Lake Camp Road Report

An Evaluation of Ways to Reduce the Impact of Camp Roads, Driveways and Boat Launches on Lake Water Quality

Maine Department of Environmental Protection
Report to the Maine Legislature

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Executive Summary

Maine has nearly 6,000 lakes, many of outstanding quality. Maine's lakes are important to the State economy, as well as for the health and well-being of those who live and recreate near them. But while the quality of many Maine lakes is high, a growing number are facing the threat of declining water quality. The Department, municipalities or other partnering organizations have put in place a number of programs to tackle the various sources of pollution to Maine lakes. However, few programs have been able to effectively address polluted runoff from the 12,000 miles of private camp roads and countless driveways and boat launches in lake watersheds.

As part of the 2008 Public Law Chapter 593 "Act to Protect Lake Water Quality", the Legislature required the Department to provide a report with strategies to address these pollution sources. In response, Department staff and stakeholders met six times between June and December 2008 to develop strategies to better address pollution from these land uses. The Department developed the following 11 recommendations based on substantial input from these meetings.

Strengthen and Encourage the Formation of Private Road Associations

1. The Department should work with partners to update *A Guide to Forming Road Associations* to clarify common legal questions.
2. The Maine Legislature should provide limited and appropriate statutory liability protection for road association Directors, Commissioners and volunteers.
3. The Maine Legislature should amend the Private Ways Law to clarify road association purpose, meeting procedures, duration and easements.

Establish Municipal Authority and Encourage Towns to Assist with Roads

4. The Maine Legislature should create enabling legislation to clarify conditions when municipalities may assist with camp road repairs.
5. The Department should promote the adoption of ordinances that allow municipalities to provide assistance for fixing camp roads.

Provide Financial Incentives to Road Associations

6. The Department should explore state bond funding as a source of cost-share assistance to road associations.

Develop Technical Resources to Help Individuals Identify and Fix Problems

7. The Department should promote the use of its Camp Road Water Quality Evaluation Form.
8. The Department should develop a fact sheet about boat launch sites that includes information about environmental impacts, permitting considerations, and stabilization options.

Conduct Public Education and Outreach for Residents and Road Associations

9. The Department should coordinate with partners to create a web-based clearinghouse and communication network for camp road resources.
10. The Department should provide road associations with training through the Nonpoint Source Training Center.
11. The Department should conduct an outreach campaign with road associations to emphasize the connection between erosion from camp roads and water quality.

Report Overview

Legislative Directive

Public Law Chapter 593, "An Act to Protect Lake Water Quality" requires the Department to submit a report to the Legislature by January 15, 2009, which evaluates strategies to diminish the impact of private roads, driveways and boat ramps on lake water quality. In addition to proposed strategies, the report must include:

- guidance to municipalities on appropriate road standards for the protection of lake water quality,
- a sample model ordinance, and
- an analysis of the constitutional issues regarding the public purpose doctrine raised by permitting a municipality to adopt an ordinance that includes an assessment of an annual fee on property owners for construction or maintenance of a private road to prevent degradation of water quality.

These three elements dealt with a controversial proposal to allow municipalities to assess a camp road impact fee that the Department included in its 2007 report to the Legislature. The Department decided not to recommend legislation specific to the impact fee idea due to the many concerns voiced by stakeholders and the growing sense that few, if any, municipalities would voluntarily adopt the impact fee. Nevertheless, these three elements have been included in this report since they are relevant to several of the recommended strategies.

Stakeholder Process and Public Opinion Surveys

The findings and recommendations in this report were developed by Department staff with substantial input from a Camp Road Stakeholder Group that met six times between June and December of 2008. The group included representation from state agencies, the Maine Municipal Association (MMA), the Maine Association of Conservation Districts, business interest groups, private road associations and lake protection interest groups. A list of participants is included in Appendix A. Meeting notes are available on the Department's web site at: http://www.maine.gov/dep/blwq/doclake/593.htm

The Department also conducted two surveys in the fall of 2008 to gather data on the public's attitudes toward camp road issues and on the attitudes and knowledge of camp road association members. Four focus group discussions were held in Winthrop, Portland and Raymond with 43 participants living on different lakes in each region. The Department also included four questions about camp roads in a statewide phone survey of 425 randomly selected adults. The information collected from both surveys was used to evaluate and refine the strategies in this report. (Summary reports on the phone and focus group surveys are in Appendix J, and the full reports are at http://www.maine.gov/dep/blwq/doclake/593.htm).

Report Focus and Definitions

The Legislature charged the Department with developing recommendations on ways to address pollution sources from camp roads, driveways and boat launches. For the purposes of this report, the Department will use the following definitions for each:

Camp Road - Private roads that are typically narrow and unpaved, servicing lakefront properties. The terms camp road and private road are used interchangeably in the report.

Driveway - This report follows the Maine Shoreland Zoning Guidelines definition to make the distinction between driveways and camp roads. A driveway is a vehicular access-way less than five hundred (500) feet in length serving no more than two lots or two single-family dwellings or one two-family dwelling.

Boat Launch – A private, noncommercial boat access to a lake, which could serve a single property or be a deeded right-of-way for multiple properties.

Due to the complex nature, pervasiveness and severity of the pollution problems associated with camp roads, much of the discussion and strategies covered by the stakeholder workgroup and included in this report relate specifically to camp roads. However, due to their similarities, several recommended strategies also apply to driveways, and two strategies apply to boat launches.

Overview of Camp Road, Driveway and Boat Launch Issues

Lake Water Quality and Camp Roads

Protection of lake water quality depends on how the land around it is managed. In watersheds that have development, disturbance of soil material from human activity often leads to erosion which results in sediment washing into the lake. Phosphorus attached to the sediment contributes to declining water quality.

Improper construction and maintenance of camp roads has long been recognized as a significant issue in lake watersheds. While other development activity, such as building

construction, is often a source of soil erosion, building sites are eventually stabilized and pose less of a threat over the long run than roads, which are often subject to on-going problems. Camp roads contribute a disproportionate amount to lake water quality problems due to their proximity to the water and due to their sub-standard construction, which is largely because most camp roads were originally intended to only provide seasonal access.

Typical problems identified on camp roads through Department-sponsored watershed surveys include erosion of the road surface, road shoulders and ditches; unstable and undersized culverts; poor road surface material; and inadequate ditch size or lack of ditches. Many of these camp road problems can also be found on state and municipal roads. However, while there are existing programs to assist municipalities with proper construction and maintenance of local roads, mainly offered through the Maine Department of Transportation's Local Road Center, there are fewer resources available to property owners on private roads.

Typical Problems on Driveways and Boat Launches

Driveways share many of the same problems with camp roads. Driveways often have eroded driving surfaces and shoulders; lack proper surface material; and convey polluted runoff directly into the lake or adjacent camp roads. Since driveways are typically shorter than camp roads, solutions to these problems are usually less expensive and easier to coordinate since there is often only one landowner involved.

Eroded, rutted driveway

Eroded boat launch

Due to the nature of their design and purpose, boat launches also tend to direct runoff into lakes. Typical problems observed on boat launches in watershed surveys include surface erosion, poor surface material and shoreline erosion. Even lakes with public boat launches commonly have several, if not dozens, of private launches.

Existing Resources and Programs

The Department and other groups have wrestled with the numerous issues surrounding camp roads, driveways and boat launches for many years and have developed several resources to help communities and landowners address these problems. The following programs and resources are the key tools currently in place to assist with these issues.

Nonpoint Source Grant Program (Section 319 of the Federal Clean Water Act)

The Department administers a competitive grants program using federal grant money from Section 319 of the Clean Water Act. Grants help watershed groups assess water

quality problems and take action to reduce or remove nonpoint sources of water pollution. Oftentimes, 319 grant projects allocate a portion of their cost sharing funds to fix camp roads, driveways, boat launches and other problem sites. Watersheds with two or more phases of 319 grant projects have made significant progress in stabilizing these pollutant sources and teaching local residents the importance of long-term maintenance.

Despite the success of this program, it is not realistic to expect that 319 grant funds can have a statewide impact on camp road, driveway, or boat launch problems. The grant process is highly competitive, and it can typically only fund about 10 to 15 new projects each year. Large increases in federal funding are not viewed as likely since funding levels have decreased over the past five years, despite lobbying efforts and strong support from Maine's delegation. More information about the 319 grant program can be found in the Department's 2007 Annual Report at www.maine.gov/dep/blwq/docgrant/319_files/reports/index.htm.

Camp Road Maintenance Manual

The Department and Kennebec County Soil and Water Conservation District (SWCD) produced a 55-page Camp Road Maintenance Manual for maintaining and improving camp roads. The manual provides camp road owners and contractors with practical tools and detailed diagrams on ditching, crowning, road surface materials and other road maintenance practices. Although the manual has been widely distributed and updated three times over the past decade, most participants at the camp road focus groups were not aware of the manual. Participants expressed strong interest in receiving copies to share with their road association leaders. The manual is online at www.maine.gov/dep/blwq/docwatershed/camproad.pdf.

A Guide to Forming Road Associations

With Department 319 funding, the York County SWCD produced a 55-page Guide to Forming Road Associations as a resource for private road residents who would like to improve planning for, and implementation of, successful road maintenance programs. The manual describes the different types of road associations, legal issues and steps to forming associations (including a CD with templates for bylaws and forms). This manual has also been very popular, although the frequent changes in the Private Ways Law have made it difficult to keep readers updated about the changing legal issues. The manual is available online at www.maine.gov/dep/blwq/docwatershed/roadassociation.htm.

Department Enforcement through the Erosion and Sedimentation Control Law

The Maine Erosion and Sedimentation Control Law (ESC Law) became effective in 1997. Initially, the statute only applied to new development activity. However, it was later amended to require, in part, that:

> "A person who owns property that is subject to erosion because of a human activity before July 1, 1997 involving filling, displacing or exposing soil or other earthen materials shall take measures in accordance with the dates established under this paragraph to prevent unreasonable erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. Adequate and timely temporary and permanent stabilization measures must be taken and maintained on that site to prevent unreasonable erosion and sedimentation. This paragraph applies on and after July 1, 2005 to property that is located in the watershed of a body of water most at risk as identified in the department's storm water rules adopted pursuant to section 420-D and that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8. This paragraph applies on and after July 1, 2010 to other property that is subject to erosion of soil or sediment into a protected natural resource as defined in section 480-B, subsection 8."[1]

With the amended language, chronically eroding sites, including camp roads, have become subject to the erosion control requirements. The Department has used this law as part of its outreach campaign to get owners of property that is subject to on-going erosion, including wash-outs in storm events or spring run-off, to take responsibility to repair and maintain the property.

In its January 31, 2008 report to the Maine Legislature, the Department reported the following recommendation: "Identify lake watersheds where the Department should increase its effort to get problem sites fixed using a combination of incentives, including 319 grant funding; technical assistance; education and outreach; and compliance and enforcement action." The need for additional enforcement was again identified as a pressing need at Camp Road Stakeholder meetings.

Since then, the Department has initiated a pilot effort at camp road enforcement by evaluating roads[2] located in several southern Maine communities. In January 2009, the Department will be notifying property owners on two roads that their roads are not in compliance with Maine's Erosion and Sedimentation Control Law and will request that they submit a plan for correcting the deficiencies by the end of June 2009. If there is not a willingness by the property owners to engage with the Department on these problem sites, the Department will begin enforcement proceedings. The Department will publicize any resulting activity taken by either the landowners to achieve compliance, or by the Department through enforcement action. The Department will utilize this approach in the future where appropriate and as resources allow.

[1] Title 38 MRSA §420-C.
[2] While the current focus of this recommendation is aimed at camp roads, driveways and boat launches with chronic erosion problems in Most-at-Risk lake watersheds could also be pursued through this approach.

Maine Alliance for Road Associations

The Maine Alliance for Road Associations (MARA) was formed in 2005 to serve as a clearinghouse for information of interest to private road associations and to represent the interests of private road associations in the Legislature. This small, volunteer-run organization currently maintains a website, www.maineroads.org, which includes links to various informational materials, including a manual intended to clarify the process of forming a road association under the Private Ways statute. Although this organization is not widely known around the state, it could potentially serve in a leadership role in carrying out several of the outreach strategies outlined later in this report.

Identified Needs and Associated Strategies

The Department recommends several strategies to address the complex legal, technical and funding problems associated with camp road, driveway and boat launch erosion. Recommendations are intended to provide incentives and tools to road associations, remove identified barriers to progress, and raise awareness about the impact of roads on water quality. These ideas were discussed at length during the Camp Road Stakeholder meetings, and several of the ideas were also provided by participants in the camp road focus groups.

Strengthen and Encourage the Formation of Private Road Associations

There are over 12,000 miles of private roads in Maine's lake watersheds. Many of these roads, especially in rural areas with only seasonal residents, have no organizational structure in place to address road problems. If maintenance occurs at all, the work and associated costs might fall on the shoulders of the year-round residents, someone that owns a piece of heavy equipment, or the person unfortunate enough to own the last camp on the road. Other roads have an informal decision-making structure with one person taking charge of maintenance and residents chipping in funds to cover the expenses. While these arrangements may keep roads drivable, they most likely lack the leadership and funding to address larger problems that can impact lake water quality.

The Department has a strong interest in promoting more formal road associations. Even though they might not recognize water quality protection as a primary goal, the structure and leadership provided by a formal road association is the first step to an effective camp road maintenance program. More and more camp road residents are also recognizing these potential benefits and are taking steps to become formal road associations. Although new roads might be eligible to become nonprofit corporation road associations similar to homeowner associations, most road associations are formed under the provisions in the Private Ways Law 23 MRSA §3101 to 3105 (Appendix B). This law outlines the process that needs to be followed to form a road association, make decisions and assess fees, and provides the legal authority to collect dues.

Recommendation #1

The Department should work with partners to update *A Guide to Forming Road Associations* to clarify common legal questions.

Although the Private Ways Law describes how to form and run a road association, it is a relatively complicated process. Camp Road Stakeholder participants emphasized the value of the Department's publication, *A Guide to Forming Road Associations*, in navigating the complicated legal requirements. Despite its utility, stakeholders identified several parts of the manual that could be updated and clarified to further help road associations. For example, several parts of the manual lack clear guidance and instead recommend contacting a lawyer for advice. The uncertainty and prospect of legal expense associated with such statements was identified as a barrier to individuals contemplating forming a road association. The Department should work with partners to update the guide to address as many of these legal questions as possible. The Department should also update outdated statutes in the manual and provide lists of available resources. The updated manual should be posted on the Department and other appropriate websites (see Recommendation #9) and updated as statutes affecting private roads change.

Recommendation #2

The Maine Legislature should provide limited and appropriate statutory liability protection for road association directors, commissioners and volunteers.

Statutory road associations are led by Commissioners or Boards elected at annual meetings. Oftentimes, the volunteers serving in these positions need to deal with landowners who are unhappy about paying fees or about the work done on the road. The threat of lawsuits filed against the road association and the leaders themselves has been identified as a major problem that prevents people from serving in these roles or forming a road association in the first place.

One way to allay these liability concerns and encourage the formation of road associations is to provide limited statutory immunity for road association directors, commissioners and volunteers (See Appendix C for proposed draft language). Note that this proposed immunity would not extend to the road association itself, which could still be brought to court. Road associations could opt to purchase liability insurance to protect the road association's assets, but directors and commissioners would not need to worry about individuals filing suit against them personally. This statutory protection would also ensure that more of a road association's limited budget would go to actual road improvements, instead of director's insurance coverage.[3]

[3] The suggested language in Appendix C is currently found at 14 M.R.S.A. SEC. 158-A(2), regarding charitable immunity, and has been reviewed by an Office of Program and Legislative Affairs staff member. The language, however, warrants additional discussion to ensure that any grant of immunity is not overly broad and is applicable only to activities associated with performing the work of an association and not applicable to statutory violations of environmental laws or inappropriate instances of gross negligence. Thus, in the context of road associations, it may make sense to include a clarifying clause (proposed as sub-section 3) that, notwithstanding the immunity provisions set forth, there is no immunity from enforcement actions for violations of statutory environmental laws.

Recommendation #3

The Maine Legislature should amend the Private Ways Law to clarify road association purpose, meeting procedures, duration and easements.

A subcommittee of the Camp Road Stakeholder group was formed to examine the existing Private Ways Law (23 MRSA §3101 – 3105). The committee's goal was to clarify the law and make it easier for landowners wanting to form an association to understand the process (see Appendix B for proposed changes). In order to clarify the law's purpose, the group suggested that a preamble be added with the intent that it will help to encourage more road owners to engage in the association formation process. With regard to meetings of an association, the recommendation is to clarify that one meeting can be called to form the association, choose a commissioner or Board, develop by-laws, and address road maintenance and repair. Current language does not make this clear, which might discourage landowners from organizing. Sections 3101and 3102 would be modified to add this clarifying language. Based on recommendations from the sub-committee that the meeting notification process is reasonable using U.S. Mail, the Department proposes to modify the notification requirements of this section to eliminate posting a notice.

Another concern raised by the sub-committee was the confusion as to whether or not an association formed under 23 MRSA §3101must be re-formed each year. Although this may appear to conflict with the intent of the legislation, the language is not clear and the Department recommends that it be modified in § 3101.5. Finally, the use of easements for road repair and maintenance work is not formally addressed in the law. The Department recommends that the law be revised to clearly state that easements can be used and that easements should specify maintenance and recording requirements.

Establish Town Authority and Enable Towns to Assist with Private Roads

In the Department's recent statewide phone survey[4], stakeholder meetings and focus groups, there was consensus that private landowners and road associations bear the ultimate responsibility for fixing their roads. However, there is also a public interest in protecting lake water quality because Great Ponds are owned by the people of Maine; lakes are important to Maine's state and local economies; and several studies have documented the connection between property values and water quality[5]. For these reasons, most participants agreed that state and local entities can and should play some role in supporting and encouraging landowners and road associations to fix erosion problems on camp roads to keep lakes clean. This section discusses issues surrounding municipal authority and provides draft ordinances that municipalities can adopt to help address local camp road impacts.

[4] In the statewide phone survey, 73% of the 425 respondents felt that owners should be responsible for fixing or preventing erosion on privately owned dirt roads.

[5] Several studies are summarized in the Department's article, *More on Dollars and Sense: The Economic Impact of Lake Use and Water Quality*, which is available online at http://maine.gov/dep/blwq/doclake/econlong.pdf

The Public Purpose Doctrine

2007 Public Law Chapter 593, Section 3, requires "in consultation with the Office of Attorney General, an analysis of the constitutional issues regarding the public purpose doctrine raised by permitting a municipality to adopt an ordinance that includes an assessment of an annual fee on property owners for construction or maintenance of a private road to prevent degradation of water quality." Although the Camp Road Stakeholders recommended against pursuing the impact fee proposal, there was still strong interest in identifying options for municipal involvement, which would require similar analysis.

The public purpose doctrine requires that an expenditure of public funds must serve a public purpose. The Office of the Attorney General has provided an analysis (Appendix D) of the constitutional issues raised by the Department's proposed legislation to allow municipalities to assess an impact fee on private roads. The analysis includes an examination of the 1989 Law Court opinion pertaining to the expenditure of public funds for the maintenance of private roads for emergency vehicle access. The justices concluded that a public expenditure on private roads for this reason did not serve a public purpose because the public did not have the legal right to travel on the roads and could be barred from them. In the case of expending public funds for road improvements to protect lake water quality, the analysis from the Attorney General states that a legislative finding "concluding that protecting water quality benefits the public would be consistent with prior legislative findings recognizing the importance of protecting water to promote the health, safety and general welfare of the public."[6]

The analysis states that a "second and more difficult consideration with respect to the public purpose doctrine is whether there is a rational basis to conclude that improving roads will protect water quality."[7] The analysis points out that not all roads are equal in their contribution to water quality degradation and not all improvements will have the same benefit to water quality.

Based on this analysis, the Department concludes that road improvements that will significantly reduce the amount of sediment being carried to a lake in runoff would have significant benefit to lake water quality. The Department further concludes that the use of the proposed Camp Road Water Quality Evaluation Form (Appendix I) would allow a municipality, the Department or a trained 3rd party to evaluate whether expending public resources to fix a private road would meet the test of providing a public benefit through protection or improvement of water quality.

As noted in the section above on "Existing Resources and Programs," the Department does have enforcement authority through its administration of the Erosion and Sedimentation Control (ESC) Law, and is using its authority in several on-going cases involving camp roads. However, the Department staff recognizes that each road has different circumstances, particularly with respect to ownership and that pursuing enforcement of the ESC Law in some cases could cost more in resources than the cost

[6] Memorandum to Donald T. Witherill, DEP from Amy B. Mills, AAG dated October 17, 2008, page 3.
[7] *Id.,* page 4.

to fix the erosion problem. Therefore, the Department concludes that the expenditure of public resources for the public benefit of water quality protection or restoration will provide for more roads being fixed than would occur be relying solely on enforcement authority.

Recommendation #4

The Maine Legislature should create enabling legislation to clarify conditions when municipalities may assist with camp road repairs.

According to members of the Camp Road Stakeholders Group, since the 1989 Law Court opinion regarding use of public funds on private roads, local assistance has not been available on the vast majority of private roads. While protecting lake water quality may be viewed as sufficient public benefit to warrant such assistance, without clear legislative authority to use public resources, few if any towns are expected to take a risk, even if there is local interest in doing so.

The Department recommends that legislation be enacted to provide municipalities with clear authority to invest public resources for the purposes of improving or protecting lake water quality when such expenditure would result in improvement to a private road. Draft statutory language is provided in Appendix B (§3105 for use of town equipment) and Appendix E.

Recommendation #5

The Department should promote the adoption of ordinances that allow municipalities to provide assistance for fixing camp roads.

With the proposed enabling legislation, municipalities would have the ability to help improve camp roads that impact lake water quality. The Department has included in this report three draft ordinances (Appendices F, G, H) that offer different ways for towns to provide assistance. The Department should further refine these ordinances and then promote the adoption of these ordinances through the outreach strategies proposed later in this report.

Draft Ordinance - Municipal Assistance with Private Roads

Municipalities could choose to enact an ordinance that parallels the enabling legislation. The ordinance would establish a Lake Protection Fund, identify the waterbodies eligible for assistance, and outline the criteria that would need to be met to allocate funding to fix camp roads. See Appendix F for the draft ordinance.

Draft Ordinance - Town Extended Fee-Based Service on Private Roads

Even with the legal and constitutional questions resolved, many towns will remain reluctant to incur the expenses associated with providing additional services to private roads. Another option, which could be pursued separately from providing publicly funded services, would be for a town to receive payment for services provided on a private road. According to the MMA's Municipal Roads Manual (1999), this type of agreement should be spelled out explicitly in a contract between the town and road association. All expenses, including staff direct wages and indirect costs, equipment use and construction materials, should be fully reimbursed to the town. The contract

should also include liability provisions and clarify that the private road work will take place only after public road priorities are completed. This report provides a draft ordinance in Appendix G that towns can adapt and incorporate into an existing Road Ordinance to formally adopt this type of arrangement.

Sample Ordinance - Town Adoption of 'Class B' Camp Roads

Most, if not all, municipalities have ordinances in place that outline a process and standards by which new and existing private roads can be formally accepted as town roads. These ordinances list specific standards (e.g., right-of-way, road surface and shoulder widths, thickness and type of road material etc.) that must be met in order for roads to be considered for town adoption. Since most existing camp roads tend to be narrow and lack sufficient base material, it would be very difficult and prohibitively expensive to achieve existing standards. In many cases, widening the travel surface would entail taking away some private land. Since many camp lots are small to begin with, this prospect would likely generate significant opposition.

Existing town standards for roads address local concerns for safety and long-term maintenance. While appropriate for new roads being built, they are not always practical for addressing the concern for water quality effects from camp roads. The Town of Acton added a second class of roads to their Road Ordinance with standards more readily achieved by typical camp roads. The creation of this 'Class B' road standard has since served as an incentive for landowners to make improvements on their roads. Several informal and formal road associations are working to bring their roads closer to the 'Class B' standards in the hopes that they will eventually be able to formally petition the town to adopt the road. This report recommends more extensive use of this approach and includes draft language that a town could voluntarily incorporate into their existing ordinance (See Appendix H).

Although this is not viewed as a widespread solution, the idea of improving camp roads with the goal of becoming town roads would appeal to some landowners and towns. The idea was met with mixed reactions from the participants in the Department's four camp road focus groups. Many people liked having control of their roads or immediately deemed that it would be impossible for their roads to meet any formal standards. Other people expressed interest in working toward a standard over several years so they would not have to deal with the many frustrations of running a road association and maintaining their road. They also liked the possibility of receiving additional town services such as school bus and trash pickup if they lived on a town road.

The Department expects that some towns would be interested in adopting an adapted version of this sample road ordinance, especially where the local economy and tax base depends on the quality of the lakes and ponds. Since camp road erosion is a significant source of pollution, this ordinance would be a way a town could motivate individuals to fix their roads. There would undoubtedly be concerns about how many roads a town could afford to adopt. The 'Class B' road standards could be modified to strike the right

balance with local camp road conditions to provide a realistic incentive yet not overwhelm town resources.

Towns may well be nervous about taking on the expenses associated with the care of additional miles of town roads. Theoretically, when towns adopt 'Class B' roads, the roads should be upgraded to the extent that the primary expenses would be regular maintenance, and not expensive repairs and upgrades. Capital upgrade costs would be partially offset by payments from the Urban-Rural Road Initiative Program[8].

Provide Financial Incentives to Road Associations

For many years, the Department has provided financial assistance to watershed groups, including lake associations, through its Nonpoint Source Grant Program, authorized and funded under Section 319 of the federal Clean Water Act. Under this program, cost share grants (40% non-federal match required) have been made available for property owners to fix eroding sites, including camp roads, driveways, and boat launches. This work is typically a component of a "watershed implementation" grant that is funding an array of activities for the purpose of eliminating the most significant nonpoint sources of runoff pollution. The Department views this program as very successful. However, many Nonpoint Source pollution funding needs exist around the state and the 319 Program can only provide assistance for a very small percentage of them.

The cost of properly repairing or upgrading a sub-standard camp road is usually very expensive, and is a major deterrent for property owners who live on the road. Property owners typically indicate they are concerned about protecting lake water quality, but getting all of the property owners on a camp road to collectively agree to costly repair or upgrade work has proven difficult. Several participants in the camp road focus groups had benefited from 319 grants and they strongly agreed that cost-sharing incentives had helped their road associations focus on water quality issues and slowly improve their roads.

Recommendation #6

The Department should explore state bond funding as a source of cost-share assistance to road associations.

Great Ponds are state-owned, water quality standards are state-established, environmental protection is primarily a state function and the benefits of clean water are enjoyed by the general public, not simply lakefront property owners. Accordingly, the Camp Road Stakeholders felt that it is appropriate to use state-level resources to protect and improve water quality. Given the reality of the General Fund, bond funds appear to provide the only viable opportunity to devote state funds to this issue. A majority of Camp Road Stakeholders expressed strong support for additional cost-share

[8] See PL 1999, c. 473, effective July 1, 1999. Under this Program, municipalities receive regularly scheduled payments from DOT for the improvement of public roads. Rural Road Initiative funds are distributed at the rate of $600 per year per lane mile for all rural state aid minor collector roads and all local roads located outside urban compact areas, except that the rate is $300 per year per lane mile for seasonal town ways (23 MRSA §1803-B(1)(A)). – Excerpt from MMA Municipal Roads Manual (1999).

funding support through a State bond referendum, which would target projects to improve lake water quality.

In a statewide phone survey in October 2008 (Appendix J), 73% of respondents stated the primary responsibility for fixing camp road problems lay with the owners. However, 65% of respondents also indicated that they would support a bond to provide matching funds to fix erosion problems on camp roads. If funded, the proceeds of bonds could be expended under the direction of the Department through a competitive grants program modeled after the 319 grant program. Road association grants could be subject to long-term maintenance provisions and a minimum 50% non-State funding match requirement. Preliminary estimates indicate that a bond in the range of three million dollars would meet the initial demand for pollution control projects on camp roads in Maine's lake watersheds.

The Department recognizes the need for additional funding support beyond what is currently available through the 319 grant program. However, the Department must evaluate this need against needs in other environmental programs it administers. As of the writing of this report, the Department has not made a final determination as to what its funding priorities will be in the coming year, nor has a determination been made as to how much total funding would be requested. For this reason, while the Department does support stakeholders' recommendation of exploring the possibility of state bond funding, it does not take a formal position on this recommendation for the current legislative session.

Develop Technical Resources to Help Individuals Identify and Fix Specific Issues

The Department's *Camp Road Maintenance Manual* and other publications provide technical guidance on the installation and maintenance of various Best Management Practices. However, these tools do not provide readers with enough direction to identify and prioritize specific needs and actions on their roads and boat launches. The following publications will help bridge this gap between information and action.

Recommendation #7

The Department should promote the use of its Camp Road Water Quality Evaluation Form.

Most road associations coordinate and carry out very basic services such as biannual grading, filling potholes and sometimes plowing. Large storms might cause major road failures that force road associations to repair washouts or replace failed culverts to keep roads in safe condition. Although some of these activities might help protect water quality as a byproduct, it is not typically the primary goal. A set of camp road water quality standards, in the form of a road evaluation form, has been needed to draw attention to specific water quality issues and needs on individual roads. The Legislature required the Department to develop standards as part of this report.

The Camp Road Water Quality Evaluation Form was developed by the Department with assistance from members of the stakeholders group to objectively evaluate the impact

of a road or driveway on water quality (Appendix I). The standards were field tested on several different roads and modified accordingly. The evaluation form was designed to provide road associations with a tool to assess their roads with regard to water quality impact and help identify sections of the road needing the most work. With some training, road associations could use the form to figure out how to solve the problems. Qualified professionals could also use the standards to develop a more formal plan. Towns or the Department could also use the assessment as an objective way to determine eligibility for receiving public cost sharing funds (Recommendations 5 and 6). The Department will be offering training on use of the scoring protocol, and estimates a trained person could evaluate a mile of road in 1.5 hours.

Recommendation #8

The Department should develop a fact sheet about boat launch sites that includes information about environmental impacts, permitting considerations, and stabilization options.

The Department does not permit new private boat launches and only allows limited improvements to existing private launches. The Department should create a publication to provide specific guidance about minimizing impacts from boat launches. The publication should highlight the impacts of boat launches on lake water quality, review permitting considerations and outline stabilization and restoration options. Such a publication could be included as a fact sheet in the Department's *Conservation Practices for Homeowners* series, which is designed for use by landowners, LakeSmart evaluators and partner organizations.

Conduct Public Education and Outreach for Camp Road Residents and Associations

The Department's two publications, *Camp Road Maintenance Manual* and *Guide to Forming a Road Association,* are the cornerstones of the Department's resources for camp roads. Additional outreach is needed to get these and other tools in the hands of camp road residents and road association leaders. A broader campaign is also needed to underscore the connection between lake quality and camp road erosion.

Recommendation #9

The Department should coordinate with partners to create a web-based clearinghouse and communication network for camp road resources.

Although there are several agencies and groups working on camp road issues, there is a general lack of knowledge by camp road owners about the resources available and a lack of information exchange between road associations. In fact, very few of the 43 focus group participants had even heard of the *Camp Road Maintenance Manual* – although most people were immediately interested in receiving copies. Most people were also surprised to learn about the legal authority of statutory road associations to collect dues, which is spelled out in the *Guide to Forming a Road Association* and Private Ways Law.

Members of the Camp Road Stakeholder group identified the need for a web-based, central clearinghouse for camp road publications, resources and current statutes. A camp road website would help make these resources more readily accessible and provide a location for interested entities and road associations to share information and discuss common issues. The Department should coordinate with the Maine Congress of Lake Associations (COLA), the Maine Alliance of Road Associations (MARA), and any other interested parties to determine a location for a website, the resources to include on the website, and who would be responsible for creating and maintaining the site. A plan will also be made to publicize this website as part of the outreach campaign described in Recommendation #11.

Since no current means exists to determine the number, location and contact information for the state's road associations, the Department and partners should also explore options and work together to develop a more formal communication network. Possible options include a voluntary registration process, a camp road list-serve or the transformation of MARA to a membership organization. Once a camp road network is developed, information on statutory changes, training opportunities, etc. could easily and quickly be shared with camp road associations and residents.

Recommendation #10

The Department should provide road associations with training through its Nonpoint Source Training Center.

Camp Road Stakeholder and focus group participants identified the need for road association training in both technical and legal issues. The Department's Nonpoint Source Training and Resource Center currently offers a variety of classes around the state for contractors, lake residents, septic system installers and engineers. Starting in 2009, the Center should add camp road trainings to its catalog to respond to this need. The Center should offer classes in the formation of road associations and camp road maintenance and repair. Trainings on forming road associations should include information from the Department's road association manual and presentations from a lawyer with experience in private road issues and leaders of existing road associations to answer questions and share lessons learned.

Recommendation #11

The Department should conduct an outreach campaign with road associations to emphasize the connection between erosion from camp roads and water quality.

Most Maine residents appear to have a relatively high level of concern about runoff from camp roads. In the Department's statewide phone survey, two-thirds of the 425 respondents were concerned about runoff from dirt roads getting into streams and lakes, and most of the 43 focus group participants thought runoff from camp roads was a problem for their lakes.

Despite this concern, most focus group participants admitted that their road associations were focused primarily on reducing maintenance costs rather than protecting water quality. However, after learning that eroding roads and ditches were one of the biggest problems for lakes, most were willing to spend more money to fix

roads. The Department should conduct an outreach campaign to emphasize the magnitude of the problem with the aim of convincing camp road residents to reduce erosion from their roads and ditches. As part of this campaign, the Department will also publicize the camp road website described in Recommendation #9 to provide road associations with resources to take action.

This outreach campaign will be challenging since camp road associations and camp road residents are difficult to locate and target. However, a campaign could reach camp road residents by working with lake associations, COLA, MARA, water districts, and the contractors that are currently maintaining the roads.

Appendix A. Camp Road Stakeholder Meeting Participants

- Augusta Water & Sanitary District (June Mooney)
- Belgrade Regional Conservation Alliance (Peter Kallin, Charles Baeder)
- China Region Lakes Alliance (Jim Hart)
- Congress of Lake Associations (Maggie Shannon)
- Cumberland County Soil & Water Conservation District (Betty Williams)
- Department of Transportation (Peter Newkirk)
- Franklin County Soil & Water Conservation District (Rosetta Thompson)
- Kennebec County Soil & Water Conservation District (Dale Finseth, Josh Platt)
- Maine Alliance for Road Associations (Betsy Bowen)
- Maine Association of Conservation Districts (Bill Bell)
- Maine Association of Realtors (Barbara Berry, Linda Gifford)
- Maine Department of Conservation (George Powell)
- Maine Forest Service (Keith Kanoti)
- Maine Land Use Regulation Commission (Amy Hudnor, Diana McKenzie)
- Maine Municipal Association (Jeff Austin, Geoff Herman, Kate Dufour)
- Maine Real Estate Developers Association (Pattie Aho)
- Pattee's Pond Assoc. (Larry Fleury, Carl Snow)
- Portland Water District (Nate Whalen)
- Senator Richard Nass, Maine State Senate
- 13th Street Road Association (Bill Gannon, Jack Kelley)
- 30 Mile River Watershed Association (Clyde Walton)
- Town of Readfield, Code Enforcement Officer (Clif Buuck)
- Worromontogus Lake Association (Patten Williams)

Appendix B. Private Ways Law and Proposed Amendments

The following text includes the current Private Ways Law (23 MRSA §3101 to 3105). Proposed additions to the statute are indicated with underlined text and proposed deletions are indicated with strikethrough.

Preamble: The purpose of this statute is to facilitate the formation of road associations for private roads and to assist said associations in the assessment and collection of fees to properly maintain and repair these roads.

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

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Private way" means a public easement as defined in section 3021, subsection 2.

B. "Repairs and maintenance" does not include paving, except 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.

2. Call of meeting. When 4 or more parcels of land are benefited by a private road, private way or bridge as an easement or by fee ownership of the private road, private way or bridge, the owners of any 3 or more of the parcels, as long as at least 3 of the parcels are owned by different persons, may make written application to a notary public to call a meeting to address the repair and maintenance of the private road, private way or bridge. The meeting may also be used to choose a commissioner or Board pursuant to subsection 6, to form a road association, and to develop by-laws of said association. The notary may issue a warrant or similar written notice setting forth the time, place and purpose of the meeting. Copies of the warrant or similar written notice must be mailed by means of the United States Postal Service to the owners of all the parcels benefited by the private road, private way or bridge at the addresses set forth in the municipal tax records at least 30 days before the date of the meeting. ~~If mailing copies of the warrant or similar written notice to all such owners is not possible, the notary shall post a notice in a public place.~~ The notice must inform the owners of the planned meeting's agenda and specify all items to be voted on. [9] Subsequent meetings may be called in the same manner or by a commissioner or board appointed at a previous meeting pursuant to subsection ~~5~~ 6.

3. E-mail. E-mail may be used as an alternative to United States mail for sending notices and other materials under this section with the agreement of the

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The highlighted sections have had some concerns raised regarding them but the Department wasn not able to resolve the issues during the stakeholder process. The highlighted concerns are noted in the footnotes.

[9] The newly adopted language in section 4 on absentee voting appears to conflict with this provision on calling a meeting. Section 4 allows members at the meeting to vote on items that "were not included in the agenda" whereas Section 2 requires the notice to "specify all items to be voted on."

receiving party as long as the communication includes the current address and telephone number of the sender for purposes of verification.

4. Voting. Each parcel of land benefited by a private road, private way or bridge represents one vote[10] under this section; except that, if the bylaws of the association authorize more than one vote, then each parcel may represent no more than 2 votes under this subsection. The call to a meeting may state that an owner may elect to appoint another owner to vote in the owner's stead. Owners voting by absentee ballot must be polled on all voting items that were not included in the agenda and the final tally must be reported to the owners.

5. Road Associations Duly Formed under Section 3101. Road Associations through their commissioner or board may address present and future repair and maintenance of said private road, private way or bridge until such time as the association is dissolved by a majority vote of its members.

~~5~~ 6. Commissioner or board; repair and maintenance assessment. The owners of parcels of land benefited by a private road, private way or bridge at a meeting called pursuant to subsection 2 may choose a commissioner or board, to be sworn. By a majority vote, the owners may determine what repairs and maintenance are necessary and the materials to be furnished or amount of money to be paid by each owner for repairs and maintenance. The determination of each owner's share of the total cost must be fair and equitable. The commissioner or board shall report the outcome of all votes to all the owners by United States mail within 30 days. Special assessments for emergency repairs and maintenance may be made at a duly held meeting called for that purpose. Emergency repairs and maintenance are those actions necessary to maintain or restore the functionality of the private road, private way or bridge.

7. Easements. The owners of parcels of land benefited by a private road, private way or bridge or the commissioner or board chosen by the owners may negotiate easements for the installation of ditches, drains, culverts and other stormwater management practices. These easements must specify when ditches, drains, culverts and stormwater management practices must be maintained and include reasonable performance standards to guide the timing and extent of their upkeep and repair. The easements must also be recorded at the registry of deeds in the county in which the property is located. Such ditches, drains, culverts or stormwater management practices shall be under the control of, and maintained by said owners association, commissioner, board or their designee(s).

[10] Unresolved issue: There was stakeholder concern that each parcel having one vote could result in a inappropriate monopoly of votes if a landowner has many parcels of land along a road but does not have any buildings and does not use the road while other landowners may have only one parcel but have a house and use the road regularly.

~~6~~ 8. Commercial or forest management purposes. This section does not apply to a private road, private way or bridge constructed or primarily used for commercial or forest management purposes.

§ 3102. **Commissioner's or board's duties; neglect of owners to pay**

The commissioner or board chosen under section 3101, with respect to the private road, private way or bridge, has the powers of a road commissioner. If any owner, on requirement of the commissioner or board, neglects to furnish that owner's proportion of labor, materials or money, the same may be furnished by the other owners and recovered of the owner neglecting to pay in a civil action, together with costs of suit and reasonable attorney's fees. The commissioner's or board's apportioning of the cost of repairs to the road undertaken pursuant to the provisions of section 3101 may not exceed 1% of an individual owner's property valuation in any calendar year.

§ 3103. **Contracts for repair; assessments**

The owners, at a meeting held under section 3101, may by a majority vote authorize a contract to be made for making repairs to and maintaining the private road, private way or bridge by the year or for a lesser time and may raise money for that purpose pursuant to section 3101, subsection 5. The commissioner or board shall collect the money as town taxes are collected, and is liable for neglect of duty as town collectors are for similar neglects.

§ 3104. **Penalties and process**

Money recovered under sections 3102 and 3103 is for the use of the owners. In any process for its recovery, a description of the owners in general terms as owners of parcels of land benefited by the private road, private way or bridge, clearly describing the private road, private way or bridge, is sufficient. Such process is not abated by the death of any owner or by the transfer of any owner's interest.

§ 3105. **Use of town equipment**

The inhabitants of any town or village corporation at a legal town or village corporation meeting may authorize the selectmen of the town or assessors of the village corporation to use its highway equipment on private ways within such town or village corporation, whenever such selectmen or assessors deem it advisable in the best interests of the town or village corporation for fire and police protection and water quality protection.

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 123rd Legislature, and is current through December 31, 2008, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

Appendix C. Proposed Draft Legislation for Immunity for Road Association Directors, Commissioners and Volunteers

The following draft language would likely be placed in 14 MRSA Chapter 7, which includes several other existing provisions providing limited immunity for various activities.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Road association" means any organization formed as a statutory road association under the provisions set forth in 23 MRSA §3101-3103 or as a nonprofit corporation road association under 13B MRSA §403.

B. "Director" means a person who serves without compensation, except that the person may be paid for expenses, on the board of directors of a road association.

C. "Commissioner" means a person who serves without compensation, except that the person may be paid for expenses, as the commissioner of a road association.

D. "Volunteer" means a person who provides services without compensation, except that the person may be paid for expenses, to a road association.

2. Immunity. A director, commissioner or volunteer is immune from civil liability for personal injury, death or property damage, including any monetary loss:

A. When the cause of action sounds in negligence and arises from an act or omission by the director, commissioner or volunteer which occurs within the course and scope of the activities of the road association in which the director, commissioner or volunteer serves;

or

B. Arising from any act or omission, not personal to the director, commissioner or volunteer, which occurs within the course and scope of the activities of the road association in which the director, commissioner or volunteer serves.

3. Exception for environmental violations. Notwithstanding sub-section 2 above, a director, commissioner or volunteer is not immune from enforcement actions for violations of statutory laws under the jurisdiction of the Maine Department of Environmental Protection.

4. Limited waiver of immunity while operating vehicles.
Notwithstanding any immunity granted in subsection 2, a director, commissioner or volunteer is considered to have waived immunity from liability when the cause of action arises out of the director's, commissioner's or volunteer's operation of a motor vehicle, or other vehicle for which the operator or the owner of the vehicle is required to possess an operator's license or maintain insurance. The amount of damages in an action

authorized by this section may not exceed the combined limits of coverage of any applicable insurance policies other than umbrella insurance coverage and the courts shall abate a verdict in an action to the extent that it exceeds such limits. A provision in a policy of insurance that attempts to exclude coverage for claims that are authorized by this section is void as contrary to public policy.

Appendix D. Analysis of Constitutional Issues by Attorney General's Office

OFFICE OF ATTORNEY GENERAL

State House Station 6
Augusta, Maine 04333-0006
Phone: 626-8878

FAX: 287-8812
email: amy.mills@maine.gov

Memorandum

TO: **Donald T. Witherill**
Director, Division of Watershed Management
Department of Environmental Protection (DEP)

FROM: **Amy B. Mills, AAG**

DATE: **October 17, 2008**

SUBJECT: **Lake Water Quality Report; constitutional issues**

INTRODUCTION

Section 3 of P.L. chapter 593 (123rd Legislature), An Act to Protect Lake Water Quality ("the Act"), directs DEP to submit to the Legislature a report regarding means to diminish impacts on lake water quality. Section 3 further directs DEP to consult with this Office regarding "an analysis of the constitutional issues regarding the public purpose doctrine raised by permitting a municipality to adopt an ordinance that includes an assessment of an annual fee on property owners for construction or maintenance of a private road to prevent degradation of water quality." This memo responds to your request for such consultation regarding the public purpose doctrine.

It is important to note at the outset that this analysis is based upon a general description of the contemplated legislation as described in the Act. Once legislation is drafted, it should be reviewed for consistency with the applicable constitutional requirements discussed here. I would be happy to provide further advice at that stage of the process, should that be helpful.

The Law Court has not addressed the specific issue raised by the Act. However, for the reasons discussed below, we believe that legislation designed to prevent water quality degradation can be drafted in a manner that would likely pass constitutional muster with respect to the public purpose doctrine. Any legislation that imposes an assessment on property owners is also subject to certain constitutional limitations on the assessment of taxes. Because of their importance, I have also provided a brief outline of these requirements.

LEGAL ANALYSIS

A. The Public Purpose Doctrine

1. Cases Discussing the Constitutional Standard

The Law Court has recognized that the concept of public purpose is not static, *see Common Cause v. State of Maine*, 455 A.2d 1, 24 (Me. 1983) discussed *infra*, but it has not applied the doctrine in the specific context contemplated in the Act, namely with respect to water quality. While it may seem obvious that preventing water quality degradation serves a public purpose, the more difficult issues are how to structure the tax and how to structure a program to prevent water quality degradation, *see* discussion *infra*. Before specifically addressing the issues raised regarding private roads and water quality, I will address the basic parameters of the public purpose doctrine.

The public purpose doctrine is based on the following language in art. IV, pt. 3, § 1 of the Maine Constitution:

> The Legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.

The Law Court has interpreted this provision to require that taxation at either the state or local level be for a public purpose, *Delogu v. State*, 1998 ME 246 ¶ 10, and has stated that it is well-settled that "[t]he expenditure of public fund funds must be for a public purpose," *Common Cause*, 455 A.2d at 43. This section of the Constitution, however, also constitutes "broad legislative power [and] gives rise to an initial presumption that any statute enacted for the purpose of spending tax revenues is constitutional, and the court will invalidate a statute only in those cases where the Legislature has *clearly* exceeded its constitutional authority by expending tax revenues for other than a 'public purpose.'" *In re Questions Propounded by the Senate*, 601 A.2d 610, 619 (Me. 1991) (emphasis in original); *see also Common Cause*, 455 A.2d at 52.

Thus, legislative findings that an expenditure will serve a public purpose "are entitled to great weight, [but] the question of public purpose is ultimately a matter for determination by the courts." *Common Cause*, 455 A.2d at 45-46. With respect to that judicial determination, "it is not for the Court to assess [a project's] wisdom or efficacy as a matter of economic or fiscal policy." *Id.* at 49. Rather, if there is a rational basis for the Legislature to conclude that the project will achieve the intended public benefits—that is, if the project is a reasonable means for achieving the stated public purpose—then the project will not be struck down. *Id.*

The Law Court has also addressed the public funding of private interests, holding that a subsidy of public funds to a private person may serve a public purpose where the funded project benefits the public directly (clearance of urban blight), produces a product that the public will have a right to use (rail road transportation), or where a project has the indirect public benefit of promoting the general economic climate (stimulating the economy and creating jobs). *See Common Cause*, 455 A.2d at 58-76 (discussing cases upholding public purpose). "Ultimately, in

examining the constitutionality of a tax or spending measure, the Court should focus on whether the plan threatens a detriment to the public which outweighs the benefit that could have been anticipated." *Id.* at 75. In that regard, the Law Court has noted "[t]hat some private interests would be benefited by [a] project [does] not prevent the basic purpose from being public in nature." *Id.* at 66 (discussing cases upholding projects aimed at eliminating urban blight, subsequent sale or lease of cleared area for private purposes notwithstanding).

Finally, the Law Court has addressed the public purpose doctrine in the context of spending public funds on the maintenance of private roads. In *Opinion of the Justices*, 560 A.2d 552 (Me. 1989), the justices were asked to respond to questions regarding legislation with the stated purpose of "protect[ing] the health and safety of the members of the public who reside along the privately owned roads by ensuring adequate access and egress for police, fire and other emergency vehicles, as well as other vehicles traveling to and from those residences." *Id.* at 553. The justices' conclusion that a public expenditure upon private roads did not serve a public purpose turned on the fact that the public had no legal right to travel the roads and thus could be barred from using them. The justices, however, narrowed their opinion by stating that the legislation did not give rise to an "occasion to comment on the validity of a general statute addressing the maintenance of access to private property for the use of emergency vehicles," *id.* at 555, such vehicles enjoying a greater right of access across private roads than the public at large.

2. Application of the Case Law to Lake Water Quality Initiative

The Law Court precedent discussed above regarding the public purpose doctrine may provide guidance to DEP as it considers the use of public dollars to improve private roads for the purpose of preventing the degradation of lake water quality. Specifically, (1) the purpose of the contemplated legislation must be a public purpose, and (2) there must be a rational basis to conclude the action or project authorized by the legislation will indeed serve that public purpose.

With respect to the first factor, the stated purpose of the proposed assessment to fund road improvements is to prevent degradation of water quality. Unless clearly demonstrated otherwise, such legislation would be entitled to a presumption of constitutionality. A legislative finding concluding that protecting water quality benefits the public would be consistent with prior legislative findings recognizing the importance of protecting water to promote the health, safety and general welfare of the public, *see, eg.* 38 M.R.S. §§ 410-L (lake protection), 435 (shoreland zoning), 464 (water classification program), 480-A (natural resources protection).[1]

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[1] There appear to have been few legal challenges to findings that protecting water quality serves the public's interest as a general matter. The Law Court has noted, in the context of an eminent domain proceeding, that "[t]o protect the purity and conserve the quantity of a public water supply is undoubtedly a public purpose." *Bowden v. York Shore Water Company*, 95 A. 779, 156 (Me. 1915). Where the issue has arisen in the context of restrictions on development, *see, e.g.*, *Manzo v. Marlboro*, 838 A.2d 534, 540-41 (N.J. Super. 2003) (protecting streams worthy land use purpose), *Massachusetts v. Blair*, 2000 Mass. Super. LEXIS 172, 19-20 (protecting drinking water supplies and wetlands legitimate state interest), *Christianson v. Snohomish Health District*, 946 P.2d 768, 775 (Wa. Sup. Ct. 1997) (protecting public health, surface and ground water legitimate public purpose), *Sun Ridge Development, Inc. v. Cheyenne*, 787 P.2d 583, 589 (Sup. Ct. Wyo. 1990) (drainage regulations proper exercise of police powers), case law suggests legal disputes have turned less on whether protecting water quality is a legitimate purpose and more on

Such a purpose appears to be distinguishable from the purpose considered in the 1989 *Opinion of the Justices* regarding improvements to private roads to improve access because the instant legislation does not turn on public use or access along privately-owned roads, but rather is directed more broadly at protecting water quality.

The second and more difficult consideration with respect to the public purpose doctrine is whether there is a rational basis to conclude that improving roads will protect water quality. There is a spectrum of possibilities here because arguably not all improvements may have the desired water quality impact, not all roads are a factor in water quality degradation, and not all waters are similarly situated. DEP, of course, has expertise to bring to bear in this area. For example, the legislation could authorize only improvements designed to satisfy best management and design standards that result in decreased surface water runoff and only with respect to roads identified as contributors to lake water quality degradation. While it is likely that any improvement will also bestow some private benefit, that land owners along the private roads would be benefited would not necessarily prevent the basic purpose from being public in nature.[2]

B. Constitutional Restrictions on Taxes and Assessments

The language of the Act contemplates the assessment of a fee on property owners for construction of maintenance of a private road in order to prevent water quality degradation. There are several constitutional requirements that might apply to the imposition of a tax or assessment.

A funding mechanism must be consistent with Article IX, Section 8 of the Maine Constitution (mandating equal apportionment and assessment of taxes) and Article IX, Section 9 of the Maine Constitution (mandating nondelegation of legislative power to tax). *See Delogu v. City of Portland*, 2004 ME 18 (2004). Further, it is not clear whether the contemplated legislation would authorize a special assessment. With respect to special assessments (that is, a charge upon real property within a pre-determined district to defray the expense of a public improvement), there must be both a public purpose and a special benefit to the properties assessed above that accruing to the public. *See McBreairty v. Commissioner*, 663 A.2d 50 (1995); *City of Auburn v. Paul*, 24 A. 817 (Me. 1892). The special "assessment must be rationally related to the objective for which it is imposed, and must be in proportion to the benefit conferred." *Concerned Taxpayers Coalition of Scarborough v. Town of Scarborough*, 576 A.2d 1368, 1370 (1990).[3]

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whether the means chosen serve the stated purpose. *See* discussion in text *infra* regarding rational basis review and DEP expertise.

[2] In other words, it appears prudent to consider whether, and if so to what extent, the private benefits remain incidental to the protection of water quality for the benefit of the public at large.

[3] Finally, while not a constitutional limitation on the assessment of taxes, it is assumed the contemplated legislation would authorize a program whereby private property owners would voluntarily provide access to their property for the road improvements, thus eliminating other constitutional issues such as due process and takings. *See Haley v. Davenport*, 168 A. 102, 103 (Me. 1933) (statute authorizing the draining of another's private property for access unconstitutional); *Paine v. Savage*, 136 A. 664 (Me. 1927) (statute authorizing the use of private roads for another's logging purposes unconstitutional).

I hope that this memo will be of assistance to DEP as it prepares the report required by the Act. While DEP has considerable expertise with respect to developing means to diminish impacts on lake water quality, it may be advisable for DEP to consult with Maine Revenue Services with respect to devising a constitutionally sound tax assessment structure. If I can be of further assistance, please do not hesitate to contact me.

Appendix E. Proposed Enabling Legislation for Municipalities

Title 23 §3106. Municipal assistance for purposes of protecting or restoring public waters. For the purposes of preventing stormwater runoff pollution from reaching a great pond, a municipality may provide road repair on a private road or bridge for a fee or through expenditure of public funds provided the following standards are met:

1. Great Pond Drainage. The road is within the watershed of a great pond as defined under Title 38, §480-B.5.
2. Great Pond at Risk. The great pond in whose watershed the repair will be performed is listed on the Maine Department of Environmental Protection's list of Lakes Most at Risk from Development; has been listed as impaired in an Integrated Water Quality Monitoring and Assessment Report submitted by the Maine Department of Environmental Protection to the U.S. Environmental Protection Agency at least once since 2002; or has a completed watershed survey that identifies threats to water quality, using a protocol accepted by the Maine Department of Environmental Protection.
3. Road Impacting Water Quality. The Maine Department of Environmental Protection or the municipality determines that the road is contributing to degradation of lake water quality based on an evaluation of the road using a protocol accepted by the Maine Department of Environmental Protection.
4. Use of Best Management Practices. Road repairs must comply with best management practices adopted by the Maine Department of Environmental Protection.
5. Maintenance. Provisions are established for on-going maintenance of the road, including the establishment of a road association, either under the provisions set forth in §3101-3103 or as a nonprofit corporation road association under 13B MRSA §403.

Appendix F. Draft Ordinance: Municipal Assistance with Private Roads

ADOPTED:_____
ENACTED: _____

A. Purpose and Establishment of Lake Protection Fund

The Town (City) of _____ recognizes the public value of its lakes and ponds, including the following:

_____

_____

These waters provide public benefits for recreation, including boating, fishing, swimming and wildlife viewing. However, these benefits are at risk due to declining water quality. Stormwater runoff from development in the watersheds of these lakes and ponds is contributing to water quality decline, which has caused these waters to be:

a. Listed by the Maine Department of Environmental Protection as a Lake Most at Risk from Development;
b. Listed by the Maine Department of Environmental Protection as impaired in an Integrated Water Quality Monitoring and Assessment Report submitted by the Department to the U.S. Environmental Protection Agency; or
c. The subject of a completed watershed survey that is sanctioned by the Department of Environmental Protection.

In order to prevent further degradation of water quality in the above listed lakes and ponds, the Town (City) of _____ hereby establishes a Lake Protection Fund, for the purposes of providing financial assistance to repair roads in the watersheds that have been found to be contributing to water quality degradation, based on an evaluation of the road using the Maine Department of Environmental Protection's Camp Road Water Quality Evaluation Form.

B. Lake Protection Fund

1. Funds may be appropriated by annual appropriations in the municipal budget or by voluntary contributions from property owners. Funds received may be dedicated to use on specific private roads or private ways that have been found by their condition to contribute to the degradation of lake water quality. Where funds are not dedicated, the municipality may offer funding through a competitive application process.

2. Any award of financial assistance for work on a private road shall require a minimum cost share contribution of 50% of the total project cost.

3. Recipients of cost sharing assistance must agree to properly operate and maintain the installed practices to meet the designed purposes.

4. Road repairs must comply with best management practices adopted by the Maine Department of Environmental Protection.

5. Provisions must be made for on-going maintenance of the road, including the establishment of a road association, either under the provisions set forth in 23 MRSA §3101-3103 or as a nonprofit corporation road association under 13B MRSA §403.

Appendix G. Draft Ordinance: Town Extended Fee-Based Service on Private Roads[11]

ADOPTED:_____
ENACTED: _____

A. Purpose

The Town has adopted this ordinance to legally provide extended services to private roads and maintain private roads in a reasonable condition. The Town has adopted this policy in accordance with state law as of the policy's adoption date. This ordinance shall only apply to those roads in existence prior to the adoption date of this ordinance.

B. Definitions

Town Way - "Town way" means an area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle; all town or county ways not discontinued or abandoned before July 29, 1976; and, all state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to section 53 of 23 MRSA §3021.

Public Easement – "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 (23 MRSA §3021). Private ways created pursuant to sections 3001 and 3004 prior to the effective date of this Act (23 MRSA §3021) are public easements.

Private Road – A road over which neither the Town nor the general public has the right of access or to pass over by vehicle or foot.

Road Maintenance and Repair– Services provided to a road association will be determined between the Public Works Director (or Road Commissioner) and Road Association liaison and may include road grading, adding new road material, stabilizing and cleaning out ditches, snow plowing, road sanding, installing and cleaning out culverts and other road drainage and stabilization activities.

Adequate/ Adequacy - The Public Works Director (or Road Commissioner) shall determine any standard or requirement based on adequacy.

Road - Refers to a duly recorded (deeded) public road easement.

Road Association - A statutory road association formed under the provisions set forth in 23 MRSA §3101-3103 or a nonprofit corporation road association 13B MRSA §403.

C. Policy Effective Date

D. Public Easement[12]

[11] Text adapted from the Town of Gray's Public Easement Road Policy.
[12] This draft ordinance is drafted to apply only to public easement roads (also known as private ways). If liability issues are resolved, towns could also potentially extend this ordinance to private roads.

Roads considered for Extended Services under this ordinance must first be accepted by the Town as public easement roads. Refer to Town Ordinance that outlines these provisions and requirements.

E. Extended Services Contract – Road Association Requirements and Procedure

Road associations with roads that are formally accepted as public easement roads may submit a written request to enter into an extended services contract with the town. All roads seeking extended services shall meet the following criteria:

1. Requests for Extended Services under this ordinance shall be made in writing by the road association president. The written request must include a detailed description of the services requested of the town.

2. Each respective road association and each individual property owner if required shall sign a general release to the Town granting permission to enter upon road to perform maintenance and release for liability.

3. Each respective road association and each individual property owner if required shall agree and sign to hold the Town harmless for any damages that may be caused in the process of providing maintenance services.

4. All costs associated with each public easement and extended services acceptance shall be borne by the respective road association and property owners. Said costs may include public easement recording fee, published notices and road improvements as determined above.

5. Upon written application to the Town and demonstration of extraordinary circumstances the Town (specify by what means) has sole authority to waive or modify requirement of the road adoption criteria.

6. The Town makes no presumption in any form or manner that any road accepted under this policy by the Town is to be accepted as a town way, as defined above.

7. If a public easement's traveled portion is paved, the road association and abutting property owners agree the Town assumes no responsibility for damages or injury to the paved surface.

F. Extended Services Contract – Town Procedure and Requirements

1. Upon receipt of the written request for Extended Services, the Public Works Director (or Road Commissioner) will visit the road and estimate the cost associated with all of the requested services or the portion thereof that the Town would be willing to take on. The cost estimate should include an itemized list of expenses associated with the work, including staff direct wages and indirect costs, equipment use and materials.

2. The cost estimate should be submitted to the road association president along with the terms of the contract. If the road association accepts all or part of the cost estimate and terms of the contract, the Town will prepare a formal contract that includes the provisions outlined above for review by the Town and road association.

3. The contract should state that the extended services will be scheduled such that high priority road maintenance and repairs on town ways take precedence.

G. Road Association Representation

In order to provide an efficient and workable relationship between the Town and the road association, each respective road association president or designee shall be the liaison between the Town and road association. Each road association is responsible to inform the Town in writing, identifying their respective association president or designee, address and telephone number by September1st of each respective year.

H. Contractors Issues and Concerns

All initial questions, problems or issues concerning the actual work being performed by a private contractor shall be directed to the respective road association president or designee and private contractor.

If the issues(s) or concern(s) still persist after initial inquiry to the contractor, the road association president may then contact the Town's Public Works Director (or Road Commissioner).

If the issue or concern is not resolved after consultation with the Public Works Director (or Road Commissioner), then the Public Works Director (or Road Commissioner) or the association president may contact the Town Manager (or Selectboard or Council), who may in turn resolve the issue by any means deemed appropriate, including terminating the contractor's agreement.

I. Ordinance Modification

The Town may modify this ordinance at any time after proper notice and public hearing as required by 30-A MRSA Chapter 141.

J. Hold Harmless

As a condition of this ordinance, for public easement road acceptance and extended services, each road association hereby recognizes the Town responsibilities shall be limited to the scope of this policy and to hold the Town harmless regarding any liability for any negligent damage to property: including by not limited to: drive ways, mail boxes, lawns, trees, curbing, shrubs or property markers. Each road association or individual benefiting for this policy agrees to hold the Town, its officers, agents and employees harmless.

Appendix H. Sample Ordinance: Town Adoption of 'Class B' Camp Roads

The following text may be incorporated into a town's existing Road Ordinance or modified as needed to suit local needs and conditions of camp roads. The sample ordinance provided below includes the guidelines and standards dealing specifically with 'Class B' roads. The Town of Acton's Road Ordinance can be viewed in its entirety at http://www.actonmaine.org/files/ROAD-ORD.pdf.

A. Class B Roads – Standards and Classifications

Private roads which are shown on year 2000 Acton 911 emergency dispatch maps may be defined and reconstructed in compliance with the following standards for Class B roads. Class B roads shall be deemed to meet standards necessary for consideration by the Town for acceptance as a Town Way.

1. Minimum of 34 ft. wide right-of-way fully described with bounds and measurements and fee simple interest title conveyed to Town of Acton.
2. 20' wide gravel or paved top course with 7' minimum sides for shoulders and drainage
3. 16" compacted gravel base
4. 3" finish crushed gravel (3/4' to 1 ½")
5. 100' hammerhead turnaround (defined as a "T" terminus to the road with a minimum extension to one side of 25' and a minimum total length of extensions to both sides of 100')
6. Maximum grade of 8% in any 100 ft
7. 200' minimum tangent between curves on a reverse alignment
8. 34 ft. right-of-way shall be clear of trees, stumps, boulders, fences and any other hindrance to plowing and maintenance.
9. Minimum culvert size of 12". The Code Enforcement Officer may require an alternative size culvert based on existing site conditions
10. Maximum 60,000 lbs. GVW shall be permitted except when posted
11. Newly proposed roads that intersect with existing roads must intersect at a 90 degree angle.
12. Class B roads must discharge to a Class A or B road.

B. General Provisions (items pertaining to Class B Roads):

1. Procedures for the creation of Roads
    a. The owner(s) of land shall submit a petition to the Selectmen requesting the Annual Town Meeting to create a Class A, B or C road. The petition shall be submitted at least three months prior to the annual Town Meeting. The petition shall include a plan, prepared by a registered land surveyor, describing the road. The petition shall be accompanied by a deed for the property described on the plan, conveying a fee simple interest for class A and B roads and a Public Easement interest for Class C roads to the Town of Acton.
    b. The Road Commissioners shall inspect the road to determine if the road meets the standards set forth in this ordinance and make an appropriate recommendation for action by the Town Meeting.
2. Maintenance of Roads
    a. Town ways shall be provided winter and summer maintenance by the Town in accordance with the laws of the State of Maine.

Appendix I.

Camp Road Water Quality Evaluation Form

Road Name or Fire Lane Number:_____

Municipality:_____

Book and Page number of deed for road: Book: _____
Page:_____

Road is seasonal _____ Road is year round_____,
If year round, is it plowed in the winter_____

Is winter and/or" mud season" use prohibited by owners or the Road Association?_____

Right of way width if known:_____ Approximate Road Length:_____

Number of culvert crossings:_____

Is the road in the shoreland zone?_____ If yes, What percentage is within 100 feet of Lake?____

Is there an active Road Association for the road? _____
Contact Person: _____
Telephone number:_____

What immediate Lake Watershed is the road located in:_____

If in a lake watershed, is the lake considered most at risk by the DEP?_____

Name of evaluator:_____

Date of Evaluation: _____

Weather conditions:_____

The procedure developed to evaluate roads includes the following:

NOTE: It is strongly recommended that a road be evaluated during a rain event (especially if soils contain a lot of silts and clays) so that you can observe the quality of the runoff and where it is discharged in addition to water flow on the road surface in culverts and in ditches.

1) Walk or drive entire length of road to determine location of culverts, ditch turnouts and steep slopes. Locate any potential erosion sites, discharge points for culverts and ditches along lakes or streams. Note length and width of road.

2) Evaluate Road using Section 1 Water Quality. If score is 100 or greater **STOP,** Road meets standards.

3) If you must evaluate using Section 2 and /or 3, establish a sample station at every other telephone or power pole on the road. If few or no poles are present, establish sample stations at approximately 10%, 20%, 40%, 60%, and 80% of road length. Use the small boxes on the score sheet to record ratings at each station.

4) When evaluating for section 2, at each sample station, measure crown, and evaluate the road surface within 25 feet of either side of the pole or sample location. For section 3, rate shoulders and ditches in these areas.

5) If you must evaluate using Section 4, locate each culvert crossing and rate each culvert. Note if there are locations that culverts need to be installed. Use the small boxes on the score sheet to record ratings at each culvert location.

6) Average ratings for each criterion and assign score. (Round up to the highest score if .5 or greater)

7) Add all scores and come up with the final score for each section evaluated. Each section's score must meet or exceed score indicated "to qualify" to meet standards for that section.

Section 1. Water Quality

		SCORE
1. Is there evidence of eroded road surface materials being discharged either directly or indirectly into lakes, streams or nearby waterbodies?	0 Substantial evidence 10 Minor evidence 20 No evidence **If Substantial evidence, Road does not qualify and you must evaluate using Section 2 and repair accordingly**	
2. Is there evidence of eroded materials from ditches or shoulders being discharged either directly or indirectly into lakes, streams or nearby waterbodies?	0 Substantial evidence 10 Minor evidence 20 No evidence **If Substantial evidence, Road does not qualify and you must evaluate using Section 3 and repair accordingly**	
3. Is there evidence of any erosion occurring from road crossings with materials being discharged directly or indirectly into lakes, streams or nearby waterbodies?	0 Substantial evidence 10 Minor evidence 20 No evidence **If Substantial evidence, Road does not qualify and you must evaluate using Section 4 and repair accordingly**	
4. Does road slope to lake in a straight path and discharge most of its drainage to the lake?	0 All 5 Most 10 Some 20 None **If "all or most", Road does not quality and you must evaluate using Section 2 and modify accordingly**	
5. Are culverts, located in streams that contain fish, sized at 1.2 times the stream's bank full width and sloped at 3% or less?	0 None 5 Some 10 Most 20 All or N/A	
6. Are culverts, located in streams that contain fish, imbedded into stream channel and otherwise do not impede fish passage?	0 None 5 Some 10 Most 20 All or N/A	
Total Available Points = 120	**(100 to qualify)** **If score is 100 or better, and sections 1-4 qualify, road meets standards**	

NOTE: If road scores 10 points or less on questions 1 through 3, the road is likely in violation of the erosion and sediment control law if it is located in a watershed of a body of water most at risk from development. If it is not located in a watershed of a body of water most at risk, it will likely be in violation of the erosion and sediment control law if the condition persists after July 1, 2010.

Section 2. Road Base and Surface Areas

		SCORE
1. Road constructed above original ground level to facilitate drainage/structural integrity of road base materials.	0 None, 1 Some, 2 Most, 3 All	
2. Gravel road surface is at least 4 to 6 inches, is compacted, and is composed of a firmly packed aggregate. ***(Refer to page 8 and 9 of the Camp Road Manual for testing procedure)***	0 None, 1 Some, 2 Most, 3 All	
3. Gravel road surface provides good traction and is not highly erodible and dusty (too many fines).	0 None, 1 Some, 2 Most, 3 All	
4. Level or low slope road surfaces are crowned to shed water at ½ inch of rise per foot of road width, or contain alternative drainage structures, such as waterbars, or are otherwise designed to direct stormwater as sheet flow off of the road surface (insloped /outsloped). ***(Refer to page 11 and 12 of the Camp Road Manual for information on Determining Road Crown)***	0 None, 1 Some, 2 Most, 3 All	
5. Steep sloped road surfaces are crowned to shed water at ¾ inch of rise per foot of road width, or contain alternative drainage structures or are otherwise designed to direct stormwater as sheet flow off of the road surface or are paved. ***(Refer to page 11 and 12 of the Camp Road Manual for information on Determining Road Crown)***	0 None, 1 Some, 2 Most, 3 All or N/A	
6. Stormwater flow from the road surface is directed to stable ditches, a vegetated buffer or stable vegetated areas (that are not wetlands) of at least 50 feet in width between the road and a waterbody.	0 None, 1 Some, 2 Most, 3 All	
7. Dust from the road surface is effectively controlled using materials to keep road surface intact.	0 Never, 1 Controlled only in response to complaints, 2 Occasionally, 3 Regularly	
Total Available Points = 21	**(14 to qualify)** **If score is 15 or better, road meets these standards**	

Section 3. Road Shoulders and Ditches

		SCORE
1. Road shoulders are stabilized with vegetation or have a firmly packed gravel surface	0 None / 1 Some / 2 Most / 3 All	
2. Road shoulders are sloped to promote surface drainage away from the road and into adjacent ditches or buffer areas. A "false ditch" or berm of road material is not present which might prevent runoff from draining off the road surface	0 None / 1 Some / 2 Most / 3 All	
3. Ditches are stabilized with vegetation and/or rock riprap shaded with vegetation and have no signs of excessive erosion	0 None / 1 Some / 2 Most / 3 All	
4. Ditches are U shaped (versus V-shaped) with side slopes less than 2 to 1 (50% slope) that are properly sized ***(Refer to page 15 thru 19 of the Camp Road Manual for information on ditches)***	0 None / 1 Some / 2 Most / 3 All	
5. Ditches do not discharge directly into the lake but discharge from a stable outlet into a vegetated buffer (that is not a wetland) of at least 50 feet in width between the outlet and receiving waterbody	0 None / 1 Some / 2 Most / 3 All	
6. Ditches have appropriately located and spaced turnouts that direct water into stable vegetated buffer areas (that are not wetlands) of at least 50 feet in width between the turnout outlet and any waterbody	0 None / 1 Some / 2 Most / 3 All	
Total Available Points = 18	**(12 to qualify)** **If score is 12 or better, road meets these standards**	

Section 4. Culverts and Bridges

		SCORE
1. Culverts are large enough to accommodate flow, properly installed, and covered with at least one foot of fill or half the culvert diameter (if over 24 inches) ***(Refer to pages 21 thru 24 of the Camp Road Manual for information on Culverts)***	0 None / 1 Some / 2 Most / 3 All or N/A	
2. Culvert inlets are stable with properly installed rock riprap or vegetation	0 None / 1 Some / 2 Most / 3 All or N/A	
3. Culvert outlets are stable with properly installed rock riprap or vegetation	0 None / 1 Some / 2 Most / 3 All or N/A	
4. Culvert bore shows no signs of crushing, bowing or obstructions that could impair water flow	0 None / 1 Some / 2 Most / 3 All or N/A	
5. Appropriate number of culverts installed and located to accommodate flow and there is no sign of road topping, and/or erosion occurring ***(Refer to pages 20 of the Camp Road Manual for information on Culvert installation)***	0 None Installed but needed / 1 Some / 2 Most / 3 All or N/A	
6. Evidence indicates that culverts are working to maximum capacity and are not plugged and in need of cleaning or subject to ice jams in winter.	0 None / 1 Some / 2 Most / 3 All or N/A	
7. Bridge abutments and wing walls are stable with no visible signs of erosion occurring.	0 None / 1 Some / 2 Most / 3 All or N/A	
Total Available Points = 21	**(14 to qualify)** **If score is 14 or better, road meets these standards**	

Appendix J. Summary of Camp Road Public Opinion Surveys

Two surveys were conducted in the fall of 2008 to gather data on the attitudes and knowledge of camp road association members and on the public's attitudes toward camp road issues. The research was conducted by a market research firm, Market Decisions.

Results of Focus Groups of camp road residents (qualitative survey/discussions with 43 people in 4 groups):
"Focus groups are considered qualitative research. They identify issues and types of responses, but they do not result in statistically meaningful allocations of responses by percentages, as would quantitative research. Focus groups can tell us how consumers may act, think or feel but they cannot tell us how many consumers think or feel a certain way." (Market Decisions, The Maine Survey, October 2008)

Key findings from the focus groups include:

- Water quality was one of the top concerns for landowners around lakes, but many did not realize that eroding dirt was a significant pollutant.
- Road associations, whether they were formal or informal, generally ran smoothly; the primary objective was met – the road was maintained and plowed to meet the needs of landowners.
- The top problem of road associations was getting everyone to pay.
- Some road associations were improving roads but mostly to reduce maintenance costs rather than reduce runoff pollution.
- After learning that eroding roads were the largest pollutant for lakes, most were willing to spend more money to fix roads, an average of 73% more.
- Most did not want towns to take over their roads; they have an emotional attachment to their private roads.
- Most participants were not supportive of a state agency such as DEP creating standards for road construction and maintenance. They noted that enforcement would be a problem.
- Many respondents were appreciative of state grants that matched road association spending to improve road drainage and reduce runoff. Grants seemed to serve as a catalyst for action.
- Most participants liked the idea of the DEP "Camp Road Maintenance Manual" and wanted a copy to read and thought that they would use the "best practices" recommended.

Participants' recommendations for DEP

- Provide education and technical assistance for landowners
- Provide training for contractors
- Offer grants and rebates for road upgrades
- Offer assistance on setting up road associations

Results of Phone Survey (statistically significant survey of 425 randomly selected Maine adults with a standard error of 4.9%.)

Key findings:

- 16% of Mainers have a camp near a lake, river or stream while 59% spend recreation time near a lake, river, stream or the ocean. (25% indicated neither).
- 61% are concerned about stormwater runoff from dirt and gravel roads entering lakes, rivers, streams and the ocean. (24% are very concerned). (Note 36% were not very concerned or not at all concerned.)
- 73% feel the owners of the road are responsible and bear the cost of maintaining the road. (39% indicated road owners were responsible, 19% indicated the property owner and another 15% indicated the homeowner or whoever lived on the road. Combining all the ways to say the "owner", the result was 73 %.)
  10 % said that government of some form: state, local and/or federal, was responsible.
  9% thought a combination of the owner and government.
  14% were unsure or didn't answer. Multiple answers were accepted.
- 65% of Mainers would support a "Lake Protection" bond issue that would provide matching funds to help fix erosion problems on private & public roads contributing to water pollution. (25% would not.)

Pulling together the information from both these studies:

- Mainers care and are connected to our water resources.
- Unpaved private road owners don't realize soil is washing off and making it to local waters.
- Private road owners value the fact that their road is private. Visceral/emotional value.
- Private road owners on lakes feel they already pay too much in taxes.
- The general public believes the burden of maintaining these private roads is on the road owner/user, not government; however,
- The general public is supportive of a matching bond issue to help maintain the roads to protect water quality.
- Private road owners are interested in technical help, and some in becoming a more formal road association.
- It is challenging to reach private road owners to provide education, assistance or other services. There is no registry or list of roads or road owners.

The full reports can be found at http://www.maine.gov/dep/blwq/doclake/593.htm in the Materials section at the bottom of the page.