STATE OF MAINE
127th LEGISLATURE
FIRST REGULAR SESSION

Commission To Study the Public Reserved Lands Management Fund

December 2015

Members:
Sen. Thomas B. Saviello, Chair
Sen. James F. Dill
Rep. Craig V. Hickman, Chair
Rep. John L. Martin
Rep. Donald G. Marean
Thomas Abello
John Bryant
Doug Denico
Tony Madden
Bob Meyers
Jonathan Robbins
Greg Shute
Richard Smith
David Trahan
Walter Whitcomb

Staff:
Curtis Bentley, Legislative Analyst
Mike O'Brien, Legislative Analyst
Office of Policy & Legal Analysis
13 State House Station
215 Cross Building
Augusta, ME 04333-0013
(207) 287-1670

Table of Contents

Page

Executive Summary i

I. Introduction 1

II. Overview of Public Reserved Lands 2

A. Origin of Maine's Public Reserved Lands
B. Management of Maine's Public Reserved Lands
C. Public Reserved Lands Management Fund

III. Public Reserved Lands Management – Positives 6

IV. Recommendations 8

Appendices

A. Authorizing legislation – Public Law 2015, chapter 267, Part GGGG
B. Membership list, Commission To Study the Public Reserved Lands Management Fund
C. Summary of Commission meetings – held on September 9, 2015, September 29, 2015, October 27, 2015, and December 1, 2015
D. Commission letter to Attorney General, October 15, 2015
E. Attorney General letter to Commission, October 26, 2015
F. Commission letter to Attorney General, November 3, 2015
G. Attorney General letter to Commission, November 24, 2015
H. Fiscal Year 2016 Public Reserved Lands Management Fund projected budget
I. Commission letter to the Joint Standing Committee on Agriculture, Conservation and Forestry containing Commission's recommendations, December 5, 2015

Executive Summary

The 127th Maine Legislature established the Commission To Study the Public Reserved Lands Management Fund (hereinafter the "Commission") with the passage of Public Law 2015, chapter 267, Part GGGG. The Legislature charged this 15-member Commission – comprised of legislators, leaders from the executive branch and knowledgeable members of the public representing various interest groups – with reviewing, studying and analyzing:

1. The proper use of the Public Reserved Lands Management Fund established in the Maine Revised Statutes, Title 12, section 1849 (hereinafter "the Fund") and its possible expansion to other uses;

2. The proper sustainable harvest levels on state land and how best to maintain those levels;

3. How best to manage public lands to preserve forests for recreation, wildlife habitat and public use while ensuring a healthy working forest;

4. After reviewing data and current science, how best to manage the State's public lands to deal with possible pest and disease issues;

5. Investments in public lands to increase access to public lands and spur rural economic development;

6. The impact of outdoor recreation on the State's tourism economy and the role public lands play in that economy; and

7. Any other issues the Commission feels necessary to protect and manage public lands and the funds derived from those public lands.

To complete these duties and develop a report with recommendations, the Commission conducted public meetings on September 9, September 29, October 27 and December 1, 2015 in Room 216 of the Cross State Office Building in Augusta, Maine. The Commission was directed to submit this report and any proposed legislation to the Joint Standing Committee on Agriculture, Conservation and Forestry by December 5, 2015.

The Commission members present and voting unanimously make the following nine recommendations.[1]

1. The Public Reserved Lands Management Fund must have a minimum $2.5 million annual cash operating balance at the start of each fiscal year. The Legislature may consider establishing this baseline figure statutorily.

[1] The final vote tally was 12-0, with three members absent during the vote. Rep. Donald G. Marean, Walter Whitcomb and Doug Denico were not present for the vote on the Commission's report and recommendations.

2. The Department of Agriculture, Conservation and Forestry should conduct a detailed forest inventory (estimated cost of $50,000-$100,000). The Commission strongly recommends conducting a forest inventory every five years, beginning in fiscal year 2016. Although new technology is emerging that may eventually make the establishment of a continuous forest inventory a viable option for the Bureau of Parks and Lands, we do not presently recommend pursuing a continuous forest inventory.

3. The Legislature should allow experts, including the Silvicultural Advisory Committee, to advocate for the appropriate annual sustainable timber harvest level for our Public Reserved Lands. After staff at the Bureau's Lands Division makes a recommendation based on expert opinions and data from the most recent physical forest inventory that is consistent with multiple use objectives, existing management plans and the Integrated Resource Policy, the recommendation should be presented to the joint standing committee of the Legislature having jurisdiction over Public Reserved Lands for review and public comment before the harvest level is accepted. The Bureau of Parks and Lands' annual report to the Legislature should include a breakdown of growth and yield in the three regional units and also identify any harvesting that has been occurring in individual management units where yield exceeds annual growth. The Joint Standing Committee on Agriculture, Conservation and Forestry should review the statutory language adopted in Public Law 2015, chapter 267, Part FF (related to the sustainable harvest level).

4. The Bureau of Parks and Lands should discover where the State does not currently have deeded access to our Public Reserved Lands and begin exploring how to go about obtaining access. Regional foresters within the Bureau's Lands Division, who are familiar with both the physical landscape and present-day landowner relations, should develop realistic goals and priorities regarding increased access to Public Reserved Lands.

5. To better meet the needs of Maine people, staff within the Bureau's Lands Division should develop a statewide priority list of recreational infrastructure projects and American with Disabilities Act (ADA) projects for our Public Reserved Lands. Recreational investments connect more people to Maine's outdoors and present real economic opportunity, particularly in rural communities. Because of previous financial challenges, the Bureau's Lands Division has not been able to invest in recreational infrastructure and ADA projects, but with additional funding it can address high priority sites. To make those investments and spur rural economic activity, a statewide priority list needs to be developed. The Bureau's Lands Division's statewide recreational infrastructure and ADA accessibility priority list should be presented to the joint standing committee of the Legislature with

jurisdiction over Public Reserved Lands for its consideration and public vetting before listed projects are implemented.

6. The following uses of the Fund, which are listed in no particular order of priority and some of which are already contained in existing management plans for the various Public Reserved Lands units, are potentially viable from a legal perspective and should be considered by the Legislature.

   A. Improving existing wildlife habitats on Public Reserved Lands so they are managed in an exemplary manner.

   B. Purchasing additional lands (special habitats) on adjacent parcels.

   C. Improving signage on and around Public Reserved Lands – including signage related to forestry education and signage related to the location of Public Reserved Lands and accessibility.

   D. Improving accessibility for individuals with disabilities on Public Reserved Lands, particularly around boat launches and at campsites.

   E. Providing funding (up to $300,000 total) for public secondary and post-secondary educational programs related to logging. The joint standing committee of the Legislature having jurisdiction over Public Reserved Lands should consider legislation directing the Bureau's Lands Division to establish, by rule, a system where eligible programs may apply for a maximum one-time allocation of $50,000 per school unit. School units may include in their application a plan to use the one-time allocation over multiple years. Regional managers within the Bureau's Lands Division must be included in the decision-making process related to the use of any allocated funds that result from this process and be involved with, or have capacity for, input in successful applicants' school programs. These funds may be used, among other educational related uses, to upgrade existing logging equipment or for the lease or purchase of logging equipment to help students meet the needs of an ever changing work force. Any funds provided to school units must supplement, not supplant, existing school funding.

7. The Legislature should review the uses of the Fund and approve allocations therefrom. Public Law 2013, chapter 368, Pt. LLLL, section 2 repealed the following language from Title 12, section 1849, subsection 3 and should be reenacted, as amended:

3. Expenditures from fund. Expenditures from the Public Reserved Lands Management Fund are subject to legislative approval in the same manner as appropriations from the General Fund. Money may not be expended without allocation by the Legislature. The joint standing committee of the Legislature having jurisdiction over Public Reserved Lands must approve and recommend the allocations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

8. The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands should review its bid process for timber harvesting and road construction projects, along with any liability concerns, with interested members of the Commission and report back to the Joint Standing Committee on Agriculture, Conservation and Forestry with any recommended changes by January 15, 2016.

9. The Joint Standing Committee on Agriculture, Conservation and Forestry should report out legislation to extend this Commission, authorizing a minimum of two meetings for fiscal year 2017.

I. INTRODUCTION

In 2015, during the First Regular Session of the 127th Maine Legislature, the Commission To Study the Public Reserved Lands Management Fund (hereinafter the "Commission") was established with the passage of Public Law 2015, chapter 267, Part GGGG.[2] The Legislature charged this 15-member Commission with reviewing, studying and analyzing:

1. The proper use of the Public Reserved Lands Management Fund established in the Maine Revised Statutes, Title 12, section 1849 (hereinafter "the Fund") and its possible expansion to other uses;

2. The proper sustainable harvest levels on state land and how best to maintain those levels;

3. How best to manage public lands to preserve forests for recreation, wildlife habitat and public use while ensuring a healthy working forest;

4. After reviewing data and current science, how best to manage the State's public lands to deal with possible pest and disease issues;

5. Investments in public lands to increase access to public lands and spur rural economic development;

6. The impact of outdoor recreation on the State's tourism economy and the role public lands play in that economy; and

7. Any other issues the Commission feels necessary to protect and manage public lands and the funds derived from those public lands.

Appointments to the Commission were completed during the early fall of 2015. Membership on the Commission included two members of the Maine Senate; three members of the Maine House of Representatives; a commercial wood harvester; a state-licensed forester; a scientist who has studied forest health and management; a representative of the tourism industry; a representative of a conservation organization; an individual who represents outdoor recreation interests; a representative of commercial timber holdings in the State; a representative of a sportsman's group; the Commissioner of Agriculture, Conservation and Forestry, or the Commissioner's designee; and the Director of the Bureau of Parks and Lands within Maine's Department of Agriculture, Conservation and Forestry, or the Director's designee.[3]

To complete these duties and develop recommendations, the Commission conducted public meetings on September 9, September 29, October 27 and December 1, 2015.[4] There was

---

[2] A copy of the Commission's authorizing legislation, Public Law 2015, chapter 267, Part GGGG, is included in this report as Appendix A.
[3] A copy of the Commission's membership list is included in this report as Appendix B.
[4] Summaries of Commission meetings are included in this report as Appendix C.

an opportunity for public comment at the first three Commission meetings and all Commission meetings were broadcast through the Legislature's public internet system.

The Commission was directed to submit a report of its findings and recommendations to date, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry by December 5, 2015.

II. Overview of Public Reserved Lands

The following is a brief overview of Maine's Public Reserved Lands and the associated Fund that is comprised of revenues derived from these state-owned lands. The Fund receives revenue from sources related to the use of the Public Reserved Lands under the care, custody, control or management of the Maine Department of Agriculture, Conservation and Forestry's Bureau of Parks and Lands (hereinafter "the Bureau"), including but not limited to, the sale of timber, grass and other things of value. All information related to the Public Reserved Lands and the Fund that was presented to the Commission can be found on the Commission's webpage at the following link: http://legislature.maine.gov/legis/opla/publiclandsmgmtmatrls.htm.

A. Origin of Maine's Public Reserved Lands

The origin of Maine's Public Reserved Lands dates back to the late 18th century, when the Commonwealth of Massachusetts set aside "public lots" within townships to support specific public uses, including the ministry and public education.[5] When Maine separated from Massachusetts and became its own state in 1820, these "public lots" became a part of Maine.

In 1824, the Maine Legislature passed a law to address the formation and usage of any additional public lots, declaring that "[t]here shall be reserved in every township, suitable for settlement, one thousand acres of land to average in quality and situation with the other land in such township, to be appropriated to such public uses for the exclusive benefit of such town, as the Legislature may hereinafter direct."[6] In the 1970s, the State began trading some of these "public lots" with private landowners in order to consolidate these state-owned lands into larger management units, thereby improving their value for public use. Over the years, additional Public Reserved Lands have been acquired by the State in various ways, including through the Land for Maine's Future program.[7]

In fiscal year 2014, Maine had 616,952 acres of Public Reserved and Nonreserved Lands in 154 Public Reserved Land units and 14 Nonreserved Public Land units ranging in size from 60 acres to 47,440 acres.[8] These lands include forested and non-forested land located in both organized and unorganized territories throughout Maine.

---

[5] *Opinion of the Justices*, 308 A.2d 253, 254 (Me. 1973).
[6] *Opinion of the Justices*, 308 A.2d 253, 254 (Me. 1973) (citing Chapter 280, section 8, Public Laws of 1824).
[7] FY 2014 Annual Report to the Joint Standing Committee on Agriculture, Conservation and Forestry – Maine Public Reserved, Nonreserved, and Submerged Lands – Submitted by Bureau of Parks and Lands (March 1, 2015).
[8] FY 2014 Annual Report – Bureau of Parks and Lands (March 1, 2015).

B. Management of Maine's Public Reserved Lands

The Bureau, which was established through a merger of the former Bureau of Parks and Recreation and the former Bureau of Public Lands,[9] is responsible for managing several categories of state-owned lands, including "[p]ublic reserved lands, nonreserved public lands, submerged lands and intertidal lands."[10] The Bureau's Lands Division is currently responsible for the management of the State's Public Reserved Lands.

In 1820, Maine "...by virtue of its sovereignty became entitled to the care and possession of these reserved lands ... [and] the State (of Maine) became trustee. . ."[11] The adoption of the Articles of Separation, which have been incorporated into Article X of the Maine Constitution, establish a framework for appropriate management and usage of the Public Reserved Lands, stating ". . . the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by this Commonwealth."[12]

In 1973, at the request of the Maine Legislature, the Maine Supreme Judicial Court issued an opinion[13] (hereinafter the "*Opinion of the Justices*") which stated that the uses designated in the Articles of Separation were merely "illustrative" of the permitted uses and that the inclusion of "schools" and "the ministry" was not intended to establish an exclusive list of uses.[14] However, the State of Maine "...must continue to hold and preserve [public lots] for the 'beneficial uses' intended."[15] During that same year, the Maine Legislature provided that the State's Public Reserved Lands must be used for the general benefit of the people of the State and be managed under the principles of multiple use to produce a sustained yield of products and services including silvicultural, wildlife and recreational opportunities.[16]

The next legal authority to provide guidance on appropriate management of these lands and usage of the Fund came in 1992, when Maine's Attorney General issued an opinion[17] (hereinafter the "*Opinion of the Attorney General*") stating that the revenue derived from Public Reserved Trust Lands is not interchangeable with General Fund revenue.

Collectively, the above-referenced *Opinion of the Justices* and *Opinion of the Attorney General* indicate that the State's foremost obligation is to hold and preserve Public Reserved Lands for future public use; that the management of Public Reserved Lands as multi-purpose forests for recreation, sustainable timber harvesting and wildlife habitat is permitted under

---

[9] *See* Public Law 2011, chapter 657 and Public Law 2013, chapter 405.
[10] 12 MRSA §§1802-1803.
[11] *Opinion of the Justices*, 308 A.2d 253, 254, 269 (Me. 1973) (quoting State v. Mullen, 97 Me. 331, 54 A. 841 (emphasis supplied) (1903)).
[12] *Opinion of the Justices*, 308 A.2d 253, 254 (Me. 1973) (citing Articles of Separation, paragraph seventh).
[13] *Opinion of the Justices*, 308 A.2d 253 (Me. 1973).
[14] *Opinion of the Justices*, 308 A.2d 253, 271 (Me. 1973).
[15] *Opinion of the Justices*, 308 A.2d 253, 270 (Me. 1973).
[16] *See* 12 MRSA §1847.
[17] *Op. Me. Att'y Gen. 92-07*, December 15, 1992.

Article X of the Maine Constitution; and that revenue derived from the Public Reserved Lands is also impressed with the public trust.[18]

According to the Bureau, Maine's 612,000 acres of Public Reserved Lands consists of 418,000 acres suitable for timber harvest, 94,000 acres in ecological reserves, 30,000 acres of nonforested land, 30,000 acres of non-commercial forest land and 40,000 acres of inoperable terrain. Among other directives, current law directs the Bureau to develop management plans for Public Reserved Lands that "... provide for a flexible and practical approach to the coordinated management of the public reserved lands..." and requires the Bureau to maintain an "adequate inventory of the public reserved lands, including not only the timber on those lands but also the other multiple use values for which the public reserved lands are managed."[19] The Bureau developed an Integrated Resource Policy (IRP) as a planning and decision tool to ensure its management plans are consistent with statutory requirements.[20]

C. Public Reserved Lands Management Fund

The Fund was created by the Maine Legislature as a depository for revenues derived from various sources, including "from the sale of timber and grass and other rights and things of value from the public reserved lands under the care, custody, control or management of" the Bureau.[21] Because these revenues are derived from public trust property, use of the Fund must be consistent with the public trust limitations embodied in Article X of the Maine Constitution.[22] However, the Legislature has some flexibility in determining the appropriate uses of this revenue beyond the original designations of schools and the ministry.[23]

The *Opinion of the Justices* and the *Opinion of the Attorney General* indicate that other permissible uses of the Fund include paying expenses associated with the management of Public Reserved Lands and the purchase of additional lands to be used for similar purposes. Those opinions also establish that revenue derived from Public Reserved Trust Lands is not interchangeable with General Fund revenue and that when the Maine Legislature intends to use revenue from the Fund, it must specifically express its intent to exercise its trust responsibility.

Traditionally, the Bureau has used the Fund to offset expenses incurred in the management of Public Reserved Lands, including but not limited to, forestry-related activities, construction and maintenance of trails, campsites, roads and wildlife management projects. While the *Opinion of the Justices* and the *Opinion of the Attorney General* provide important guidance related to the framework of permissible uses of the Fund, the full scope of permissible uses remains unclear.

---

[18] For additional information related to the *Opinion of the Justices* and the 1992 *Opinion of the Attorney General*, *see* this Commission's correspondence with the Attorney General in Appendix D through Appendix G.
[19] *See* 12 MRSA §1847, sub-§2.
[20] The Bureau's complete IRP is available to view at the following link: http://www.maine.gov/dacf/parks/get_involved/planning_and_acquisition/management_plans/docs/irp.pdf.
[21] 12 MRSA §1849, sub-§1.
[22] *See Op. Me. Att'y Gen. 92-07*, December 15, 1992.
[23] *See Op. Me. Att'y Gen. 92-07*, December 15, 1992.

During the course of their deliberations, the Commission requested additional legal guidance from Attorney General Janet Mills on a number of proposed uses of the Fund. The first request was made on October 15, 2015, regarding proposals to: (1) purchase heating equipment for low-income families in rural areas; (2) transfer Fund monies to the Bureau for state park purposes; and (3) purchase other real estate of various types.[24]

With respect to the purchase of heating equipment, Attorney General Janet Mills stated that the connection between using Fund monies to provide low-income heating assistance and the preservation of the Public Reserved Lands was difficult to make and would "...likely meet great skepticism from the Court."[25] Additionally, the Attorney General stated that using Fund monies to administer state parks, thereby offsetting General Fund money to be used for other purposes, would be "...effectively making trust money interchangeable with General Fund revenue, which is not permitted." Citing the *Opinion of the Justices*, Attorney General Janet Mills opined that the legality of using Fund monies to purchase real estate "...depends on the characteristics of the property and the uses to which it would be dedicated" and that the "[a]cquisition of property that is not designated as Public Reserved Lands, but that is dedicated to the same or substantially similar uses, might also be permitted." The Attorney General further advised that if the Legislature decided to authorize the use of Fund monies to purchase such properties, it would need to include specific fact-finding to address why the acquisition is consistent with its public trust responsibilities and would have to ensure that the acquired property would be perpetually managed in a way that is consistent with public trust principles.

On November 3, 2015, the Commission made a second request seeking guidance from Attorney General Janet Mills regarding the legality of using revenues from the Fund to support educational programs related to logging and forestry offered by private and public institutions, including but not limited to, the purchase and maintenance of teaching equipment.[26]

Attorney General Janet Mills responded on November 24, 2015, stating that "[o]ne of the original uses for which the Public Reserved Lands were set aside was to support schools, and education through public institutions likely remains a permissible use of revenue derived from these lands." The Attorney General further stated that if the Legislature seeks to use Fund monies for this purpose or for other purposes, it should "acknowledge the exercise of the Legislature's authority as trustee, and should include specific fact-finding as to why the expenditure is consistent with public trust limitations." However, the Attorney General cautioned that using money from the Fund to support educational programs at private institutions "...could create constitutional concerns" but that if a concrete proposal to use the Fund in this way is developed, the Attorney General would be willing to review it and provide additional guidance at that time.[27]

The summary of the projected Public Reserved Lands Management Fund budget for Fiscal Year 2016, provided by Director Denico, can be found in Appendix H of this report.

---

[24] The complete letter from the Commission to the Attorney General (Oct. 15, 2015) can be found in Appendix D.
[25] The complete letter from the Attorney General to the Commission (Oct. 26, 2015) can be found in Appendix E.
[26] The complete letter from the Commission to the Attorney General (Nov. 3, 2015) can be found in Appendix F.
[27] The complete letter from the Attorney General to the Commission (Nov. 24, 2015) can be found in Appendix G.

III. Public Reserved Lands Management – Positives

Throughout this process, Commission members have reaffirmed their strong belief that the staff within the Bureau's Lands Division is currently doing an outstanding job managing our Public Reserved Lands under the principles of multiple use. The following section of this report highlights a few of the many positive activities and accomplishments achieved by the Bureau's dedicated Lands Division staff.

Regional Managers take pride in managing the State Public Reserved Lands. The following are positive statements that all three managers feel strongly about including in this report, and reflect their dedication to their work.

1. "We are contributing to the economy of Maine by providing work for hundreds of individuals and Maine families."
2. "I'm pleased to have a dedicated staff who takes great pride in stewarding the public's forests in a multiple-use scenario."
3. "We continue to provide the public wonderful opportunities to enjoy their public lands by hiking, camping, boating, fishing and hunting in some of the most beautiful settings in Maine; all at no taxpayer cost."
4. "We are managing a public resource, and leaving it in a better condition than we find it."
5. "I'm proud that we practice uneven-aged management with positive results. It is a complex silvicultural system and we do it quite well."
6. "Firewood from Public Lands is helping heat Maine homes."

Some specific accomplishments and developments worth mentioning include the following.

1. We are always rated highly by third party forest certification auditors, for both the Sustainable Forestry Initiative (SFI) and Forest Stewardship Council certification (FSC), and have been dual certified since 2002.
2. We continue to improve our forestry with better analysis; through updated aerial photography, inventory, timber typing, forest modeling.
3. We are making strides in adopting new technologies in the field, including increased use of technology for planning, and providing better information through maps and data on hand held devices, recently moving from GPS Units to iPads and helping contractors learn with us.
4. We continue to transition from stumpage permits to contract logging service (CLS) contracts, without additional staff to deal with the significant increase in contracts and timber accounting. The transition is improving the long-term, direct relationships with contractors, equipment operators and mill owners. The transition to CLS has increased revenues which has resulted in a significant increase in investments on the landbase, again without an increase in staff.

5. We have a robust public planning process that helps us make sound management decisions on the highest and best use of our lands, which have more geographic, silvicultural, wildlife and recreation diversity than any other single landowner in Maine, and perhaps the country.

6. We work to accommodate all types of recreation on Public Lands, whether motorized, mechanized, or non-motorized.

7. We work with landowners surrounding us in partnership to provide regional trail linkages and expand public recreation opportunities, expanding both land and water trails, through cooperative agreements (such as with Brookfield Power at Flagstaff Lake and Moosehead Lake); and the ground-breaking regional hiking trails project with Plum Creek in the Moosehead region, which will create a diverse new set of trails on Plum Creek and BPL lands.

8. We invest in roads for the public on Public Lands that are of good quality and maintained specifically for passenger vehicular use. We contract for road maintenance on public use roads totaling approximately 366 miles across all regions.

9. We continue to maintain, improve and add to our popular hiking trails including Tumbledown, Kennebec Highlands, Pineland, Little Moose Mountain, Big Spencer Mountain, Donnell Pond Unit, Cutler Coast, and Deboullie Mountain, among others.

10. We find ways to support the local economy not only with timber harvests, but with a variety of leases: sugarbush leases in the Western Region, scattered agricultural leases, 10 commercial sporting camps, and firewood permits yielding annually about 300 cords of firewood, to name a few.

IV. Recommendations

The Commission arrived at its recommendations after thoughtful deliberations, which included seeking legal guidance from Attorney General Janet Mills. The Commission received extensive information from the Bureau delivered by Commission member, Doug Denico; along with information provided by Will Harris, former Director of Bureau of Parks and Lands; Tom Morrison, a former Acting Director of the Bureau of Parks and Lands; five former Commissioners of the Department of Conservation (Richard Barringer, Richard Anderson, Edwin Meadows, Ronald Lovaglio and Patrick McGowan); a representative from Efficiency Maine, the Maine Professional Guides Association, Alpha One, the Appalachian Mountain Club, Professional Logging Contractors of Maine, the Maine Council of Trout Unlimited, Natural Resource Council of Maine, Maine Audubon, Friends of Bigelow; and testimony from members of the general public.

The Commission believes its recommendations reflect a thorough analysis of available data and present a careful balance between the State's current budgetary needs, the Fund's historical public trust limitations and the multi-purpose use of Maine's Public Reserved Lands.

The Commission members present and voting unanimously recommend[28] the following:

Recommendation #1: The Public Reserved Lands Management Fund must have a minimum $2.5 million annual cash operating balance at the start of each fiscal year. The Legislature may consider establishing this baseline figure statutorily.

Recommendation #2: The Department of Agriculture, Conservation and Forestry should conduct a detailed forest inventory (estimated cost of $50,000-$100,000). The Commission strongly recommends conducting a forest inventory every five years, beginning in fiscal year 2016. Although new technology is emerging that may eventually make the establishment of a continuous forest inventory a viable option for the Bureau of Parks and Lands, we do not presently recommend pursuing a continuous forest inventory.

Recommendation #3: The Legislature should allow experts, including the Silvicultural Advisory Committee, to advocate for the appropriate annual sustainable timber harvest level for our Public Reserved Lands.

- After staff at the Bureau's Lands Division makes a recommendation based on expert opinions and data from the most recent physical forest inventory that is consistent with multiple use objectives, existing management plans and the Integrated Resource Policy, the recommendation should be presented to the joint standing committee of the Legislature having jurisdiction over Public Reserved Lands for review and public comment before the harvest level is accepted.

[28] The final vote tally was 12-0, with three members absent during the vote. Rep. Donald G. Marean, Walter Whitcomb and Doug Denico were not present for the vote on the Commission's report and recommendations.

- The Bureau of Parks and Lands' annual report to the Legislature should include a breakdown of growth and yield in the three regional units and also identify any harvesting that has been occurring in individual management units where yield exceeds annual growth.

- The Joint Standing Committee on Agriculture, Conservation and Forestry should review the statutory language adopted in Public Law 2015, chapter 267, Part FF (related to the sustainable harvest level).

Recommendation #4: The Bureau of Parks and Lands should discover where the State does not currently have deeded access to our Public Reserved Lands and begin exploring how to go about obtaining access. Regional foresters within the Bureau's Lands Division, who are familiar with both the physical landscape and present-day landowner relations, should develop realistic goals and priorities regarding increased access to Public Reserved Lands.

Recommendation #5: To better meet the needs of Maine people, staff within the Bureau's Lands Division should develop a statewide priority list of recreational infrastructure projects and American with Disabilities Act (ADA) projects for our Public Reserved Lands. Recreational investments connect more people to Maine's outdoors and present real economic opportunity, particularly in rural communities. Because of previous financial challenges, the Bureau's Lands Division has not been able to invest in recreational infrastructure and ADA projects, but with additional funding it can address high priority sites. To make those investments and spur rural economic activity, a statewide priority list needs to be developed. The Bureau's statewide recreational infrastructure and ADA accessibility priority list should be presented to the joint standing committee of the Legislature with jurisdiction over Public Reserved Lands for its consideration and public vetting before listed projects are implemented.

Recommendation #6: The following uses of the Fund, which are listed in no particular order of priority and some of which are already contained in existing management plans for the various Public Reserved Lands units, are potentially viable from a legal perspective and should be considered by the Legislature.

A. Improving existing wildlife habitats on Public Reserved Lands so they are managed in an exemplary manner.

B. Purchasing additional lands (special habitats) on adjacent parcels.

C. Improving signage on and around Public Reserved Lands – including signage related to forestry education and signage related to the location of Public Reserved Lands and accessibility.

D. Improving accessibility for individuals with disabilities on Public Reserved Lands, particularly around boat launches and at campsites.

E. Providing funding (up to $300,000 total) for public secondary and post-secondary educational programs related to logging. The joint standing committee of the Legislature having jurisdiction over Public Reserved Lands should consider legislation directing the Bureau to establish, by rule, a system where eligible programs may apply for a maximum one-time allocation of $50,000 per school unit. School units may include in their application a plan to use the one-time allocation over multiple years. Regional managers within the Bureau's Lands Division must be included in the decision-making process related to the use of any allocated funds that result from this process and be involved with, or have capacity for, input in successful applicants' school programs. These funds may be used, among other educational related uses, to upgrade existing logging equipment or for the lease or purchase of logging equipment to help students meet the needs of an ever changing work force. Any funds provided to school units must supplement, not supplant, existing school funding.

Recommendation #7: The Legislature should review the uses of the Fund and approve allocations therefrom. Public Law 2013, chapter 368, Pt. LLLL, section 2 repealed the following language from Title 12, section 1849, subsection 3 and should be reenacted, as amended:

> **3. Expenditures from fund.** Expenditures from the Public Reserved Lands Management Fund are subject to legislative approval in the same manner as appropriations from the General Fund. Money may not be expended without allocation by the Legislature. The joint standing committee of the Legislature having jurisdiction over Public Reserved Lands must approve and recommend the allocations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

Recommendation #8: The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands should review its bid process for timber harvesting and road construction projects, along with any liability concerns, with interested members of the Commission and report back to the Joint Standing Committee on Agriculture, Conservation and Forestry with any recommended changes by January 15, 2016.

Recommendation #9: The Joint Standing Committee on Agriculture, Conservation and Forestry should report out legislation to extend this Commission, authorizing a minimum of two meetings for fiscal year 2017.

APPENDIX A

Authorizing legislation – Public Law 2015, chapter 267, Part GGGG

proposed policy and any other information the Attorney General and the district attorneys believe is relevant. The Joint Standing Committee on Judiciary may report out legislation related to the report to the Second Regular Session of the 127th Legislature.

PART GGGG

Sec. GGGG-1. Commission established. Notwithstanding Joint Rule 353, the Commission To Study the Public Reserved Lands Management Fund, referred to in this Part as "the commission," is established.

Sec. GGGG-2. Commission membership. The commission consists of the following members:

1. Two members of the Senate, appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives, appointed by the Speaker of the House, including at least one member from each of the 2 parties holding the largest number of seats in the Legislature;

3. Four members appointed by the President of the Senate as follows:

A. A commercial wood harvester;

B. A state-licensed forester;

C. A scientist who has studied forest health and management; and

D. A representative of the tourism industry;

4. Four members appointed by the Speaker of the House as follows:

A. A representative of a conservation organization;

B. An individual who represents outdoor recreation interests;

C. A representative of commercial timber holdings in the State; and

D. A representative of a sportsman's group;

5. The Commissioner of Agriculture, Conservation and Forestry, or the commissioner's designee; and

6. The Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry, or the director's designee.

Sec. GGGG-3. Chairs. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission.

Sec. GGGG-4. Appointments; convening of commission. All appointments must be made no later than 30 days following the effective date of this Part. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs

shall call and convene the first meeting of the commission within 45 days. If 30 days or more after the effective date of this Part a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

Sec. GGGG-5. Duties. The commission shall meet a minimum of 4 times to review, study and analyze:

1. The proper use of the Public Reserved Lands Management Fund established in the Maine Revised Statutes, Title 12, section 1849 and its possible expansion to other uses;

2. The proper sustainable harvest levels on state land and how best to maintain those levels;

3. How best to manage public lands to preserve forests for recreation, wildlife habitat and public use while ensuring a healthy working forest;

4. After reviewing data and current science, how best to manage the State's public lands to deal with possible pest and disease issues;

5. Investments in public lands to increase access to public lands and spur rural economic development;

6. The impact of outdoor recreation on the State's tourism economy and the role public lands play in that economy; and

7. Any other issues the commission feels necessary to protect and manage public lands and the funds derived from those public lands.

Sec. GGGG-6. Staff assistance. The Legislative Council shall provide necessary staffing services to the commission.

Sec. GGGG-7. Report. No later than December 5, 2015, the commission shall submit a report of its findings and recommendations to date, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry. The joint standing committee is authorized to submit a bill to the Second Regular Session of the 127th Legislature related to the subject matter of the report.

PART HHHH

Sec. HHHH-1. Rename Land and Water Quality program. Notwithstanding any other provision of law, the Land and Water Quality program within the Department of Environmental Protection is renamed the Water Quality program.

Sec. HHHH-2. Establish Land Resources program. Notwithstanding any other provision of law, the Land Resources program is established within the Department of Environmental Protection.

APPENDIX B

Membership list, Commission To Study the Public Reserved Lands Management Fund

Commission to Study the Public Reserved Lands Management Fund

PL 2015, c. 267 part GGGG

Appointment(s) by the President

Sen. Thomas B. Saviello – Chair 60 Applegate Lane Wilton, ME 04294	Senate members – One member from each of the two parties holding the largest number of seats in the Legislature
Sen. James F. Dill 72 Sunset Drive Old Town, ME 04468	Senate members – One member from each of the two parties holding the largest number of seats in the Legislature
Tony Madden PO Box 499 Milford, ME 04461	A commercial wood harvester
Bob Meyers Maine Snowmobile Association PO Box 80 Augusta, ME 04332-0080	A representative of the tourism industry
Jonathan Robbins 211 Magog Road Searsmont, ME 04973	A state licensed forester
Richard Smith 15 Gordon Road New Sharon, ME 04955	A scientist who has studied forest health and management

Appointment(s) by the Speaker

Rep. Craig V. Hickman – Chair 192 Annabessacook Road Winthrop, ME 04364	House members – including at least one member from each of the two parties holding the largest number of seats in the Legislature
Rep. John L. Martin PO Box 250 Eagle Lake, ME 04739	House members – including at least one member from each of the two parties holding the largest number of seats in the Legislature
Rep. Donald G. Marean 233 Boney Eagle Road Hollis, Me 04042	House members – including at least one member from each of the two parties holding the largest number of in the Legislature
Thomas Abello The Nature Conservancy 14 Maine Street Ste. 401 Brunswick, ME 04011	A representative of a conservation organization

John Bryant
American Forest Mgmt.
Northeast Region Mgr
40 Champion Lane
Milford, ME 04461

A representative of commercial timber holdings in the State

Greg Shute
Chewonki Foundation
485 Chewonki Neck Road
Wiscassett, ME 04578

An individual who represents outdoor recreation interests

David Trahan
Sportsman Alliance of Maine
205 Church Hill Road
Augusta, ME 04330

A representative of a sportman's group

Statutory appointment(s)

Doug Denico
Department of Agriculture, Conservation and Forestry
Maine Forest Service
22 State House Station
Augusta, ME 04333-0022

Director of Maine Forest Service

Walt Whitcomb
Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04333-0022

Commissioner Agriculture, Conservation and Forestry

Staff:
Curtis Bentley
Mike O'Brien
Office of Policy and Legal Analysis

APPENDIX C
Summary of Commission meetings – held on September 9, 2015, September 29, 2015, October 27, 2015, and December 1, 2015

Commission To Study the Public Reserved Lands Management Fund

Summary of first Commission meeting – September 9, 2015 at 12:30pm
Held in the Cross State Office Building, Room 216 – Augusta, Maine

Members present: Sen. Saviello, Sen. Dill, Rep. Hickman, Rep. Martin, Doug Denico, John Bryant, Thomas Abello, David Trahan, Greg Shute, Jonathan Robbins, Richard Smith, Bob Myers, Tony Madden

Members absent: Rep. Marean, Walter Whitcomb

1. Chairs' welcome; introduction of Commission members; review of the Commission's duties as prescribed by Public Law 2015, chapter 267, Part GGGG.

2. Presentations were given to the Commission by the following individuals (organizations):

- Jerry Reid (Assistant Attorney General) – Provided an overview of legal issues related to the use of the Public Reserved Lands Management Fund. During his presentation, Assistant Attorney General Jerry Reid:
    - Provided a brief history of Public Reserved Lands and explained what "public trust" means;
    - Reviewed the 1973 Maine Supreme Judicial Court opinion regarding the use of public lands; the Public Reserved Lands Management Fund may be used for public purposes other than education;
    - Reviewed the 1992 Maine Attorney General opinion regarding the transfer of money to the General Fund for unrestricted uses from certain trust accounts; public reserved land accounts and other specified public trust assets are not subject to unrestricted diversions of trust money to General Fund uses without any articulated relationship to the trust purposes of the assets involved; and
    - Reviewed *Cushing v. State* – a 1981 Maine Supreme Judicial Court case; cutting rights on public lots granted by the State conveyed no right to cut timber not in existence on the date of the conveyance; public lands remain in public trust.

- Doug Denico (Director, Maine Forest Service) – Provided an overview of the State's public lands. During his presentation, Director Denico discussed:
    - Types of public lands: Public Reserved Lands are those lands that originated in the State's original public lots (state set aside land in each township); Public Nonreserved Lands are lands the State acquired over the years (*e.g.* land another agency no longer required);
    - Legislative mandates on uses of Public Reserved Lands (timber management, recreation, sustainable yield of renewable resources, fish and wildlife management, watershed management, exemplary land management practices, management of ecological reserves, designation of "special natural areas," management of the Fund, sound planning and other public practices);
    - Key components used to accomplish statutory obligations / mandates;

- Uses of public lands by acreage (timber harvest, ecological reserves, non-forested land, non-commercial forest land, and inoperable terrain);
    - Total acreage = 612, 000 acres;
- How public lands are administered (three administrative offices, 15 planning regions broken down into planning units);
- Planning process for each land unit – land is allocated to seven uses (special protection, backcountry rec., remote rec., visual consideration, developed rec., and timber management), public land constituencies are involved in process;
- Current forest inventory;
- Harvest levels – annual allowable cut (AAC);
- Silvicultural prescriptions (multi-aged and single-aged management, patch cut, clear cut and no treatment);
- Insect, diseases and invasive species concerns (spruce budworm, emerald ash borer, Asian longhorn beetle and invasive plants);
- Public Lands' budget and staff positions (currently 40 employees);
- Fisheries and wildlife matters (riparian areas, lynx, deer withering habitat);
- Recreation on public lands (trails, camp sites, boat launches, etc.); and
- Future funded projects and initiatives (elimination of invasive plants, better growth quality of timber by younger stands, increase road network, study group regarding spruce budworm spraying, bring field and planning staff closer together, create two demonstration forests, separate cost between forest management and recreation, growth and yield in-house capabilities and 5-year forest inventory).

- Michael Stoddard (Efficiency Maine) – Discussed the incentives available for various home energy upgrades; Efficiency Maine tries to stay out of marketing and the general public is not aware of incentives for all types of energy, so need help getting the word out to consumers.

- Don Kleiner (Maine Professional Guides Association) – The wildlife and fish resources on public lands are very important and valuable to Maine's rural, small business economy and Maine's economy as a whole; need to protect them for future generations. Mr. Kleiner said we need to figure out how to collectively turn wildlife and fish assets into economic activity.

- Dennis Fitzgibbons (Alpha One) – Disabilities are a growing factor in Maine as its population ages; important to provide access to public lands for this demographic; will enhance economic activity; ATV trailheads often have barriers that limit access to ATVs of 60 inches in width or less, thereby restricting access by disabled riders because their ATVs tend to be wider than 60 inches.

- Appalachian Mountain Club – Need to build trails on public lands in order to bring people to rural communities. Public lands are great places for short hiking trails that can be accessed by most people (*e.g.*, older hikers, strollers, young children, disabled, etc.), which will attract more visitors to rural areas, thereby creating economic development opportunities.

- Will Harris (Former Director of Bureau of Parks & Lands) – Important to talk about public lands as a public trust and not treat them as the State's wood lot. The Bureau should not divert funds for projects at the beginning of the year because then there is a strong incentive to cut for those projects. Instead, wait until the end of the year after all the costs to operate and maintain the public lands have been paid to see if there are any funds available for other projects. It is important to have deeded access to state lands.

- Tom Morrison (Former Acting Director of Bureau of Parks & Lands) – We need to make the money before we spend it. In the past, not everything was addressed because the Bureau always lived within its budget. Additional revenue could be used to create a continuous forest inventory program, address spruce budworm (pesticides may be needed), wildlife habitat improvements/management, deer wintering area improvements, boundary line management, road construction and maintenance, recreational facilities; The Bureau should grow high quality trees (biological v. economic maturity); the State should look at obtaining deeded access to public lands.

3. Public comment period.

- During the public comment period, the following individuals / organizations testified: George Smith; Lew Kingsbury; Dana Doran (Professional Logging Contractors of Maine); Ed Meadows; Steve Swatling; Jeff Reardon (Trout Unlimited); Kathy Johnson (Natural Resources Council of Maine); John Waters; Jennifer Gray (Maine Audubon); Gordon Mott; Richard Fecteau (Friends of Bigelow); Mitch Lansky; G.W. Martin; Ken Spaulding.

- During this public comment period, the following points and arguments were presented:
    - Concern about building more roads because it will be detrimental to wildlife, especially native brook trout;
    - Use public land income to purchase more land and put more work into marketing recreational use on public lands;
    - There should be more of a focus on the recreational use of public lands;
    - Maine State Park, Conservation and Recreation Lands Protection, Question 5 (1993), which was approved on November 2, 1993, needs to be studied and discussed;
    - Consider putting any extra money towards high school logging education programs;
    - Questions raised over whether the Bureau has the staff and resources to do forest inventory and modelling;
    - There should be separate accounting; Parks are General Fund money and are not a business enterprise, unlike other public lands that are a business enterprise because self-funded;
    - State must function as a fiduciary. As fiduciaries, the State cannot reduce the value of the asset;
    - No modelling has been successfully done on public lands; it is critical that we spend the resources to develop a model that is accurate;

- We should focus on fish and wildlife resources, not just timber resources; Roads will be detrimental to our wildlife and fish resources, especially wild brook trout populations; Greater access through additional roads means more pressure on the land; stream blockages and alterations will negatively impact Maine's unique and fragile native and wild brook trout resources; Need to do a better job marketing our brook trout resources; don't advertise one pond but instead a large group of them to spread out the fishing pressure to avoid overuse;
- Bring recreation and wildlife habitat up to the same level of importance as logging; Consider using financial incentives to retain "good" loggers on public lands;
- Concern was raised over not having enough field foresters;
- Road building will enhance industrial level extraction of timber to the determent of wildlife and recreational uses;
- Roads open up areas to the spread of invasive species; focus on eco-recreation and educating public on how forest practices affect the climate;
- Invest in restoring public lands; use contractors to build trails that BPL staff design; too much harvesting no longer a balance of uses, 40 staff and only one wildlife biologist and one recreational position;
- Concerned about building new roads and how it will impact wildlife.
- If need to treat budworm, use a low toxicity biological agent; Canada is currently using one successfully to treat budworm infestations;
- Concern that Bigelow is managed like any other public reserved land; Bigelow gets a lot more use and needs more funding for trail development and maintenance;
- Concerns about level of cut; each unit is supposed to be viewed as an individual unit, not grouped with other units, leads to undercutting one unit and overcutting another;
- Invitation given to Commission members to Frye Mountain historic ride;
- Funding from cutting should remain with public lands; need to focus more on wildlife and recreation.

4. Commission discussion.

- During the course of the meeting, the Commission made the following requests for information from the Maine Forest Service:

A. A copy of the Integrated Resource Policy (IRP);
B. Membership list of various constituencies involved in the Public Lands planning process;
C. An example of a 5-year land management plan;
D. Detailed documentation of the current forest inventory;
E. Additional information regarding average profit per cord realized from Public Lands;
F. A spreadsheet concerning silvicultural prescriptions (referenced at the meeting by Director Denico);
G. Current inventory regarding accessibility accommodations on Public Lands;
H. A summary of Silvicultural Advisory Committee tour (from Tom Charles); and

I. A complete list of management plans.

- The Commission also directed the following questions to the Maine Forest Service:

A. Is any money from the Fund currently being spent on education?
B. How, specifically, is the Department of ACF managing riparian zones at a higher level than is required?
C. How are conservation easements on Public Lands currently being funded?

5. Commission's staff gave the Commission an oral summary of the meeting.

The meeting adjourned at approximately 6:10 pm.

Commission To Study the Public Reserved Lands Management Fund

Summary of second Commission meeting – September 29, 2015 at 11:00am
Held in the Cross State Office Building, Room 216 – Augusta, Maine

Members present: Sen. Saviello, Sen. Dill, Rep. Hickman, Rep. Martin, Rep. Marean, Doug Denico, Thomas Abello, David Trahan, Greg Shute, Jonathan Robbins, Richard Smith, Bob Myers, Tony Madden

Members absent: John Bryant, Walter Whitcomb

1. Chairs' welcome; introduction of Commission members.

2. Doug Denico (Director, Maine Forest Service) – Provided responses to information requests and the questions posed to the Maine Forest Service during the first Commission meeting (held on September 9, 2015).

- Information provided by Director Denico can be found at the following webpage: http://legislature.maine.gov/legis/opla/publiclandsmgmtmatrls.htm and is summarized below.
  - Most recent Integrated Resource Policy (IRP);
  - Links to SFC/SFI certifications;
  - An example of a 5-year land management plan; links to the complete list of land management plans;
  - Membership list of the constituencies involved in the Public Lands planning process;
  - A description of how the harvest prescriptions encompass the multiple use mandate on public lands;
  - An example of a prescription;
  - A comparison of contract logging services v. stumpage for 2013, 2014 & 2015 YTD;
  - A detailed plan to provide an annual allowable harvest using a forest biometrician and sophisticated harvest modeling tools; a summary of Silvicultural Advisory Committee tour; current inventory of accessibility accommodations on public lands; details about the current Bureau of Parks and Lands budget;

- Contract lumber services (CLS) yields more revenue than stumpage contracts; Bureau is trying reduce the number of "middlemen" by dealing directly with the contractors that are doing the actual cutting to ensure they receive fair pay for their services; Getting a CLS through the state system can be burdensome and can result in lost opportunities because sometimes there is a limited window of opportunity to make a deal and get the wood cut;
- Bureau of Parks and Lands does not get any money from public reserved lands unless BPL provides a service;
- Need to do a better job of keeping recreational cost separated from other costs such as infrastructure – don't have those separated out at this point;
- Need better data on recreational use patterns and more education about recreational opportunities on public lands;
- Need to have roads in the right areas at the right time to properly manage land;
- Once we pay all our bills, we need to have a $2.5 million cash balance on hand to cover costs in the case of an emergency;
- Currently, the annual allowable cut (AAC) is 141,500 cords over 394,000 acres (166,000 discounted 15% to reach 141,500 cords); The discount number is arbitrary and it is unclear whether it is needed after reviewing 1999 & 2011 forest inventories;
- Proposed conducting a forest inventory next fall – will get an estimate for the Commission, but doesn't think will be too expensive.

3. Letter from five former commissioners (dated Sept. 24, 2015).

- Ronald Lovaglio, Former Commissioner of the Maine Department of Conservation addressed the Commission.
  - Felt the former commissioners had something to offer the Commission … to help with its deliberations; take public trust very seriously and concerns about increasing the harvest – go slow; Suggested using any surplus money to conduct a thorough forest inventory and proffered using the Fund to help with the Parks budget and then use the General Fund money that would have otherwise have gone to Parks to help with energy program.

4. Public comment period.

- During the public comment period, the following individuals / organizations testified:
  - Lew Kingsbury; Steve Swatling; Kathy Johnson (Natural Resource Council of Maine); Gordon Mott; Mike Wilson; Ken Spaulding.

- During the public comment period, the following points and arguments were presented:

  - Kathy Johnson provided the Commission with a list of funding needs / recommendations for the Bureau of Parks and Lands. The document can be accessed at: http://legislature.maine.gov/legis/opla/publiclandsmgmtmatrls.htm;
  - Wildlife and the protection of old growth forests are as important as a working forest; need to focus more on these aspects of public lands;
  - Need to continue to build forest inventory as all past commissioners have done;

- The annual allowable cut is a technical and not a political analysis; politics should not set the max allowable cut; should determine how overall cut should be managed among species;
- The Bureau of Parks and Lands should take a more proactive approach in developing destination development strategies;
- Consider developing more agricultural uses for public lands.

5. Commission discussion.

Commission members discussed the following / made the following arguments:

- Budget matters, access and education – Should develop a way to track line items in budget; track road building component of budget separately from recreational costs; need to set up a reserve account to hold the $2.5 million in emergency funds; consider alternative ways to list budget expenditures, encumbrances, etc. so that it is less confusing to lay persons; before the next meeting, Commission members should review the letter presented by Kathy Johnson of Natural Resource Council of Maine;

- Access and education – Need to further consider educational outreach efforts such as signage about (1) what opportunities exist on public reserve lands, (2) what people are seeing on these lands and (3) what is being done on public reserved lands; need to ensure long-term accessibility; look at boat launches for Americans with Disability Act (ADA) accessibility to determine where the needs are; unclear how to address ADA access issues; updating inventory and GIS system would be a good investment;

- Sustainable harvest – Legislature should not determine annual allowable cut; AAC should instead be left to professionals, based on science; make sure the Bureau has the tools it needs to determine AAC; consider establishing an allowable cut advisory committee to help determine AAC and other issues that arise that require certain expertise;

- Pest and disease control – Should look more closely at invasive species and other diseases and not just at spruce budworm, what is on the horizon; look at what was passed this past legislative session regarding the spruce budworm laws; Denico will brief the Commission on the Bureau's strategy on pest/disease control;

- Tourism – Agencies need to work together to promote tourism on Public Reserved Lands; should give destination development more consideration; webcasts, signage etc., to inform the public of the opportunities on these public lands.

- Next meeting – tentatively set for October 27, 2015.

During the course of the meeting, the Commission made the following requests for information:

- Request for Director Denico – (1) A copy of the bid criteria and sample form; (2) An estimate of what it will cost to do a 5-year forest inventory in the fall of 2016; (3) Brief presentation about spruce budworm strategy; (4) List of priority recreation projects; (5) Copy

of the Sewall letter (one page) that was distributed during ACF budget process; (6) ADA expenditures currently undertaken by Dept.; (7) Additional clarity re: how much money is really available in the Public Lands account;

- Request for former Commissioner of Conservation, Ronald Lovaglio – (1) Review current forest inventory data and report back with comments at the Commission's next meeting; (2) Provide recommendations on how to expand on recreational/job creation opportunities on public lands without putting a study together;

- Request for Mike Wilson – Provide additional information on destination development;

- Request for Commission staff – distribute statutory updates enacted during the First Regular Session of the 127th Legislature that address the spruce budworm issue.

The meeting adjourned at approximately 4:00 pm.

Commission To Study the Public Reserved Lands Management Fund

Summary of third Commission meeting – Tuesday, October 27, 2015 at 11:00am
Held in the Cross State Office Building, Room 216 – Augusta, Maine

Members present: Richard Smith, John Robbins, Jon Bryant, Doug Denico, Rep. Marean, Greg Shute, Tony Madden, Bob Myers, David Trahan, Tom Abello, Sen. Dill, Sen. Saviello, Rep. Hickman

Members absent: Walter Whitcomb, Rep. Martin

1. Chairs' welcome; introduction of Commission members.

2. Doug Denico (Director of Maine Forest Service) provides responses to questions from previous meeting.
   - Comments about how costs of roads will reduce in approximately three years after many new roads have been built. After that, only maintenance will be needed.
   - Response to Question #1 (A copy of the bid criteria and sample form)
     - Discussion about connecting with Tony Madden after the meeting to look deeper into the bid process. **Tony said he will share his thoughts on the bid process after corresponding with Doug. Commission members indicated that they would like to review these thoughts and include in them in the letter to the ACF Committee.**
   - Response to Question #2 (An estimate of what it will cost to do a 5-year forest inventory in the fall of 2016)
     - Discussion about the cost of setting up a continuous forest inventory.
       - Doug said this would be an extremely expensive process.

    - Discussion about evolving technology and allocating some money every year to update the inventory, regardless of whether using old or new technology.
- Response to Question #3 (Brief presentation about spruce budworm strategy)
    - Discussion about 2-prong approach – cutting and (maybe) spraying.
    - Discussion about whether we need more money in reserve to be prepared for a budworm outbreak.
- Response to Question #4 & #6 (List of priority recreation projects; ADA expenditures currently undertaken by the Dept.)
- Response to Question 5 (Copy of the Sewall letter that was distributed during ACF budget process)
- Response to Question 7 (Additional clarity re: how much money is really available in the Public Lands account).

3. Lunch break (15 minutes)

4. Commission member discussion (based on duties from Public Law 2015, chapter 267, Part GGGG-5) to develop recommendations for report / legislation.

- Discussion about letter received from the Attorney General regarding permissible uses of the Fund.

- Discussion about plan of action moving forward, with one meeting remaining.
    - Plan: Letter to ACF Committee –
        - The ACF Committee can then engage in a public process and decide to report out legislation or otherwise correspond with the AFA Committee.

- **Commission members agreed that there should be at least a $2.5 million cash operating balance in the Fund.**
    - **Minimum of $2.5 million set aside for FY 2016 and for FY 2017, rolling over. After 2017, this figure can be adjusted by the ACF Committee as necessary.**

- Because there is approximately $4.5 million to work with and $2.5 million should be set aside, discussion about what should be done with the rest of the money available in the Fund (approximately $2 million).

    - Education:
        - Discussion about spreading word about what BPL does well, creating demonstration forests, etc.
        - Discussion about leaving it up to the Public Lands staff about how to spend the remaining balance in Fund.

- Discussion about having Public Lands staff put forth priorities from the various regions based on the plans they already have. Cautioned not to create expectations based on current surplus.
    - Then have plan come back to committee of jurisdiction for review and public vetting.
- Discussion about funding logger education programs.
- Discussion about mentoring programs as a safe way to create educational opportunities.
- **Discussion about using Fund to improve signage** / bolster tourism.
    - Talk about distribution of brochures, maps, etc.
        - Idea presented about establishing a grant program to enlist local communities to help with this effort.
    - Talk about a Public Lands app.
- **Letter to be sent to the Attorney General asking for guidance about whether funding high school loggers' education programs would be a legally permissible use of the Fund.**

- Deeded access:
    - Discussion about using money in Fund to ensure we have access to the lands that we already own.
    - **Discover where we do not have access and begin to explore how to go about obtaining it (with realistic goals / priorities to be established by the regional foresters).**

- ADA accessibility:
    - Discussion about using money in Fund to bolster ADA accessibilities. Questions about what other states are going to address this issue.

- Forest inventory:
    - **Consensus that we need to do an inventory and (at this point in time) not a continuous forest inventory.**
        - **Conduct inventory every five years, beginning next FY.**

- Purchasing additional land:
    - Discussion about purchasing deer yards on adjacent land.
    - **Discussion about value of protecting special wildlife places / purchasing additional land.**

- Brief discussion about spruce budworm.

- Discussion about Annual Allowable Cut (AAC).

- Discussion about setting up ACF sub-committee to give legislators opportunity to gain more expertise in forestry issues. Disagreement because other oversight committees already exist.
- **Legislature should stay out of the annual sustainable harvest determination. After BPL staff has made their recommendations and provides data to support their position, then ACF Committee can review and allow for public comment.**

- **Discussion about including statutory language to send to ACF Committee that reestablishes practice of allowing ACF Committee to review the uses of the Fund (language that had been removed by a previous legislature).**

- **Discussion about extending the Commission to Study the Public Reserved Lands Management Fund for an additional year (at least two meetings).**

- **Discussion about giving recognition to the BPL for the good work that they have been doing to date in the letter that is sent to the ACF Committee.**
  - Request for Doug Denico to provide this information.

- Comment about how public perception of Public Lands is important and often different from the industry's perception of them; need to **address multiple-use in our letter.**

5. Public comment period.

- Testimony was given by the following individuals: Mr. Ted Wright, Cameron Clark, Adam Casins, Mark Beaudoin, George Smith, Glenn Kraploff, Steve Swatling, Lew Kingsbury, Gordon Mott
- The following points / arguments were presented during the public comment period:
  - Schools need new equipment and the industry would benefit from increased funding in youth education programs related to logging / forestry;
  - Great value in education programs (currently, approximately 100 students statewide – experience is gained along with an appreciation for the forest and the State of Maine;
  - Concerns raised about protection of DWAs, road building and the impacts of roads on wildlife and deer yards;
  - Recreation needs and wildlife needs are important to the public;
  - Current administration is intimidating, regional managers are putting pressure on foresters and five foresters working for the State have resigned during the past two years;
  - Article IX, Section 23 of the Maine Constitution should be discussed at greater length and the AG's office should be permitted to weigh in on this issue;

- Access to our lands needs to be acquired.

6. Direction given to Commission staff to begin drafting letter to circulate to Commission members for edits. The Commission will have opportunity to review the recommendations and letter to ACF Committee at the final meeting, which will be held on December 1, 2015.

The meeting adjourned at approximately 3:15PM.

Commission To Study the Public Reserved Lands Management Fund

Summary of fourth (final) Commission meeting – December 1, 2015 at 11:00am Held in the Cross State Office Building, Room 216 – Augusta, Maine

Members present: Sen. Saviello, Sen. Dill, Rep. Hickman, Rep. Martin, Doug Denico, John Bryant, Thomas Abello, David Trahan, Greg Shute, Jonathan Robbins, Richard Smith, Bob Myers, Tony Madden

Members absent: Rep. Marean, Walter Whitcomb

1. Chairs' welcome, introduction of Commission members.

2. Staff provided a review of Attorney General Mill's November 24, 2015 letter responding to the Commission's November 3, 2015 letter requesting guidance on the potential use of the Public Reserved Lands Management Fund to support public and private educational programs related to logging and forestry. Commission members discussed the AG's guidance related to this issue.

3. Commission members reviewed the Commission's draft letter to the Joint Standing Committee on Agriculture, Conservation and Forestry, which contains their recommendations.

- Commission members engaged in an in depth review of each of its proposed recommendations and amended many of them before taking a final vote on all nine recommendations. The Commission members who were present voted unanimously to accept the recommendations as amended and, additionally, to accept the draft report as amended to reflect their agreed-upon changes to the letter. Commission member Doug Denico was absent from the room at the time of the vote.

The Commission adjourned sine die at approximately 1:30pm.

APPENDIX D
Commission letter to Attorney General – October 15, 2015

The Honorable Janet T. Mills
Attorney General
6 State House Station
Augusta, Maine 04333

October 15, 2015

Dear Attorney General Mills:

The Commission To Study the Public Reserved Lands Management Fund (Public Law 2015, chapter 267, Part GGGG) is charged by the Legislature with studying and analyzing the proper use of the Public Reserved Lands Management Fund (Title 12 MRSA §1849). We greatly appreciate Assistant Attorney General Jerry Reid's presentation to the Commission on September 9, 2015, regarding Maine's public reserved lands and his legal analysis of the permissible uses of the fund.

Since then the Commission has been discussing possible uses of funds derived from timber harvests on the public lots, including: the purchase of heating equipment for low-income families in rural areas; the transfer of Public Reserved Lands Management Fund monies to the Bureau of Parks and Lands for state park purposes.; and/or the purchase of other real estate of various types.

While we understand there is limited law on this issue, our members would benefit from a better understanding of the constitutional/legal parameters of this Fund and which, if any, of the proposals under discussion would be more or less likely to fare well in a court challenge. While it may not be possible to give a definitive legal opinion on any particular proposal, we would like to understand which of these uses, if any, might be more likely to withstand a legal challenge.

The Commission has been authorized to meet four (4) times over the interim and October 27, 2015, will be the Commission's third meeting. In light of our limited remaining meetings, we respectfully request that you provide us with your response before our October meeting. If a written response is not practical, perhaps you could attend the meeting on October 27, 2015, to discuss these matters.

We greatly appreciate your cooperation and guidance on this matter and please do not hesitate to contact us or our staff (Curtis Bentley and Mike O'Brien, 287-1670) with any questions regarding this request.

Sincerely,

Thomas Saviello, Senate Chair

Sincerely,

Craig Hickman, House Chair

APPENDIX E
Attorney General letter to Commission – October 26, 2015

JANET T. MILLS
ATTORNEY GENERAL

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

October 26, 2015

Senator Thomas Saviello, Chair
Representative Craig Hickman, Chair
Commission To Study the Public Reserved Lands Management Fund
c/o Legislative Information
100 State House Station
Augusta ME 04333-0100

Dear Senator Saviello and Representative Hickman:

You have asked for guidance from this Office as to whether certain proposed uses of revenue from Public Reserved Lands would be consistent with the public trust limitations on the use of such revenue. These limitations are embodied in Article X of the Maine Constitution. Since courts have not yet had occasion to draw a bright line between permissible and impermissible uses of this trust revenue, and the proposed uses have been presented only conceptually but not yet as draft legislation, it is not possible to reach firm conclusions as to their constitutionality. Even so, I offer the following summary of the two available legal authorities addressing the public trust limitations, together with some analysis as to how these opinions should inform your decision-making.

The 1973 *Opinion of the Justices*

When the Commonwealth of Massachusetts created and sold townships in Maine, it reserved "public lots" within those townships to support the local ministry and public education. When Maine became a state, Article X of the Articles of Separation, which became Article X of the Maine Constitution, designated the public lots "for the benefits of the Schools, and of the Ministry..." *Opinion of the Justices*, 308 A.2d 253, 254 (Me. 1973). Between 1824 and 1850, Maine enacted various legislation governing the use and management of the public lots, all of which specified that these lands were to be used to support the educational and religious uses identified in the Articles of Separation. *Id.* at 254-56.

In 1973 the Legislature considered a bill to direct that, among other things, (1) the public lots be used and managed for the benefit of the State as a whole; (2) the public lots be managed as multiple use state forests, and (3) income from the public lots be used for their management and for the acquisition of addition public lands to be managed under the same principles. *Id.* at 256-57. The Legislature requested an advisory opinion from the Justices of the Maine Supreme

Judicial Court as to whether the bill was consistent with the public trust limitations on the use of the public lots. The Justices issued an Opinion that the two uses designated in the Articles of Separation, "schools" and "ministry," were intended to be "illustrative" of permitted uses, but not "an exclusive listing." *Id.* at 253, 271. The Opinion of the Justices found that the uses of the public lots proposed in the pending legislation – to support the management of the public lots as multiple use forests, and to acquire additional public lands for the same purposes – did not violate the public trust limitations embodied in Article X of the Maine Constitution. *Id.* at 261-64, 270-71. The Justices also opined that the Legislature's foremost obligation is to "hold and preserve" the lands so that they remain available for permitted public uses. *Id.* at 271.

The 1992 *Opinion of the Attorney General*

In 1992 the Legislature enacted an appropriations bill that required an across-the-board transfer of 0.9% of the balance in all state accounts to the General Fund in order to address a budget shortfall. The Commissioner of the Department of Finance sought an Opinion of the Attorney General as to whether this general legislation applied to accounts that the State holds in trust for designated purposes, including the Public Reserved Lots Management Fund. *Op. Me. Att'y Gen. 92-07*, December 15, 1992. The Attorney General opined that the budget bill did not apply to this trust account, both because the Legislature did not express a specific intent to exercise its trust responsibilities in the bill, and because it is doubtful that such an expenditure would be consistent with the public trust limitations. *Id.*

Together, the *Opinion of the Justices* and the *Opinion of the Attorney General* show that: (1) The Legislature's foremost obligation as trustee of the Public Reserved Lands is to "hold and preserve" them for future public use – in effect protecting the trust's principal; (2) The Legislature has some flexibility in determining appropriate uses of the Public Reserved Lands and income derived from them, and is not restricted to the original uses designated in the Articles of Separation; (3) The management of the Public Reserved Lands as multi-purpose forests for recreation, sustainable timber harvesting, and wildlife habitat, as well as the acquisition of additional land for the same purposes, are permitted uses; (4) The Legislature must specifically express its intent to exercise its trust responsibility in legislation that purports to make use of these monies; and (5) Income derived from the Public Reserved Lands is not interchangeable with General Fund revenue, and may not be diverted to the General Fund for undifferentiated use.

In considering possible uses for the public lots, it is useful also to consider the provisions of Art. IX sec. 23 of the Maine Constitution, ratified by the people shortly after the 1992 Opinion of the Justices. This provision narrowly restricts what can be done with the proceeds of the sale of any public lots and requires a 2/3 vote by each House for any proposal to reduce or substantially alter the uses of public lots. While Art. IX sec. 23 may not relate to the specific proposals under consideration by your Commission, it provides a useful backdrop regarding the intent of the Legislature and of the Maine people regarding the preservation of these unique public lands and their current uses.

Uses Now under Consideration

Your letter seeks guidance on three proposed, new uses of this public trust income: (1) the purchase of heating equipment for low-income families in rural areas; (2) the transfer of trust monies to the Bureau of Parks and Lands for state park purposes; and (3) the purchase of other real estate of various types. Drawing upon the legal analysis above, I offer the following observations.

While the purchase of heating equipment for low-income rural families is a laudable goal, as is public assistance for food, shelter and health care, it is not easy to draw a connection between these types of uses and the preservation of the Public Reserved Lands. Under the very limited language of the Opinion of the Justices, this proposed use would likely meet great skepticism from the Court.

The transfer of trust monies to the Bureau of Parks and Lands to administer state parks raises a different concern. The use of trust money for this purpose would displace, dollar-for-dollar, General Fund revenue that is now used for this purpose, effectively making trust money interchangeable with General Fund revenue, which is not permitted.

The validity of purchasing "real estate of various types" as a proposed use of trust money depends on the characteristics of the property and the uses to which it would be dedicated. The *Opinion of the Justices* approved the use of trust money to acquire additional Public Reserved lands to be managed as multiple use forests. *Opinion of the Justices*, 308 A.2d 261-64, 270-71. Acquisition of property that is not designated as Public Reserve Lands, but that is dedicated to the same or substantially similar uses, might also be permitted. However, legislation authorizing the expenditure of trust monies for this purpose would have to include specific fact-finding to address why the property acquisition is consistent with the Legislature's public trust responsibilities, and it would have to ensure that the acquired property will be managed in accordance with public trust principles. Thus narrowed to resemble the proposal before the Court in 1972, such a proposal would have a decent chance to pass constitutional muster, much more so than the other two proposals.

I hope this information is helpful to the Committee.

Sincerely,

Janet T. Mills
Attorney General

APPENDIX F
Commission letter to Attorney General – November 3, 2015

SEN. THOMAS B. SAVIELLO, CHAIR
SEN. JAMES F. DILL
TONY MADDEN
BOB MEYERS
JONATHAN ROBBINS
RICHARD SMITH

REP. CRAIG V. HICKMAN, CHAIR
REP. JOHN L. MARTIN
REP. DONALD G. MAREAN
THOMAS ABELLO
JOHN BRYANT
GREG SHUTE
DAVID TRAHAN

STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
FIRST REGULAR SESSION

COMMISSION TO STUDY THE PUBLIE RESERVED LANDS MANAGEMENT FUND

November 3, 2015

The Honorable Janet T. Mills
Attorney General
6 State House Station
Augusta, Maine 04333

Dear Attorney General Mills:

The Commission To Study the Public Reserved Lands Management Fund (Public Law 2015, chapter 267, Part GGGG) is charged by the Legislature with studying and analyzing the proper use of the Public Reserved Lands Management Fund (Title 12 MRSA §1849), hereinafter "the Fund." We greatly appreciate Assistant Attorney General Jerry Reid's presentation to the Commission on September 9, 2015 and your October 26, 2015 letter to the Commission in response to our request for guidance on the potential uses of the Fund.

We are now writing to seek additional guidance on another potential use of the Fund. The Commission seeks guidance on whether funding educational programs related to logging and forestry, which are offered by public and private institutions in Maine, would be consistent with the public trust limitations on the use of the Fund.

While it may not be possible to give a definitive legal opinion on the specific educational programs, if any, that would be consistent with the public trust limitations, the Commission seeks to understand whether using a portion of the Fund to support these types of educational programs through the purchase and maintenance of teaching equipment would be likely to withstand a potential legal challenge.

The Commission's fourth and final meeting is scheduled to occur on December 1, 2015. Please provide us with your written response before our December meeting so we may consider your guidance before making our final recommendations.

We greatly appreciate your cooperation and guidance on this matter and please do not hesitate to contact us or our staff (Curtis Bentley and Mike O'Brien, 287-1670) with any questions regarding this request.

Sincerely,

Tom

Thomas Saviello, Senate Chair

Sincerely,

Craig Hickman, House Chair

APPENDIX G
Attorney General letter to Commission – November 24, 2015

JANET T. MILLS
ATTORNEY GENERAL

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

November 24, 2015

Senator Thomas Saviello, Chair
Representative Craig Hickman, Chair
Commission To Study the Public Reserved Lands Management Fund
c/o Legislative Information
100 State House Station
Augusta ME 04333-0100

Dear Senator Saviello and Representative Hickman:

On October 15, 2015, you wrote seeking guidance from this Office as to whether three proposed uses of revenue from Public Reserved Lands would be consistent with the public trust limitations on the use of such revenue. These limitations are embodied in Article X of the Maine Constitution. I responded by letter of October 26, 2015, providing an overview of the governing law and offering some observations about how that law applies to the proposed uses identified in your letter. You have now asked for additional guidance regarding whether a fourth proposed use – funding educational programs related to forestry and logging at public and private institutions in Maine, including purchasing and maintaining teaching equipment – would be constitutionally permissible.

Please see my letter of October 26, 2015, for a more detailed discussion of two opinions addressing this issue and the general parameters of these trust funds.

One of the original uses for which the Public Reserved Lands were set aside was to support schools, and education through public institutions likely remains a permissible use of revenue derived from these lands. *Opinion of the Justices*, 308 A.2d 253, 254, 270-71 (Me. 1973). The Legislature, as trustee, has some discretion to determine what, if any, public educational programs or expenses should be funded with this revenue. Any legislation authorizing expenditure of Public Reserve Land revenue for these or other purposes should acknowledge the exercise of the Legislature's authority as trustee, and should include specific fact-finding as to why the expenditure is consistent with public trust limitations.

Your letter also mentions the possibility of funding educational programs at private institutions. Directing Public Reserve Lands revenue, or any public money, to private educational institutions could create constitutional concerns. If your Commission develops a concrete proposal to use the revenue in this way, or if the Legislature is presented with one, I would be happy to review it and offer my thoughts at that time. I hope this information is helpful to the Committee.

Sincerely,

Janet T. Mills
Attorney General

APPENDIX H
Fiscal Year 2016 Public Reserved Lands Management Fund projected budget
(Distributed by Doug Denico)

FY16 Public Lands Projected Budget

Cash Balance as of 6/30/15	**$8,001,049**
Projected FY16 Revenue	$9,097,247
20% decrease (mill closures, market prices)	-$1,819,449
Revised Projected Revenue	**$7,277,798**
Projected FY16 Expenses (includes encumbrances)	$8,289,172
Net Fund Availability	**$6,989,675**
(Cash Balance + Revised Projected Revenue – Projected Expenses)	
Minimum cash balance needed at all times	**$2,500,000**
Balance Available	**$4,489,675**
(Net Available – Minimum Balance needed)	

APPENDIX I

Letter to the Joint Standing Committee on Agriculture, Conservation and Forestry containing Commission's recommendations – December 5, 2015

SEN. THOMAS B. SAVIELLO, CHAIR
SEN. JAMES F. DILL
DOUG DENICO
TONY MADDEN
BOB MEYERS
JONATHAN ROBBINS
RICHARD SMITH
WALTER WHITCOMB

REP. CRAIG V. HICKMAN, CHAIR
REP. JOHN L. MARTIN
REP. DONALD G. MAREAN
THOMAS ABELLO
JOHN BRYANT
GREG SHUTE
DAVID TRAHAN

STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
FIRST REGULAR SESSION

COMMISSION TO STUDY THE PUBLIC RESERVED LANDS MANAGEMENT FUND

December 5, 2015

Senator Peter E. Edgecomb, Senate Chair
Representative Craig. V. Hickman, House Chair
Joint Standing Committee on Agriculture, Conservation and Forestry
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: Commission to Study the Public Reserved Lands Management Fund – Recommendations

Dear Senator Edgecomb and Representative Hickman:

The Commission To Study the Public Reserved Lands Management Fund – established under Public Law 2015, chapter 267, Part GGGG – has been charged by the 127th Legislature with reviewing, studying and analyzing, among other things, the proper use of the Public Reserved Lands Management Fund (hereinafter "the Fund") established in the Maine Revised Statutes, Title 12, section 1849, and its possible expansion to other uses.

After thorough review, the Commission members present and voting unanimously agreed (12-0) upon several recommendations. We have learned that two proposed uses for the Fund – (1) the purchase of heating equipment for low-income families in rural areas; and (2) the transfer of trust monies to the Bureau of Parks and Lands for state park purposes – are not likely to withstand a potential constitutional challenge and therefore should no longer be pursued as viable options. Support for our recommendations, including a synopsis of our findings and our correspondence with the Attorney General's office, can be found in the Commission's final report.

Throughout this process, we have reaffirmed our strong belief that the Bureau of Parks and Lands' staff is currently doing an outstanding job managing our public reserved lands under the principles of multiple use. The following section of this letter highlights a few of the many positive activities and accomplishments achieved by the dedicated Public Lands staff.

PUBLIC RESERVED LANDS MANAGEMENT - POSITIVES

Our Regional Managers take pride in managing the State Public Reserved Lands. The following are positive statements that all three managers feel strongly about including in this letter, and reflect their dedication to their work.

1. "We are contributing to the economy of Maine by providing work for hundreds of individuals and Maine families."
2. "I'm pleased to have a dedicated staff who takes great pride in stewarding the public's forests in a multiple-use scenario."
3. "We continue to provide the public wonderful opportunities to enjoy their public lands by hiking, camping, boating, fishing and hunting in some of the most beautiful settings in Maine; all at no taxpayer cost."
4. "We are managing a public resource, and leaving it in a better condition than we find it."
5. "I'm proud that we practice uneven-aged management with positive results. It is a complex silvicultural system and we do it quite well."
6. "Firewood from Public Lands is helping heat Maine homes."

Some specific accomplishments and developments worth mentioning include the following.

1. We are always rated highly by third party forest certification auditors, for both the Sustainable Forestry Initiative (SFI) and Forest Stewardship Council certification (FSC), and have been dual certified since 2002.
2. We continue to improve our forestry with better analysis; through updated aerial photography, inventory, timber typing, forest modeling.
3. We are making strides in adopting new technologies in the field, including increased use of technology for planning, and providing better information through maps and data on hand held devices, recently moving from GPS Units to iPads and helping contractors learn with us.
4. We continue to transition from stumpage permits to contract logging service (CLS) contracts, without additional staff to deal with the significant increase in contracts and timber accounting. The transition is improving the long-term, direct relationships with contractors, equipment operators and mill owners. The transition to CLS has increased revenues which has resulted in a significant increase in investments on the landbase, again without an increase in staff.
5. We have a robust public planning process that helps us make sound management decisions on the highest and best use of our lands, which have more geographic, silvicultural, wildlife and recreation diversity than any other single landowner in Maine, and perhaps the country.
6. We work to accommodate all types of recreation on Public Lands, whether motorized, mechanized, or non-motorized.

7. We work with landowners surrounding us in partnership to provide regional trail linkages and expand public recreation opportunities, expanding both land and water trails, through cooperative agreements (such as with Brookfield Power at Flagstaff Lake and Moosehead Lake); and the ground-breaking regional hiking trails project with Plum Creek in the Moosehead region, which will create a diverse new set of trails on Plum Creek and BPL lands.

8. We invest in roads for the public on Public Lands that are of good quality and maintained specifically for passenger vehicular use. We contract for road maintenance on public use roads totaling approximately 366 miles across all regions.

9. We continue to maintain, improve and add to our popular hiking trails including Tumbledown, Kennebec Highlands, Pineland, Little Moose Mountain, Big Spencer Mountain, Donnell Pond Unit, Cutler Coast, and Deboullie Mountain, among others.

10. We find ways to support the local economy not only with timber harvests, but with a variety of leases: sugarbush leases in the Western Region, scattered agricultural leases, 10 commercial sporting camps, and firewood permits yielding annually about 300 cords of firewood, to name a few.

RECOMMENDATIONS

After reviewing this letter and the Commission's final report, we respectfully request that the Joint Standing Committee on Agriculture, Conservation and Forestry consider implementing the following recommendations.

1. The Public Reserved Lands Management Fund must have a minimum $2.5 million annual cash operating balance at the start of each fiscal year. The Legislature may consider establishing this baseline figure statutorily.

2. The Department of Agriculture, Conservation and Forestry should conduct a detailed forest inventory (with an estimated cost of approximately $50,000-$100,000).

    a. We strongly recommend conducting a forest inventory every five years, beginning next fiscal year.
    b. Although new technology is emerging that may eventually make the establishment of a continuous forest inventory a viable option for the Bureau, we do not presently recommend pursuing a continuous forest inventory.

3. The Legislature should allow experts, including the Silvicultural Advisory Committee, to advocate for the appropriate annual sustainable timber harvest level for our public reserved lands.

    a. After Public Lands' staff has made a recommendation based on expert opinions and data from the most recent physical forest inventory that is consistent with

multiple use objectives, existing management plans and the Integrated Resource Policy, the recommendation should be presented to the Joint Standing Committee on Agriculture, Conservation and Forestry for review and public comment before the harvest level is accepted.

b. The Bureau of Parks and Lands' annual report to the Legislature should include a breakdown of growth and yield in the three regional units and also identify any harvesting that has been occurring in individual management units where yield exceeds annual growth.
c. The Joint Standing Committee on Agriculture, Conservation and Forestry should review the statutory language adopted in Public Law 2015, chapter 267, Part FF (related to the sustainable harvest level).

4. The Bureau of Parks and Lands should discover where the State does not currently have deeded access to our public reserved lands and begin exploring how to go about obtaining access. Regional foresters, who are familiar with both the physical landscape and present-day landowner relations, should develop realistic goals and priorities regarding increased access to Public Reserved Lands.

5. To better meet the needs of Maine people, the Public Lands' staff should develop a statewide priority list of recreational infrastructure projects and Americans with Disability Act (ADA) projects for our public lands. Recreational investments connect more people to Maine's outdoors and present real economic opportunity, particularly in rural communities. Because of previous financial challenges, Public Lands has not been able to invest in recreational infrastructure, but now with additional funding can address high priority sites. To make those investments and spur rural economic activity, a statewide priority list needs to be developed. The Bureau's statewide recreational infrastructure and ADA accessibility priority list should be presented to the Joint Standing Committee on Agriculture, Conservation for its consideration and public vetting before listed projects move forward.

6. The following uses of the Fund (listed in no particular order of priority) – some of which are already contained in existing management plans for the various public lands units – are potentially viable from a legal perspective and should be considered by the Legislature.

    a. Improving existing wildlife habitats on Public Lands so they are managed in an exemplary manner.
    b. Purchasing additional lands (special habitats) on adjacent parcels.

c. Improving signage on and around Public Lands, including (1) signage related to forestry education and (2) signage related to the location of public lands and accessibility.
d. Improving accessibility on public lands (particularly around boat launches and at campsites).
e. Providing funding (up to $300,000 total) for public secondary and post-secondary educational programs related to logging. The Joint Standing Committee on Agriculture, Conservation and Forestry should consider legislation directing the Bureau to establish, by rule, a system where eligible programs may apply for a maximum one-time allocation of $50,000 per school unit. School units may include in their application a plan to use the one-time allocation over multiple years. Public Lands' regional managers must be included in the decision-making process over the use of any allocated funds and be involved with, or have capacity for, input in successful applicants' school programs. These funds may be used, among other educational related uses, to upgrade existing logging equipment or for the lease or purchase of logging equipment to help students meet the needs of an ever changing work force. Any funds provided to school units must supplement, not supplant, existing school funding.

7. The Legislature should review the uses of the Fund and approve allocations therefrom. The following language was repealed from Title 12, section 1849, subsection 3 by Public law 2013, chapter 368, Pt. LLLL, section 2, and should be reenacted, as amended:

> 3. Expenditures from fund. Expenditures from the Public Reserved Lands Management Fund are subject to legislative approval in the same manner as appropriations from the General Fund. Money may not be expended without allocation by the Legislature. The joint standing committee of the Legislature having jurisdiction over Public Reserved Lands must approve and recommend the allocations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

8. The Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands should review its bid process for timber harvesting and road construction projects, along with any liability concerns, with members of the Commission and report back to the Joint Standing Committee on Agriculture, Conservation and Forestry with any recommended changes by January 15, 2016.

9. We respectfully request that the Joint Standing Committee on Agriculture, Conservation and Forestry report out legislation extending the life of the Commission to Study the Public Reserved Lands Management Fund for fiscal year 2017 (authorizing a minimum of two meetings). This is a complex topic that deserves our fullest attention.

Thank you for your thoughtful consideration of these important recommendations. Please let us know if you have any questions.

Sincerely,

Sen. Thomas B. Saviello
Senate Chair

Rep. Craig V. Hickman
House Chair

Enclosure(s)

cc: Members, Commission to Study the Public Reserved Lands Management Fund\