality or village corporation, but by abutters individually or in a road association, Maine’s Legislature amended the statutory abandonment law and 23 M.R.S. § 3022 to provide that public easements created thereunder are limited to rights of access by foot or motor vehicle as defined in Title 29-A M.R.S. § 101(42). Since neither an ATV nor a snowmobile is a “motor vehicle” as defined by Title 29-A, this means that neither ATVs nor snowmobiles may be operated on these specific public easements – those created by statutory abandonment that is completed after June 2021 (23 M.R.S. § 3028-A(5)(B)), and those laid out to connect cultivated land to public ways after September 1995 (23 M.R.S. § 3022). ATVs and snowmobiles, however, may be operated on other public easements.

Because this dichotomy is not an easy one for law enforcement to recognize and enforce in the field, the Commission considered repealing the language added to 23 M.R.S. § 3028-A(5)(B) and to 23 M.R.S. § 3022 to prohibit non-motor vehicle operation on those public easements. This would mean that ATVs could be operated on any public easement. Any problem with ATV operation on public easements would be resolved by a change to the ATV regulations in Title 12 that affects all public easements, no matter how or when created. In particular, the Commission examined a possible amendment to 12 M.R.S. § 13157-A(6)(A) to prohibit the operation of an ATV on a public easement without the permission of 1) the municipality if the public easement is repaired and maintained by the municipality, or if not, 2) the abutting landowners. However, the

municipality could only provide such permission or designation by action of its legislative body (town meeting or town or city council) after notice provided by and public hearing conducted by the municipal officers (select board or town or city council). Commissioners representing snowmobile and ATV groups and State natural resources agencies objected to this proposal, and the Commission will address the issue and alternative approaches in future meetings.

6. Public Roadway. Although not a term that the Legislature had listed for the Commission to address, its definition of “Public Roadway” and its single use in Maine law raises similar issues. Title 29-A M.R.S. § 2322, which is part of the Bicycle & Roller Skis Safety Education Act, defines (and uses in § 2323) the term “public roadway” as follows:

9. Public roadway. "Public roadway" means a right-of-way under the jurisdiction and control of the State or a local political subdivision of the State for the use primarily by motor vehicular traffic.

The term “public roadway” is not used in any other Maine statute. It does not seem to require a new term and definition when the Act could as easily employ the term “public way.”

Therefore, by a vote of 10 in favor, 1 opposed and 1 absent, the Commission recommends repealing the term “Public roadway” defined in 29-A M.R.S. § 2322(9) and replacing the term “Public roadway” in §2323 with “Public way.” “Public way” already is defined for purposes of Title 29-A in 29-A M.R.S. §101(59). (Appendix D, Draft Proposed Legislation, Sections 13 and 14)

B. Priorities

1. Limitation on Landowner Liability. One of the priorities identified by the Commission in its February 4, 2023 Report was creation of a statutory limitation on liability of landowners who maintain, repair, and/or plow a public easement where the municipality has not voted to do so. The Commission investigated this possibility and examined a draft based upon the limitation of landowner liability for recreational use of property found at 14 M.R.S. § 159-A as a basis for providing this limitation. However, the Commission’s motion to approve this recommendation failed on a tie vote of 5 in favor, 5 opposed, 1 abstention and 1 absent.

2. Protection of Public Easements. To preserve the usefulness of public easements for those who live along or use the property abutting public easements and to warn persons of the liability for damaging a public easement, the Commission discussed requiring municipalities to post a sign at the entrance to any public easement within its boundaries that reads: “Warning: Damaging a Public Easement With a Motor Vehicle Is a Class E Crime.” The Commission did not take a vote on this recommendation and may revisit it in the future.

3. Buyer/Seller Disclosures. The Commission was unable to reach this matter, but likely will take it up in the future.

IV. RECOMMENDATIONS

The Commission makes the following recommendations for changes to Maine statutes regarding these terms and priorities. Appendix D contains corresponding “Draft Abandoned and Discontinued Roads Commission Proposed Legislation” that places these recommended changes in legislative format:

A. Terms.

1. **Public Way.** The Commission recommends no changes.
2. **Private Way.** The Commission recommends replacing the definition of the term “private way” in 23 M.R.S. § 3101(1) with the definition of the term “public easement,” adding a definition of “private road,” and replacing the term “private way” where it appears in 23 M.R.S. §§ 3101-3104 with “public easement that is not maintained or repaired by the municipality,” and in § 3105-A, substitute the term “public easement” for “private way.” Additional changes to other statutes where this term appears were proposed but time did not permit the Commission to reach agreement on these changes.
3. **Private Road.** The Commission recognizes that the definition of this term and revision of its usage in several statutes is necessary to carrying out the Legislature’s charge, but is unable to make recommendations for amendments at this time.
4. **Public Easement.** The Commission recognizes there are problems with the different definitions of this term, but is unable to make recommendations for amendments at this time.
5. **Public Roadway.** The Commission recommends repealing the definition of the term “Public roadway” in 29-A M.R.S. § 2322(9), and replacing the term “Public roadway” in §2323 with “Public way.” (“Public way” already is defined for purposes of Title 29-A in 29-A M.R.S. §101(59).)

B. Priorities.

The Commission was unable to make recommendations on legislation to address priorities it had identified in its report to the Maine Legislature of February 1, 2023, such as Landowner Liability Limitations and Buyer/Seller Disclosures.

V. CONCLUSION

The Commission hopes this Report and these recommendations are helpful to the Legislature. As the Commission proceeds with its work, it hopes to offer additional suggestions for changes to Maine law to provide greater certainty and protections for landowners, road users, members of the public, the real estate sector, and State, local and county government officers. The Commission will review legislation affecting abandoned or discontinued roads and provide information to joint standing committees of the Legislature upon request. The Commission is prepared to assist the Legislature in this regard upon request.