

PART GGGG

Sec. GGGG-1. Commission established. Notwithstanding Joint Rule 555, 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.

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§1846

CONSERVATION

Part 2: FORESTS, PARKS, LAKES AND RIVERS

Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

Subchapter 4: PUBLIC RESERVED LANDS

§1845. Definitions relating to public reserved lands

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 678, §13 (NEW).]

1. Multiple use. "Multiple use" means:

A. The management of all of the various renewable surface resources of the public reserved lands including outdoor recreation, timber, watershed, fish and wildlife and other public purposes; [1997, c. 678, §13 (NEW).]

B. Making the most judicious use of the land for some or all of these resources over areas large and diverse enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; [1997, c. 678, §13 (NEW).]

C. That some land will not be used for all of the resources; and [1997, c. 678, §13 (NEW).]

D. The harmonious and coordinated management of the various resources without impairing the productivity of the land and with consideration being given to the relative values of the various resources and not necessarily to the combination of uses that will give the greatest dollar return or the greatest unit output. [1997, c. 678, §13 (NEW).]

[1997, c. 678, §13 (NEW) .]

2. Sustained yield. "Sustained yield" means the achievement and maintenance in perpetuity of a high-level regular periodic output of the various renewable resources of the public reserved lands without impairing the productivity of the land.

[1997, c. 678, §13 (NEW) .]

SECTION HISTORY

1997, c. 678, §13 (NEW).

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CONSERVATION

Part 2: FORESTS, PARKS, LAKES AND RIVERS Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

Subchapter 4: PUBLIC RESERVED LANDS

§1846. Access to public reserved lands

1. Legislative policy. The Legislature declares that it is the policy of the State to keep the public reserved lands as a public trust and that full and free public access to the public reserved lands to the extent permitted by law, together with the right to reasonable use of those lands, is the privilege of every citizen of the State. The Legislature further declares that it recognizes that such free and reasonable public access may be restricted to ensure the optimum value of such lands as a public trust but that such restrictions, if and when imposed, must be in strict accordance with the requirements set out in this section.

[1997, c. 678, §13 (NEW) .]

2. Establishment of restrictions on public access.

[2001, c. 604, §10 (RP) .]

3. Unlawful entry onto public reserved lands.

[2001, c. 604, §10 (RP) .]

4. Development of public facilities. The bureau may construct and maintain overnight campsites and other camping and recreation facilities.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

5. User fees. The bureau may charge reasonable fees to defray the cost of constructing and maintaining overnight campsites and other camping and recreation facilities.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 2001, c. 604, §10 (AMD). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §24 (REV).

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Title 12:

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CONSERVATION

Part 2: FORESTS, PARKS, LAKES AND RIVERS

Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

Subchapter 4: PUBLIC RESERVED LANDS

§1847. Management of public reserved lands

1. Purpose. The Legislature declares that it is in the public interest and for the general benefit of the people of this State that title, possession and the responsibility for the management of the public reserved lands be vested and established in the bureau acting on behalf of the people of the State, that the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products and services by the use of prudent business practices and the principles of sound planning and that the public reserved lands be managed to demonstrate exemplary land management practices, including silvicultural, wildlife and recreation management practices, as a demonstration of state policies governing management of forested and related types of lands.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

2. Management plans. The director shall prepare, revise from time to time and maintain a comprehensive management plan for the management of the public reserved lands in accordance with the guidelines in this subchapter. The plan must provide for a flexible and practical approach to the coordinated management of the public reserved lands. In preparing, revising and maintaining such a management plan the director, to the extent practicable, shall compile and 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. In addition, the director shall consider all criteria listed in section 1858 for the location of public reserved lands in developing the management plan. The director is entitled to the full cooperation of the Division of Geology, Natural Areas and Coastal Resources, the Department of Inland Fisheries and Wildlife and the Maine Land Use Planning Commission in compiling and maintaining the inventory of the public reserved lands. The director shall consult with those agencies as well as other appropriate state agencies in the preparation and maintenance of the comprehensive management plan for the public reserved lands. The plan must provide for the demonstration of appropriate management practices that will enhance the timber, wildlife, recreation, economic and other values of the lands. All

management of the public reserved lands, to the extent practicable, must be in accordance with this management plan when prepared.

Within the context of the comprehensive management plan, the commissioner, after adequate opportunity for public review and comment, shall adopt a specific action plan for each unit of the public reserved lands system. Each action plan must include consideration of the related systems of silviculture and regeneration of forest resources and must provide for outdoor recreation including remote, undeveloped areas, timber, watershed protection, wildlife and fish. The commissioner shall provide adequate opportunity for public review and comment on any substantial revision of an action plan. Management of the public reserved lands before the action plans are completed must be in accordance with all other provisions of this section.

[2013, c. 405, Pt. C, §9 (AMD) .]

3. Actions. The director may take actions on the public reserved lands consistent with the management plans for those lands and upon any terms and conditions and for any consideration the director considers reasonable.

[1997, c. 678, §13 (NEW) .]

4. Land open to hunting. The bureau and the Department of Inland Fisheries and Wildlife shall communicate and coordinate land management activities in a manner that ensures that the total number of acres of land open to hunting on public reserved lands and lands owned and managed by the Department of Inland Fisheries and Wildlife does not fall below the acreage open to hunting on January 1, 2008. These acres are subject to local ordinances and state laws and rules pertaining to hunting.

[2007, c. 564, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 1999, c. 556, §19 (AMD). 2007, c. 564, §1 (AMD). 2011, c. 655, Pt. JJ, §8 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §7 (REV). 2011, c. 682, §38 (REV). 2013, c. 405, Pt. A, §24 (REV). 2013, c. 405, Pt. C, §9 (AMD).

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Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

Subchapter 4: PUBLIC RESERVED LANDS

§1848. Sale of natural resources from public reserved lands

1. Sale of resources. The bureau may sell severed timber and other products, including, but not limited to, wood and timber necessary for use in the operation of a mine, severed grass and other wild foods, maple sap and syrup, crops and sand and gravel for use in the construction of public roads or for any other purpose the director considers consistent with the purposes of this subchapter.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

2. Grant of permits. The bureau may grant permits and enter into contracts to cut timber, harvest grass and wild foods, tap maple trees for sap and cultivate and harvest crops provided that such permits and contract rights create revocable licenses to the permittee or party to the contract and do not create any real property interest in the public reserved lands. Permits and contracts for the harvesting of timber from the reserved public lands must include a provision requiring that persons engaged in timber harvesting on the public reserved lands be compensated at rates not less than the most recently issued prevailing wage and piece rates and equipment allowances for the pulpwood and logging industry as determined by the Department of Labor, Bureau of Labor Standards.

If the Department of Labor does not determine a prevailing wage or piece rate for a timber harvesting occupation or an equipment allowance for a type of harvesting equipment, the director may establish those rates by referring to prevailing rates and allowances in the industry for that occupation or type of equipment. Any rates or allowances established by the director under this subsection apply only to permits and contracts on public reserved lands governed by this section.

[2003, c. 549, §2 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

3. Bond; stumpage or other rights of value. Persons, corporations or other legal entities obtaining permits or contracts to sever or extract materials upon the public reserved lands under this section must give bond to the director with satisfactory sureties for

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the payment of stumpage or other rights of value and the performance of all conditions of the permit or contract. All timber cut or other material taken under permits or contracts is the property of the State until the stumpage or other rights are paid in full.

[1997, c. 678, §13 (NEW) .]

4. Scaling of timber. The director may appoint, swear and reimburse surveyors or scalers. Upon the instructions of the director, scalers shall scale any timber cut under permits granted by the bureau, supervise the cutting of that timber, inform the director of the quantity of products cut, whether hauled or not, and see that the timber is cut and removed in accordance with sound forest management practices.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 2003, c. 549, §2 (AMD). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 405, Pt. A, §24 (REV).

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§1849. Revenue from public reserved lands

1. Revenue sources. Except as provided in paragraph A, the bureau must receive all money, securities and other things of value accruing to the State: 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; in payment for timber, grass and other things of value cut or taken by trespassers; from forfeiture of a bond or a deposit when a contractor does not fulfill the terms of the contract or comply with state regulations; or as a result of a compromise or settlement of any claim.

A. The first \$20,000 in the aggregate of any money accruing from the alienation of rights to mine upon public reserved land, or other income arising out of mining operations, that is actually received during any fiscal year, and every portion thereof accruing from these mining operations, must be paid to the Division of Geology, Natural Areas and Coastal Resources. [2013, c. 405, Pt. C, §10 (AMD).]

[2013, c. 405, Pt. A, §24 (REV); 2013, c. 405, Pt. C, §10 (AMD) .]

2. Fund established. All income received by the director from the public reserved lands, except income provided for in section 1855, must be deposited with the Treasurer of State to be credited to the Public Reserved Lands Management Fund, which is established as a nonlapsing fund. Any interest earned on this money must also be credited to the fund.

[1997, c. 678, §13 (NEW) .]

3. Expenditures from fund.

[2013, c. 368, Pt. LLLL, §2 (RP) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 1999, c. 556, §20 (AMD). 2011, c. 655, Pt. KK, §11 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2011, c. 657, Pt. W, §7 (REV). 2013, c. 368, Pt. LLLL, §2 (AMD). 2013, c. 405, Pt. A, §24 (REV). 2013, c. 405, Pt. C, §10 (AMD).

 [West Reporter Image \(PDF\)](#)

308 A.2d 253

Supreme Judicial Court of Maine.
OPINION OF THE JUSTICES of the Supreme Judicial Court Given Under the Provisions of Section 3 of
the Article VI of the Constitution.

Questions Propounded by the Senate In an Order Dated May 25, 1973.
June 21, 1973.

Questions were propounded by the Senate to the Justices of the Supreme Judicial Court relating to the constitutionality of a proposed act regarding title to, and use, management, and sale of 'public lots.' The Justices of the Supreme Judicial Court were of the opinion that none of the provisions of the proposed act would violate the Articles of Separation, the distribution of power provisions or the due process clauses of the Federal or State Constitution.

Questions answered.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

- ◊ [317 Public Lands](#)
- ◊ [317III Disposal of Lands of the States](#)
- ◊ [317k153 k. Maine. Most Cited Cases](#)

When Maine reserved lands for designated beneficial purposes as to which specific beneficiaries to take legal title were not in existence, no vested rights to lands in question were created in private persons, but state subjected itself to legal restriction in that it removed the "public lots" in question from dominion as absolute proprietors and denied itself authority to convey premises to any other person or corporation, or for any other uses. M.R.S.A.Const. art. 10, § 1 et seq.

[2]  [KeyCite Citing References for this Headnote](#)

- ◊ [317 Public Lands](#)
- ◊ [317III Disposal of Lands of the States](#)
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Legal effect of "reservation" of lands by state as contemplated by State Constitution is that sovereign thereby removes lands reserved from public domain and must continue to hold and preserve them for beneficial uses intended. M.R.S.A.Const. art. 10, § 1 et seq.

[3]  [KeyCite Citing References for this Headnote](#)

- ◊ [317 Public Lands](#)
- ◊ [317III Disposal of Lands of the States](#)
- ◊ [317k153 k. Maine. Most Cited Cases](#)

"Public lots" reserved by Maine may be used for other public uses than schools and the ministry. M.R.S.A.Const. art. 10, § 1 et seq.

[4]  [KeyCite Citing References for this Headnote](#)

- 92 Constitutional Law
 - 92XX Separation of Powers
 - 92XX(B) Legislative Powers and Functions
 - 92XX(B)2 Encroachment on Judiciary
 - 92k2353 k. Disposition of Property in General. Most Cited Cases
(Formerly 92k54)

- 92 Constitutional Law  KeyCite Citing References for this Headnote
 - 92XXVII Due Process
 - 92XXVII(G) Particular Issues and Applications
 - 92XXVII(G)4 Government Property, Facilities, and Funds
 - 92k4100 k. In General. Most Cited Cases
(Formerly 92k278(2), 92k278(1))

- 317 Public Lands  KeyCite Citing References for this Headnote
 - 317III Disposal of Lands of the States
 - 317k153 k. Maine. Most Cited Cases

Proposed act which would provide that title to "public lots" would no longer vest in inhabitants of towns incorporated after January 1, 1973, and that public lots should be used for benefit of entire state, and which would govern use, management and sale of "public lots," would not violate Articles of Separation or distribution of power provisions or due process clauses of Federal or State Constitution. M.R.S.A.Const. art. 6, § 3; art. 10, § 1 et seq.

***253 SENATE ORDER PROPOUNDING QUESTIONS**

In the Year of Our Lord One Thousand Nine Hundred and Seventy-Three

In Senate, May 25, 1973

Whereas, it appears to the Senate of the 106th Legislature that following are important questions of law and that this is a solemn occasion; and

Whereas, a Bill, H. P. 1382, L. D. 1812, entitled 'AN ACT to Organize the Unorganized and Deorganized Territories of the State and to Provide for Managements of the Public Reserved Lands,' has been introduced into the Legislature, and the constitutionality of portions of the Act has been questioned, and it is important that the Legislature be informed as to the constitutionality of those portions of the Act; now, therefore, be it

Ordered, that in accordance with the provisions of the Constitution of the State, the Senate herewith submits the following Statement of Facts and respectfully requests the Justices of the Supreme Judicial *254 Court to give to the Senate their opinion on the following Questions of Law:

STATEMENT OF FACTS

Beginning as early as 1786,^{FN1} Massachusetts reserved from townships of its public domain which it sold, four lots of 320 acres each for public uses. The reserved lots are hereinafter referred to as the 'public lots.' The specific public uses for which some of the earliest public lots were reserved included the first settled minister, the use of the ministry, a public grammar school, public education in general and such public uses as the Legislature of Massachusetts might thereafter direct. Massachusetts generally followed this practice during the ensuing years as portions of her public domain were sold.

FN1. Laws and Resolves of Massachusetts, 1786, Chapter 40.

The Articles of Separation (Article X of the Constitution of Maine) provide in Paragraph Seventh that:

'Seventh. All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located which have been or may be made by the said Commonwealth, before the separation of said District (of Maine) shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State.

' . . . ; and in all grants hereafter to be made by either state of unlocated land within said District, 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.'

In 1824, the Legislature of Maine declared that title to all public lots which were then located in incorporated towns and which had not theretofore become vested in a particular individual or parish within the town, was to be vested in the inhabitants of the town, subject to the supervision of a board of trustees comprised of various municipal officers.^{FN2} At that time, the Legislature required that the towns use the public lots for the purposes for which they were originally reserved, to wit: schools and the ministry. With the exception of this latter provision, that law, together with other laws delineating the powers and responsibilities of the board of trustees in each town containing public lots or school and ministerial funds, is in effect today.^{FN3}

FN2. Chapter 254, Public Laws of 1824.

FN3. Title 13 M.R.S.A. s 3161.

With respect to the public lots yet to be reserved in land yet to be sold by Maine, the Legislature of Maine also declared in 1824 that:

'There 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 hereafter direct.'^{FN4}

FN4. Chapter 280, s 8, Public Laws of 1824.

The essential provisions of this law remained in effect throughout the time during which Maine's public domain was sold and are in effect today.^{FN5}

FN5. Title 30 M.R.S.A. s 4151.

In 1831 the Legislature of Maine sought to modify the Articles of Separation to acquire the power to 'direct the income of any fund arising from the proceeds of the sale of land required to be reserved for the benefit of the Ministry, to be applied for the benefit of primary schools, in the town in which such land is situate, where the fee has not already vested in some particular Parish in such town, or in some *255 individual.'^{FN6} Massachusetts responded with legislation which repeated, substantially verbatim, the act of the Maine Legislature and which recited that the Articles of Separation were thereby 'so far modified, as to permit an exercise of legislation by the Government of the State of Maine, over the subject of ministerial and school lands within its territorial jurisdiction, granted or reserved for those purposes before the separation of that State from the Commonwealth . . . '^{FN7} Pursuant to that modification, therefore, the Legislature of Maine directed that proceeds from the sale

of public lots be annually applied to the support of primary schools in each town.^{FN8} This law is in effect today.^{FN9}

FN6. Chapter 492, s 2, Public Laws of 1831.

FN7. Laws of Massachusetts, 1831, chapter 47.

FN8. Chapter 39, Public Laws of 1832.

FN9. Title 13 M.R.S.A. s 3167.

As a result of the foregoing laws public lots were reserved from substantially all of the townships which were sold by Maine and by Massachusetts and by both jointly. As townships became incorporated, title to the public lots vested in the inhabitants in accordance with the provisions of what is now Title 13 M.R.S.A. s 3161. Regardless of the purposes for which the public lots were originally reserved, since 1832 towns have been required to use these lands for the support of public schools in the town.

Prior to the incorporation of the townships or tracts from which the public lots were reserved, the public lots have remained under the control of the State. In 1831, the Legislature of Maine directed for the first time, that the Land Agent of the State should 'take care of the public lots which have been and shall hereafter be reserved for public uses in the several townships in this State, until the fee shall vest in the town or otherwise, according to the force and effect of the grant, and preserve the same from pillage and trespass.^{FN10} In 1853, Massachusetts conveyed to Maine all of its rights, title and interest in the public lots and recited in the deed that the public lots were to be held by Maine in accordance with and subservient to the provisions and stipulations contained in the Articles of Separation. The deed also specified that it was not intended to impair or invalidate the obligation in the Articles of September for 'setting apart and reserving lands to educational and religious uses.^{FN11}

FN10. Chapter 510, Public Laws of 1831.

FN11. Maine House Document #12, 1854.

In 1842, the Legislature directed that income accruing from the public lots in the unincorporated townships be deposited into a fund to be held by the treasurers of each County and paid 'to treasurers of towns rightfully owning it, whenever applied for.^{FN12} The basic requirements of this law remain in effect today,^{FN13} except that the fund is now, and since 1848 ^{FN14} has been held by the State Treasurer instead of the County Treasurers. In 1846, the Legislature directed that income from the fund should be used for school purposes pursuant to a specified formula.^{FN15} Though the formula has been significantly refined by the establishment of the Unorganized Townships Fund and the Organized Townships Fund, the basic requirements of the 1846 law remain in effect today.^{FN16} The principal amounts of the Unorganized Townships Fund and the Organized Townships Fund continue to be held by the State Treasurer with a separate accounting for each township and tract in the

unincorporated areas of the State, awaiting the incorporation of each such township or tract into a town.

FN12. Chapter 33, s 23, Public Laws of 1842.

FN13. Title 30 M.R.S.A. s 4164.

FN14. Chapter 82, Public Laws of 1848.

FN15. Chapter 217, Public Laws of 1846.

FN16. Title 30 M.R.S.A. ss 4165, 4166.

*256 Since 1850 the public lots in the unincorporated areas of the State have been in the care and custody of the Land Agent,^{FN17} the functions of which are now performed by the Forest Commissioner.^{FN18} There remain today approximately 415 unincorporated tracts and townships in Maine, including approximately 40 plantations. Although portions of a few public lots have been sold pursuant to legislative authority,^{FN19} the unincorporated tracts and townships in Maine presently contain approximately 398,000 acres of public lots. Of these, approximately two-thirds have been 'located' or partitioned from the townships or tracts from which they were reserved and the remainder have not yet been located or partitioned, although there exist statutory procedures to effect such a partition.^{FN20} While the public lots have been used by the State in recent years essentially to produce funds to be deposited with the Treasurer of the State as described above, they have been required to be managed under the principles of multiple use since 1965^{FN21} and the public lots in Baxter State Park have been used like the other lands in Baxter State Park.^{FN22}

FN17. Chapter 196, s 1, Public Laws of 1850. The Land Agent was given custody and care of public lots in plantations by Chapter 284 of the Public Laws of 1852.

FN18. The Land Agent was made Forest Commissioner by Chapter 100, s 1 of the Public Laws of 1891 and the title 'Land Agent' was abolished by Chapter 196 of the Public Laws of 1923.

FN19. 'Report on Public Reserved Lots' prepared by State Forestry Department, 1963, pursuant to Chapter 76, Resolves of 1961. See also chapters 8, 13 and 16, Resolves of 1971.

FN20. Title 30 M.R.S.A. s 4151, et seq. 7.

FN21. Title 12 M.R.S.A. s 501-A, subsection 7.

FN22. Title 12 M.R.S.A. s 902.

There is presently pending before the 106th Legislature, H. P. 1382, L. D. 1812, entitled, AN ACT to Organize the Unorganized and Deorganized Territories of the State and to Provide for Management of the Public Reserved Lands (the 'Act'). The Act is intended, among other things, to effect the following changes in the manner in which and the purposes for which the public lots are managed and owned by the State:

1. Section 5 of the Act would amend Title 13 M.R.S.A. s 3161 to provide that title to public lots shall vest in the inhabitants of any town incorporated and in existence on January 1, 1973. Title to public lots would no longer vest in the inhabitants of towns which may hereafter become incorporated.

2. Section 7 of the Act would direct that the public lots shall be used for the benefit of the State of Maine, to be managed and preserved as State assets, and not for the benefit of the present or future inhabitants of the township or tract from which the public lots were reserved. Section 15 of the Act (in the proposed provisions of Title 30 M.R.S.A. s 4162, subsection 5) further recites that the requirement that the public lots be used for the exclusive benefit of the township from which they were reserved is abolished.

3. Section 14 of the Act would require that in partitioning or locating public lots which have not heretofore been located, the Forest Commissioner shall consider, in addition to the value of timber and minerals, such qualities as scenic value, recreational potential, preservation of significant natural resources critical to the ecology of the State and contiguity to other public lands.

4. Section 15 of the Act would require, in effect, that the public lots be used and managed as multiple use State forests and gives the Forest Commissioner the power, *257 under certain conditions, to sell, purchase and exchange public lots, without retaining a public lot in each unincorporated township or tract, in order to assemble larger contiguous quantities of land.

5. Section 16 of the Act would discontinue the practice of depositing all income from the public lots into a fund to await the incorporation of the presently unincorporated tracts and townships and income from the public lots would be used (or an equivalent amount from the General Fund would be used) for the management of the public lots and for the acquisition of additional lands to be managed under the same statutory provisions which would be applicable to the public lots.

QUESTIONS OF LAW

QUESTION NO. I:

Do the provisions of Section 5 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

QUESTION NO. II:

If the answer to the preceding question is that any of the provisions of Section 5 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

QUESTION NO. III:

Do the provisions of Section 7 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

QUESTION NO. IV:

If the answer to the preceding question is that any of the provisions of Section 7 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

QUESTION NO. V:

Do the provisions of Section 14 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

QUESTION NO. VI:

If the answer to the preceding question is that any of the provisions of Section 14 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

QUESTION NO. VII:

Do the provisions of Section 15 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

QUESTION NO. VIII:

If the answer to the preceding question is that any of the provisions of Section 15 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

QUESTION NO. IX:

Do the provisions of Section 16 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

QUESTION NO. X:

If the answer to the preceding question is that any of the provisions of Section 16 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

***258 ONE HUNDRED AND SIXTH LEGISLATURE**

Legislative Document No. 1812

H. P. 1382

House of Representatives, April 3, 1973

Referred to the Committee on Public Lands. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Martin of Eagle Lake.

STATE OF MAINE
IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-THREE

AN ACT to Organize the Unorganized and Deorganized Territories of the State and to Provide for Management of the Public Reserved Lands.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 1, s 72, sub-s 13, repealed and replaced. Subsection 13 of section 72 of Title I of the Revised Statutes is repealed and the following enacted in place thereof:

13. Municipality. 'Municipality' shall include cities, towns and plantations, except that 'municipality' shall not include plantations in Title 30, chapters 201 to 213, 235, 239, subchapters IV, V and VI, chapter 241 and chapter 243.

Sec. 2. R. S., T. 1, s 72, sub-s 24, repealed. Subsection 24 of section 72 of Title I of Revised Statutes is repealed.

Sec. 3. R. S., T. 12, s 512, amended. Section 512 of Title 12 of the Revised Statutes, as amended, is further amended by adding a new sentence at the end to read as follows:

All lands acquired and administered under this section and all other state forests shall be managed under the same principles which govern the management of the public reserved lands, to the extent not inconsistent with the express provisions of this section, and management of such state forests shall, in any event, be coordinated with the management of the public reserved lands in order to facilitate the accomplishment of applicable management objectives.

Sec. 4. R. S., T. 12, s 514, repealed and replaced. Section 514 of Title 12 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

s 514. Management of public lands

The commissioner shall have the same powers, subject to the same conditions, with respect to the management of lands specified in section 504 as he has with respect to the public reserved lands as set forth in Title 30, section 4162, subsection 4.

***259 LEGISLATIVE DOCUMENT No. 1812**

Sec. 5. R. S., T. 13, s 3161, amended. Section 3161 of Title 13 of the Revised Statutes is amended to read as follows:

s 3161. Fee in ministerial and school land in existing towns.

Where lands have been granted or reserved for the use of the ministry or first settled minister, or for the use of schools, in any town incorporated and in existence on January 1, 1973, and the fee in these lands has not vested in some particular parish therein or in some individual, it shall vest in the inhabitants of such town and not in any particular parish therein for such uses. The inhabitants of any such town shall hold and enjoy said public reserved lands subject to the control of and subject to responsibilities imposed by the State.

Sec. 5-A. R. S., T. 13, s 3164, repealed. Section 3164 of Title 13 of the Revised Statutes is repealed.

Sec. 6. R. S., T. 13, s 3167, amended. Section 3167 of Title 13 of the Revised Statutes is amended to read as follows:

s 3167. Income to support schools

All income derived from such ministerial and school lands, and from the rents and profits of real and personal estate held under section 3166, shall be annually applied to the support of public schools in the town, and expended like other school moneys.

Sec. 7. R. S., T. 30, s 4151, amended. Section 4151 of Title 30 of the Revised Statutes is amended to read as follows:

s 4151. Public reserved lands and location by agreement

In every township or plantation now existing or hereafter organized there shall be reserved, as the Legislature may direct, 1,000 acres of land, and at the same rate in all tracts less than a township, for the exclusive benefit of the State of Maine, to average in quality, situation and value as to timber and minerals with the other lands therein. Title to such reserved public lots shall be in and all future earnings attributable thereto shall belong to the State of Maine for management and preservation thereof as state assets. In townships or tracts sold and not incorporated, the public reserved lots may be selected and located by the Forest Commissioner and the proprietors, by a written agreement,

describing the reserved lands by metes and bounds, signed by said parties and recorded in the commissioner's office. The plan or outline of the lands so selected shall be entered on the plan of the township or tract in the commissioner's office and shall be filed of record in the registry of deeds in the township in which the township is located, which shall be a sufficient location thereof.

Sec. 8. R. S., T. 30, s 4152, repealed. Section 4152 of Title 30 of the Revised Statutes, as amended by section 64 of chapter 226 of the public laws of 1965, is repealed.

Sec. 9. R. S., T. 30, s 4153, repealed and replaced. Section 4153 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

s 4153. Location without agreement

When the Forest Commissioner and proprietors of a tract or township described in section 4151 cannot agree on such location, the Forest Commissioner may petition the Superior Court in the county where the land lies to *260 appoint 3 disinterested persons, and issue to them a warrant, under the seal of the court, requiring them, as soon as may be, to locate the public reserved lot or lots in said township or tract. The public reserved lot or lots shall be of average quality with the residue of lands therein.

Sec. 10. R. S., T. 30, s 4154, amended. The last sentence of section 4154 of Title 30 of the Revised Statutes is amended to read as follows:

They shall make return of said warrant and their doings thereon, under their hands, to the next Superior Court in the county after having completed service; which, being accepted by the court and recorded in the registry of deeds in the county or registry district where the land is situated, within 6 months, shall be a legal assignment and location of such public reserved lot or lots.

Sec. 11. R. S., T. 30, ss 4155 and 4156, repealed. Sections 4155 and 4156 of Title 30 of the Revised Statutes are repealed.

Sec. 12. R. S., T. 30, s 4159, amended. The first sentence of section 4159 of Title 30 of the Revised Statutes is amended to read as follows:

When in the grant of any townships or parts of townships certain portions are reserved for public uses, and such portions have not been located in severalty prior to the incorporation of the same into a town, the Superior Court in the county where the land lies, on application of the assessors of the town, may appoint 3 disinterested persons of the county and issue to them its warrant under seal of the court, requiring them, as soon as may be, to locate such reserved portion according to the terms of the grant, and if the use or purpose of the reservation is prescribed in the grant, they shall set off and locate the lots accordingly.

Sec. 13. R. S., T. 30, s 4161, amended. Section 4161 of Title 30 of the Revised Statutes is amended to read as follows:

s 4161. Report of committee action

The members of the committee shall make return of said warrant and their doings thereon, to the Superior Court in the county, after having completed the service; which, being accepted by the court and recorded in the registry of deeds in the county or registry district where the land is situated, within 6 months, shall be a legal assignment and location of such reserved proportions. Thereafter the lands so set off and located shall be under the care and oversight of the trustees of the ministerial and school funds of the town, with all the powers and subject to the duties prescribed in this chapter and Title 13, chapter 93.

Sec. 14. R. S., T. 30, s 4161-A, additional. Title 30 of the Revised Statutes is amended by adding a new section 4161-A to read as follows:

s 4161-A. Criteria for location

Whenever land reserved for public uses is located pursuant to this chapter, and whenever the Forest Commissioner makes his return of partition pursuant to section 4158, the determination as to what lands are of an average quality, situation and value with the other lands in the township shall include, but shall not be limited to, appropriate consideration of the following criteria:

1. Contiguousness to other public lands;
2. Public recreation needs;
- *261 3. Accessibility to roads, highways and other transportation;
4. Proximity to centers of population;
5. Needs of state agencies;
6. Scenic quality;
7. Value as to minerals;
8. Value as to timber;
9. The preservation of significant natural, recreational and historic resources, including wildlife habitat and other areas critical to the ecology of the State;
10. The provisions of any applicable comprehensive or long-range management plan for use of public lands.

Sec. 15. R. S., T. 30, s 4162, repealed and replaced. Section 4162 of Title 30 of the Revised Statutes, as repealed and replaced by section 65 of chapter 226 of the public laws of 1965, is repealed and the following enacted in place thereof:

4162. Management of public reserved lands

1. Purpose. The Legislature finds that it is in the public interest and for the general benefit of the people of this State that title, possession and the responsibility for the management of the public reserved lands contained within the unincorporated areas of the State be vested and established in an agent of the State acting on behalf of all of the people of the State. The Legislature further finds that it is in the public interest that the public reserved lands be managed under the principles of multiple use and to produce a sustained yield of products and services and that such management should be effected by the use of both prudent business practices and the principles of sound planning.

2. Definitions. As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

A. 'Multiple use' shall mean the management of all of the various renewable surface resources of the public reserved lots, including outdoor recreation, timber, watershed, fish and wildlife and other public purposes; it means making the most judicious use of the land for some or all of these resources over areas large and diverse enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it means that some land will be used for less than all of the resources; and it means harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

B. 'Public reserved lands' includes not only all of the public reserved lots and ministerial and school lands in the unincorporated areas of the State, but all lands acquired with proceeds from the sale of such reserved lands, all lands received by the State in exchange for or pursuant to relocation of such reserved lands and all lands purchased by the State and expressly designated as public reserved lands.

C. 'Sustained yield' shall mean the achievement and maintenance in perpetuity of a high-level regular periodic output of the various renewable resources of the public reserved lots without impairment of the productivity of the land.

*262 3. Responsibility. The Forest Commissioner shall have the care, custody, control and the responsibility for the management of the public reserved lands in the unincorporated areas of the State. He shall, beginning promptly after the effective date of this Act, prepare, revise from time to time and maintain a comprehensive management plan for the management of the public reserved lands in accordance with the guidelines set forth. The management plan shall provide for a flexible and practical approach to the coordinated management of the public reserved lands. In preparing, revising and maintaining such management plan, the Forest Commissioner shall, to the extent practicable, compile and maintain an adequate inventory of the public reserved lands, including not only the timber thereon but the other multiple use values for which the public reserved lands are managed. In addition, all criteria listed in section 4161-A for the location of public reserved lands shall be considered in developing the management plans. The Forest Commissioner shall be entitled to the full cooperation of the Maine Mining Bureau, Department of Inland Fisheries and Game, Department of Parks and Recreation, Land Use Regulation Commission and State Planning Office in compiling and maintaining the inventory of the public reserved lands and shall consult with those agencies as well as other appropriate state agencies in the preparation and maintenance of the comprehensive management plan for the public reserved lands. As and when prepared, all management of the public reserved lands shall, to the extent practicable, be in accordance with said management plan.

4. Actions. The Forest Commissioner may take the following action on the public reserved lands:

A. Grant permits, on such terms and conditions and for such consideration as he deems reasonable, to cut timber, harvest grass and wild foods, tap maple trees for sap and cultivate and harvest crops; provided that such permits shall create in the permittee mere revocable licenses and shall not create any real property interest in the public reserved lands;

B. Sell gravel existing in the soil, but only for the construction of public roads or other public works; provided that in the judgment of the Forest Commissioner, the sale of such gravel shall enhance the value of the land in the vicinity from which the gravel was sold and that it shall promote the purposes for which that portion of the public reserved lands are being managed;

C. Lease the right, for a term of years not exceeding 25, to set poles and maintain utility lines;

D. Lease campsites on an annual basis;

E. Construct and maintain overnight campsites and other camping facilities and charge reasonable fees to defer the cost of maintenance;

F. With the consent of the Governor and Council and subject to the approval of the Maine Mining Bureau, the Land Use Regulation Commission and of the Department of Environmental Protection under Title 10, chapter 451. Mining and Rehabilitation of Land, grant mining rights;

G. Grant the right to construct and maintain public roads;

H. With the consent of the Governor and Council, lease mill privileges, dam sites and flowage rights.

5.-additional. The Forest Commissioner shall have the power, subject to this section, to exchange or relocate public reserved lands, both located and unlocated, for other lands and the power to sell public reserved lands, both *263 located and unlocated, and to use appropriate portions of the proceeds of the sales, in order to purchase, assemble or reassemble contiguous or nearly contiguous quantities of land to be managed as public reserved lands hereunder. The requirement that public reserved lands shall be used for the exclusive benefit of the township from which they were reserved is abolished and the sale, acquisition, assembly and reassembly of public reserved lands may proceed

without the necessity of retaining public reserved lands in each tract, township or plantation. The Forest Commissioner shall not exchange, relocate, purchase or sell any public reserved lands unless and until he shall have:

A. Prepared a management plan and determined that such exchange, relocation, purchase or sale is an implementation of that plan or, at least, that it is not in conflict with that plan;

B. Certified to the Treasurer of the State that in his opinion the consideration received for the exchange, relocation, purchase or sale is fair and just;

C. Obtained the consent of the Governor and Council to such exchange, relocation, purchase or sale;

D. Consulted with and invited the written comments of the state agencies required to be consulted in the preparation of the management plan about such proposed exchange, relocation, purchase or sale; and

E. Advertised notice of the proposed exchange, relocation, purchase or sale in the state paper not less than 30 days prior to the consummation of the exchange, relocation, purchase or sale.

6. Transfer of responsibility. Whenever a particular portion of the public reserved lands is to be used, pursuant to the management plan, for a single use which use is within the particular expertise of another agency of the State, the Forest Commissioner may, with the consent of the Governor and Council and the state agency involved, transfer to such other state agency the responsibility for the management of such particular portion of the public reserved lands.

7. Application. Nothing herein shall be construed to require the location of unlocated public reserved lands. The determination as to the desirability of locating unlocated public reserved lands shall be made by the Forest Commissioner in the preparation and maintenance of the management plan for the public reserved lands. The Forest Commissioner shall take appropriate steps to insure that in those townships in which public reserved lands remain unlocated, the State receives its proportionate share of common income and that such lands are not subjected to waste by the other cotenants.

Sec. 16. R. S., T. 30, s 4163, repealed and replaced. Section 4163 of Title 30 of the Revised Statutes, as amended by section 65-A of chapter 226 of the public laws of 1965, is repealed and the following enacted in place thereof:

s 4163. Funds from the public reserved lands

1. Receipts from sale, etc. All sums received by the Forest Commissioner for the exchange, relocation or sale of public reserved lands shall be deposited with the Treasurer of State and kept as a separate nonlapsing account to be used by the Forest Commissioner for the acquisition of other lands to be held and managed as public reserved lands.

2. Income. All income received by the Forest Commissioner from the public reserved lands shall be deposited with the Treasurer of State to be credited to the General Fund.

~~*264~~ 3. Public Reserved Lots Management Fund. To accomplish the purposes of section 4162, there is established a Public Reserved Lots Management Fund. An amount equal to the General Fund pursuant to subsection 2 shall be transferred by the Treasurer of the State to the Public Reserved Lots Management Fund on the first day of each month following the effective date of this Act. Moneys credited to the Public Reserved Lots Management Fund shall be available for expenditure by the Forest Commissioner for the purposes set forth in section 4162 without limitation as to fiscal year.

Sec. 16-A. R. S., T. 30, s 4164, repealed. Section 4164 of Title 30 of the Revised Statutes is repealed.

Sec. 17. R. S., T. 30, s 4165, repealed and replaced. Section 4165 of Title 30 of the Revised Statutes, as amended by section 66 of chapter 226 of the public laws of 1965, is repealed and the following enacted in place thereof:

s 4165. Unorganized Territory School Fund

There shall continue in existence the Unorganized Territory School Fund which shall include the existing principal of said fund arising from the public reserved lands prior to the effective date of this Act and any accrued but unexpended income from said fund as of said date. The State shall allow interest annually as earned. Said fund shall be held and administered by the Treasurer of State. The income only of said fund shall be expended and applied as is by law provided for school purposes. The Treasurer of State shall file with the Commissioner of Finance and Administration, on or before January 15th of each year, a list of interest earned by said fund during the preceding calendar year. A copy of said list shall be transmitted to the Commissioner of Educational and Cultural Services by the Treasurer of State.

Sec. 18. R. S., T. 30, s 4166, amended. Section 4166 of Title 30 of the Revised Statutes, as amended by section 67 of the public laws of 1965 and as amended by chapter 173 of the public laws of 1967, is further amended to read as follows:

s 4166. Organized Townships Fund

There shall continue in existence the Organized Townships Fund which shall include the principal of said fund arising from the public reserved lots prior to the effective date of this Act and accrued but unexpended income of said fund as of said date. The State shall allow interest annually as earned. Said fund shall be held and administered by the Treasurer of State. The income of the Organized Townships Fund shall be added to the principal of the funds, until the inhabitants of such township or tract are incorporated into a municipality, unless previously expended according to law. When any such township or tract is incorporated as a town, said funds belonging to it shall be paid by the Treasurer of State to the treasurer of the trustees of the ministerial and school funds therein, to be added to the funds of that corporation and held and managed as other school funds of that town are required to be held and managed. When such township or tract is organized as a plantation, the interest of said fund shall be paid annually by the Treasurer of State to the treasurer of such plantation to be applied toward the support of schools according to the number of scholars in each school. Said interest shall be computed to the first day of each January by the Treasurer of State. The Commissioner of *265 Educational and Cultural Services shall file in the office of the State Controller a list of such plantations with the amount due for interest for the preceding year according to a record of such amounts to be furnished to him by the Treasurer of State. The Commissioner of Educational and Cultural Services shall be satisfied that all such plantations are organized, and that schools have been established therein according to law, that assessors are sworn and qualified and that the treasurers of such plantations have given bonds as required by law. The State Controller shall thereupon insert the name and amount due such plantations in one of the first warrants drawn in that year.

The amount due Lakeville Plantation, Penobscot County, annually under this section shall be expended in accordance with this section and any excess shall, under the supervision and direction of the superintending school committee of Lakeville Plantation, be used to established scholarship aid for students of Lakeville Plantation to receive post high school education.

Sec. 19. R. S., T. 30, ss 5601-5604, repealed. Sections 5601 to 5604 of Title 30 of the Revised Statutes are repealed.

Sec. 20. R. S., T. 30, ss 5604-A-5604-H, additional. Title 30 of the Revised Statutes is amended by adding 8 new sections, 5604-A to 5604-H, to read as follows:

s 5604-A. Purpose and scope

The Legislature finds that it is desirable to extend the benefits of local government to the vast portions of the State which are presently unorganized and deorganized in order to preserve public health, safety and general welfare; to ensure that decisions relating to the governing of said territory clearly reflect the economic, social and educational needs of the citizens who live there; to provide a

foundation for the establishment of localized public services; and to regularize voting practices throughout the State.

s 5604-B. Commission on Unincorporated Territory

There is created the Commission on Unincorporated Territory to carry out the purposes of section 5604-A by organizing into plantations all of the presently unorganized, deorganized or unincorporated territory in the State. The commission shall consist of 7 members: The chairman of the Land Use Regulation Commission, who shall serve as chairman of the commission, the State Planning Director, the State Tax Assessor, the Executive Director of the Land Use Regulation Commission, the Commissioner of Educational and Cultural Services, the Commissioner of Transportation, and one public member to be appointed by the Governor. The members of the commission shall serve until the Legislature approves a boundary plan or their successors are qualified.

s 5604-C.-commission proceedings; rules

Meetings of the commission shall be held at the call of the chairman. Members of the commission shall not be paid a salary, but shall be reimbursed for all expenses incurred in carrying out their responsibilities. The commission may adopt whatever rules it deems necessary for the conduct of its business. No action shall be taken by the commission unless approved by 3 of its members.

Any hearing may be conducted by a single member of the commission so long as such member conducting the hearing transmits to the full commission all evidence taken at the hearing.

Administrative assistance to the commission shall be provided by the State Planning Office or, in the event a Bureau of Public Lands is established within a Department of Conservation, by said Bureau of Public Lands.

*266 s 5604-D.-commission duties

The commission shall convene promptly after the effective date of this Act and shall prepare, prior to the next regular session of the Legislature, a boundary plan for organizing into plantations all of the unincorporated territory of the State. The plan may propose the enlargement or alteration of existing plantation boundaries as well as propose the organization into plantations of all unorganized and deorganized areas of the State. The plan shall not propose the inclusion within any plantation of the lands presently comprising Baxter State Park. The boundary plan shall be submitted by the commission as a legislative proposal to the next regular session of the Legislature.

s 5604-E. Plantation standards

A plantation shall consist of one or more townships, existing plantations, or portions of either or both, and be located in a single county. A plantation shall not consist of less than one township. In preparing the boundary plan, the commission shall apply the following standards:

1. At least 25 persons shall be resident in each plantation;
2. Consideration shall be given to the demography of the unincorporated territory so as to provide to the extent practicable for cohesive plantation units;
3. Consideration shall be given to highway and communication connections, topography, existing schools and concentration of population within each plantation so as to promote a sense of community and facilitates the delivery of public services;
4. Consideration shall be given to the valuation of property located within the unincorporated territories so as to provide, as nearly as practicable, consistent with the other standards contained in this section, for uniform tax rates among the plantations to be organized or reorganized pursuant to the plan.

s 5604-F. Hearings

The commission shall hold a public hearing to receive evidence with respect to the proposed boundary plan. The hearing shall be held in Augusta no later than September 15, 1974. At least 30 days prior to the hearing, public notice shall be given by publishing 3 times the proposed boundary

plan and notice of the hearing in at least 4 daily or weekly newspapers throughout the State in order to bring the proposal to the attention of all interested persons.

The commission may hold other hearings, as it deems necessary, in order to prepare the proposed boundary plan and the commission shall adopt, and may amend and repeal rules relating to the conduct of all hearings and shall make a verbatim record of all hearings held pursuant to this section.

s 5604-G. Organization of plantations

Plantations organized pursuant to this Act shall be deemed organized, and all laws applicable to organized plantations shall apply to such plantations, upon the effective date of the legislative enactment adopting a boundary plan and all prior organizations of plantations, the boundaries of which are altered by the boundary plan, shall thereby be repealed. Within 90 days after such date, the commissioners of each county, in which plantations have been designated, shall issue their warrant to one of the principal inhabitants of each plantation, commanding him to notify the inhabitants thereof qualified to vote for Governor to assemble on a day not later than 150 days after the effective *267 date of the adoption of the boundary plan and at a place named in the warrant to choose a moderator, clerk, treasurer, 3 assessors, collector of taxes, constable, superintending school committee and other necessary plantation officers. Notice of such meeting shall be given by posting an attested copy of the warrant therefor in not less than 3 conspicuous places in the plantation in order to inform the inhabitants and by publishing same in the state paper at least 14 days prior to the meeting.

s 5604-H. Organization meeting

At the time and place appointed for the meetings, the person to whom the warrant was directed shall preside until a moderator is chosen by ballot by the voters present. Thereafter, the moderator shall preside. A clerk, treasurer, collector of taxes, superintending school committee and 3 assessors shall be chosen by ballot and sworn by the moderator or a justice of the peace. Other plantation officers may be chosen by ballot or other method agreed on by vote of the meeting and shall be sworn.

Sec. 21. R. S., T. 30, s 5605, amended. Section 5605 of Title 30 of the Revised Statutes is amended to read as follows:

s 5605. Copy of proceedings and description of plantation sent to Secretary of State

Upon the organization of a plantation, the clerk and assessors shall transmit to the Secretary of State, to be by him recorded, a certified copy of all proceedings had in completing such organization, including the warrant issued therefor and the return thereon, and the record of the meeting held in pursuance thereof.

Sec. 22. R. S., T. 30, s 5607, amended. Section 5607 of Title 30 of the Revised Statutes is amended to read as follows:

s 5607. Annual meeting

Organized plantations shall hold their annual meeting in March and choose a clerk, 3 assessors, treasurer, collector of taxes, constable and superintending school committee. When money is raised for repair of ways and bridges, the assessors of such plantations shall choose one or more road commissioners as selectmen of towns do.

Sec. 23. R. S., T. 30, s 5616 and s 5620, repealed. Sections 5616 and 5620 of Title 30 of the Revised Statutes are repealed.

Sec. 24. Land Use Regulation Commission unaffected. Nothing contained in this Act shall be deemed to affect the jurisdiction or authority of the Land Use Regulation Commission over the unincorporated territories.

Sec. 25. Appropriation. There is appropriated to the State Planning Office or, in the event a Bureau of Public Lands is established within a Department of Conservation, then to said bureau, from the General Fund the sum of \$30,000 to carry out the purposes of this Act.

***268 STATEMENT OF FACT**

This Act provides for a commission to prepare a plan to organize the unorganized territories for self-government and self-support. Bona fide organization of these areas into plantations would terminate outstanding conveyances of grass and timber rights on the reserved public lots.

This Act also provides standards and procedures to assure that the lands thus returned to the public domain will be located, managed and developed for the best interests of the people of the State. This proposal is included in the Governor's Legislative Program.

ANSWERS OF THE JUSTICES

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, had the honor to submit answers to the questions propounded on May 25, 1973.

The origins, and continuing creation, of the 'public lots' in Maine stem fundamentally, as disclosed by the Statement of Facts, from provisions of Item Seventh of the Articles of Separation operative in two respects: (1) to

'continue in full force, after the . . . District (of Maine) shall become a separate State'

the status of land titles created by Massachusetts by virtue of

'all grants of land . . . , and all contracts for, or grants of land not yet located which have been or may be made by the . . . Commonwealth, (of Massachusetts) before the separation . . . shall take place, . . .'

and (2) directing that

' . . . in all grants hereafter to be made by either state of unlocated land within . . . (Maine after the separation), the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by . . . (the) Commonwealth (of Massachusetts).'

Thus, the Articles of Separation are the logical starting point of analysis. Although we have been asked to provide answers to several questions propounded in seriatim sequence, we think it appropriate to present, preliminarily, a unified exposition of the meaning, and legal consequences, of the concepts of Item Seventh of the 'Articles' which have material bearing upon the 'public lots.'

The Statement of Facts recognizes that the 'Articles' are not only 'terms and conditions' fixed by the Commonwealth of Massachusetts and 'agreed and consented' to by Maine in becoming a separate State but also, as here relevant, have become incorporated as provisions of Maine's Constitution. As a part of the Constitution of this State, identified as Article X thereof, Item Seventh of the 'Articles' is the delineation of long range controls which the people of Maine have themselves imposed upon all of the State's branches of government, including the legislative, through which the sovereign power of the people will be exercised.

The initial issue for analysis, therefore, becomes the nature of the limitations contemplated ***269** by Article X of the Constitution of Maine insofar as the 'public lots' have been created by 'reservations' constitutionally acknowledged effective as they had been made by Massachusetts prior to separation and constitutionally directed to be brought into existence by Maine (or Maine and Massachusetts acting jointly) after separation.^{FN1}

FN1. By thus concentrating attention upon the Articles of Separation in this aspect as a part of the Constitution of Maine, we intend no suggestion that the 'Articles' are without independent legal effectiveness as limitations upon the sovereignty of the State of Maine imposed by the Commonwealth of Massachusetts. Cf. Green v. Biddle, 8 Wheat. (21 U.S.)

1, 5 L.Ed. 547 (1823). As the ensuing discussion will disclose, our undertaking to answer the questions propounded need not involve an investigation of this facet of the Articles of Separation.

The core subsidiary question, here, is the meaning imported by the constitutional concept of a 'reservation'-in particular, the legal consequences produced by it once it has been effected.

[1] One year after Maine had become a State, the Supreme Judicial Court of the new State in Shapleigh v. Pilsbury, 1 Me. 271 (1821) directed its attention to this subject. After a careful review of approaches taken by the Massachusetts Court in the case of Rice v. Osgood, 9 Mass. 38 (1812) and Brown v. Porter, 10 Mass. 93 (1813), in conjunction with the attitude expressed by Mr. Justice Story on behalf of the Supreme Court of the United States in Pawlet v. Clark, 9 Cranch (13 U.S.) 292, 3 L.Ed. 735 (1815), the Maine Court strongly indicated the view that the 'reservation' process produces the legal consequence that the sovereign, as a grantor 'reserving' lands for designated beneficial purposes and as to which specific beneficiaries to take the legal title are not in existence, has created no vested rights in private persons but has effectively subjected itself to a legal restriction; it has removed the 'public lots' from its dominion as an absolute proprietor and has denied itself

'... an authority to convey the premises to any other person or corporation, or for any other uses, ...' (Shapleigh, supra, 1 Me. pp. 288, 289)

Further, it may fairly be concluded that such doctrine was given continuing approval in the subsequent cases of State v. Cutler, 16 Me. 349 (1839); Dillingham v. Smith, 30 Me. 370 (1849); Dudley v. Greene, 35 Me. 14 (1852); Mace v. Land & Lumber Company, 113 Me. 420, 92 A. 486 (1914); and Flye v. First Congregational Parish, 114 Me. 158, 95 A. 783 (1915).

The case of Union Parish Society v. Upton, 74 Me. 545 (1883) is not to the contrary. Its discussion, by way of dictum, conceding that the effect of a 'reservation' is to impose 'great moral and political' strictures does not exclude the existence of legal obligations.

In State v. Mullen, 97 Me. 331, 54 A. 841 (1903) this Court characterized the 'reservation' process and its consequences as follows:

'Prior to the separation of Maine from Massachusetts, the latter State, in making grants or sales . . ., had generally pursued the policy of making reservations of lands for public uses from the lands granted. The beneficiaries of these public uses were not ordinarily in esse at the time of the grant. Massachusetts retained the legal title for the use of the beneficiaries when they should come into existence. After the separation, as held in State v. Cutler, 16 Maine, 349, this state by virtue of its sovereignty became entitled to the care and possession of these reserved lands (in the place of Massachusetts) . . . the State (of Maine) became trustee . . .' (p. 335, 94 A. p. 843) (emphasis supplied)

[2] The accumulated past expressions of this Court lead us, therefore, to the conclusion that the meaning and legal effect *270 of a 'reservation', as contemplated by Article X of the Constitution of Maine, is that thereby the sovereign removes the lands 'reserved' from the public domain and must continue to hold and preserve them for the 'beneficial uses' intended.

Insofar as Article X embodies the 'reservation' process and consequences thereof in the specific context of (1) rendering Maine bound by such 'reservations' as Massachusetts had made prior to separation and (2) specifies for the future, after separation, that if Maine makes grants of land from its public domain 'reservations' shall be effectuated in such grants for beneficial purposes according to usages which had prevailed in the Commonwealth of Massachusetts prior to separation, the Maine Constitution subjects the Legislature of Maine to the limitation that it treat all 'public lots'-i.e., those

already, or to be, created by 'reservations'-on the principle that the Constitution requires the 'public lots' to be held and preserved for the beneficial uses intended.

Pursuant to this approach, the additional issue arises concerning the nature of the beneficial uses constitutionally tolerable under the language of Article X of the Maine Constitution.

As to the direction that 'reservations' in future grants after separation

'shall be . . . for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by . . . (the) Commonwealth (of Massachusetts)',

the specific inquiry is: are the two beneficial uses particularly designated, i.e., 'Schools' and 'Ministry' intended to be exclusive limitations or merely illustrative of a more comprehensive assemblage of beneficial purposes 'usual' in 'reservations' made by Massachusetts prior to separation?

We believe the latter is the correct interpretation of the constitutional language.

The Colony of Massachusetts Bay, and later the Commonwealth of Massachusetts, maintained a policy of reserving, from grants of public land, certain lots for named public uses. While the local ministry and local schools were named as public uses, lots were also reserved for, inter alia Harvard College,^{FN2} the

FN2. Resolve of May 1, 1776, Chapter 12 (1776-77) 5 Acts & Resolves of the Province of Massachusetts Bay 666.

'benefit of public education in general, as the General Court shall hereafter direct' (State v. Cutler, 16 Me. 349, 352 (1839)),

and the further appropriation of the General Court.^{FN3} The lands reserved by Massachusetts under its policy were not, therefore, restricted only to use for the ministry and for schools.

FN3. Resolve of March 26, 1788, Chapter 80 (1787-8) Mass. Resolves 123; Resolve of February 4, 1790, Chapter 68 (1789-0) Mass. Resolves 58. In addition to its policy of reserving lands, Massachusetts sought to afford public benefits through a policy of direct grants. The public benefits advanced by these grants include both the ministry and education and also such uses as the protection of beaches and harbors. O. Handlin & M. Handlin, *Commonwealth: A study of the Role of Government in the American Economy* (Massachusetts, 1774-1861) 80 (Rev. ed. 1969).

The Maine Legislature itself, shortly after separation, responded to the constitutional requirement of Article X by enacting P.L. 1824, Chapter 280, providing that 1,000 acres be reserved from each township or six-mile tract for 'such public uses . . . as the Legislature may hereafter direct.' The statute, enacted so soon after the adoption of the Constitution, indicates that when the adoption of the Constitution was a fresh memory, the reservation clause was not construed as restricting uses to schools and the ministry. Additional evidence that the statute of 1824 was viewed as consistent with the Constitution is the *271 fact that no effort was made to procure parallel legislation in Massachusetts.^{FN4} The statute of 1824 was viewed as working no change upon constitutional requirement for the use of public lots.

FN4. Article X, Section 5, Paragraph Minth provides that modification of any of the terms of Article X, Section 5, may be made only with the consent of the Massachusetts General Court.

Grants of public land by the State of Maine under the 1824 statute contained a reservation for 'public uses.' It is significant that grants of townships by Maine and Massachusetts acting jointly also contained reservations for 'public uses' rather than reservations restricted for use of schools and the ministry. ^{FNS} This indicates that both states viewed the reservation for 'public uses' to be consistent with the usual reservations made by Massachusetts prior to Maine statehood.

FNS. E. g., Deed from Maine and Massachusetts conveying T8R13 to Samuel Smith, July 16, 1844. 2 Deeds-Maine and Massachusetts at 47. (State Archives, Augusta, Maine).

[3] In light of the practice of Massachusetts prior to Maine statehood, the legislative response of Maine soon after statehood, and the joint action of the two States, it is evident that the uses mentioned, i.e., schools and the ministry, concerning reservations to be made after separation are illustrative, and not an exclusively exhaustive listing, of the 'public uses' for which 'reservations' are to be made.

We regard this principle as controlling, also, concerning 'reservations' made prior to separation and in which, since the contemplated beneficiary had not come into existence, the 'reserved' lands had not become appropriated to any particular uses designated. In such posture, the only obligation upon the sovereign is to hold and preserve the lands 'reserved' for those 'public uses' generally reflected by the usage of Massachusetts and of which any particularly designated use provides only an example. See: Union Parish Society v. Upton, 74 Me. 545, 546-548 (1883).

[4] The foregoing general analysis provides that foundation for answers to the specific questions propounded as follows.

QUESTION NO. I: Do the provisions of Section 5 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of

ANSWER: We answer in the negative.

QUESTION NO. II: If the answer to the preceding question is that any of the provisions of Section 5 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. I is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. III: Do the provisions of Section 7 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

In providing this answer, however, we emphasize that we are interpreting the provisions regarding the State's title to the public lots, ownership of future earnings attributable thereto and its management and preservation of them as 'State assets'-all as appearing in Section 7,-to contemplate recognition of the principle enunciated in the preliminary general discussion that the 'public lots' are not part of the public domain over which Maine has absolute proprietorship but must be held and preserved for the generalized 'public uses' contemplated by the Articles of Separation.

*272 QUESTION NO. IV: If the answer to the preceding question is that any of the provisions of Section 7 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. III is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. V: Do the provisions of Section 14 of the Act violate the Articles of Separation, the Distribution of Power Provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

Our answer that neither the Articles of Separation nor the Distribution of Power provisions of the Federal or State Constitutions are violated is amply clarified by the preliminary exposition we have presented.

Our answer that the Due Process Clauses of the Federal and State Constitutions are not violated requires further discussion.

Partition, or location, of 'public lots' hitherto unlocated in lands which have become privately owned can precipitate questions of constitutional 'due process' insofar as rights already vested in private persons may be affected by the criteria and methods utilized to accomplish the partition, or location-in particular, if the Legislature has seen fit to alter the prior law governing at the time private ownership was acquired.

Section 14 retains the foundational criterion for the partition and location of 'public lots' first promulgated in 1824 that, as partitioned or located, the 'public lots' shall be '. . . average in quality and situation with the other land . . .' Section 14 further specifies, however, that over and above one subsidiary aspect of 'average in quality and situation' previously specified-i. e., 'value as to timber and minerals'-other factors shall hereafter be taken into account. We cannot project that such requirement will, or must, per se cause a landowner to lose property on a basis sufficiently different from what would arise by the applicability of such law as governed when ownership rights were acquired to constitute it a retrospective impairment of vested private rights in violation of 'due process of law.' For this reason, Section 14, taken on its face, is consistent with the Due Process Clauses of the Federal and State Constitutions.

In the context of an advisory opinion we are able to evaluate Section 14, relative to the question propounded, only by considering the language of Section 14 on its face and not with the assistance of particular factual contexts in which it might be applied. Hence, we answer that Section 14 does not violate the Due Process Clauses of the Federal or State Constitutions.

QUESTION NO. VI: If the answer to the preceding question is that any of the provisions of Section 14 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. V is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. VII: Do the provisions of Section 15 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

As the preliminary exposition has disclosed, the 'reservations' by which the 'public lots' come into being, and as conceived by Article X of the Maine Constitution, establish a limitation only that the State hold and preserve 'public lots' for *273 the general class of public uses derived from the usage of Massachusetts. Thus, no private rights being involved, and the purposes for which the 'public lots' are held and preserved being a collective grouping of public uses, the 'public lots' themselves may likewise be treated collectively if thereby the general category of public uses may be furthered. Hence, sales, purchases and exchanges of 'public lots', without retention of a 'public lot' in each unincorporated township or tract and in order to assemble larger contiguous quantities of land, is

permissible-provided that it is done to promote the beneficial public uses and purposes for which the 'public lots' must be held and preserved.

Insofar as Section 15 confers power upon the Forest Commissioner to 'relocate' any 'public lots', including 'both located and unlocated', we answer here as we answered Question No. 5. We cannot say that such authority to 'relocate', taken on its face and per se, entails, necessarily, such interference with vested private rights of property as would amount to a retrospective governmental impairment in violation of the Due Process Clauses of the Federal or State Constitutions.

QUESTION NO. VIII: If the answer to the preceding question is that any of the provisions of Section 15 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. VII is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. IX: Do the provisions of Section 16 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

The proposed use of the income from the 'public lots' is consistent with (1) the concept that the 'public lots' be held and preserved for an aggregate of public uses according to the usage of Massachusetts, as described in the answer to Question No. 3 and (2) the authority of the State of Maine to treat its 'public lots' as a collective group for the furtherance of such generalized public uses, as explained in our answer to Question No. 7.

QUESTION NO. X: If the answer to the preceding question is that any of the provisions of Section 16 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. IX is that the Articles of Separation are not violated, this question is rendered inapplicable.

Dated at Portland, Maine, this nineteenth day of June, 1973.

Respectfully submitted:

ARMAND A. DUFRESNE, Jr.

DONALD W. WEBBER

RANDOLPH A. WEATHERBEE

CHARLES A. POMEROY

SIDNEY W. WERNICK

JAMES P. ARCHIBALD

Me. 1973.
Opinion of the Justices,
308 A.2d 253

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 [West Reporter Image \(PDF\)](#)



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December 15, 1992

Sawin Millett, Commissioner
Department of Finance
State House Station #78
Augusta, Maine 04333-0078

Re: Transfer of Trust Monies to General Fund under
Part KKK of Legislative Appropriations Bill

Dear Sawin:

As you know, my office has been in contact with yours regarding the applicability to certain trust funds of Part KKK of the appropriations bill enacted in the last legislative session. Part KKK provides an across-the-board transfer of .9% of accounts to the general fund. It is this office's opinion that Part KKK cannot, however, lawfully effect a transfer to the general fund of monies that the State holds in trust for certain legally designated purposes. Such a transfer would either violate the legal trust relationship by which the State holds the monies involved, or would violate constitutional requirements by which bond or other revenues must be held for expenditure. More detailed legal analysis describing the rationale for this opinion is attached.

In the discussions between my office and yours, the suggestion was made that we provide a concise summary of our views on this issue as it pertains to the trust monies that have been brought to our attention. My purpose then is to simply state what we believe to be the law on the matter and to point out the types of trust-type funds, to the extent known by us, to which this opinion applies. Again, as to the funds described below, an across the board transfer to the general fund as envisioned by Part KKK would violate the trust duties under which the State holds these particular funds. This is in contrast to the applicability of Part KKK to other special or dedicated revenue accounts, held by the State in a non-trust capacity, and over which the Legislature has discretion in making allocations for any designated governmental purpose, including reallocation to the general fund.

These are the funds that have been brought to our attention and from which monies should not be reallocated to the general fund under Part KKK:

Monies in Baxter State Park accounts;

Monies in accounts of Bureau of Parks and Recreation of the Department of Conservation, which were donated to and received by the State with the explicit understanding that the monies would be used for certain park facilities;

Monies in accounts of the Bureau of Public Lands of the Department of Conservation, restricted to the public reserved lands or submerged lands;

Monies raised by bond issues designated for a particular purpose;

Monies in or drawn from highway trust fund accounts.

There may be other trust funds, of which we have not been made aware, and we will respond to these circumstances as they arise. In the meantime, if you have any questions, please let me know.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/tt

Attachments

cc: Michael D. Pearson, Senate Chair
Legislative Appropriations Committee
Lorraine N. Chonko, House Chair
Legislative Appropriations Committee
Jim Clair
Jack Nicholas

State of Maine

DEPARTMENT OF ATTORNEY GENERAL

M E M O R A N D U M

To: Tom Morrison, Director, Bureau of Public Lands
Herb Hartman, Director, Bureau of Parks & Recreation

From: Jeff Pidot, Deputy Attorney General

Date: August 5, 1992

Subject: Transfer of Monies to General Fund from Certain
Trust, Donation and Bond Issue Accounts

You have both asked for an opinion from this office regarding the applicability of Part KKK of the budget enacted by the Legislature for FY 1992-3 to certain accounts administered by your agencies. In pertinent part, this section of the budget legislation provides for an across-the-board .9% reduction in state government accounts, with the savings to be transferred as undedicated revenue to the General Fund. Your inquiry relates to the applicability of this provision to a number of accounts with respect to which the State has a fiduciary duty to employ the monies involved for designated trust or trust-like purposes. For the reasons set forth below, it is this office's opinion that the .9% transfer to the General Fund is inapplicable to these particular accounts.

It is important to note that the trust-like nature of these particular accounts distinguishes them from routine, special or dedicated revenue accounts, to which Part KKK's .9% General Fund transfer is otherwise applicable. It is also important to note that Part KKK was not intended by the Legislature to reimburse the General Fund for costs incurred in servicing these fiduciary accounts or in managing the programs for which they are designed. Finally, it is important to note that the enactment of Part KKK was neither explicitly nor, we believe, implicitly intended by the Legislature to be an action taken in furtherance of its trust or other fiduciary responsibilities over these particular accounts and their related trust management activities. Accordingly, the opinion stated here bears only upon the unique situation involved in applying the across-the-board budget reduction and General Fund transfer in Part KKK, intended by the Legislature to close a projected shortfall in the General Fund for FY 1992-3, to these particular fiduciary accounts.

Each of the types of accounts at issue will be separately discussed below.

Bureau of Parks and Recreation Trust Accounts

In Mr. Hartman's memo and its attachments, reference is made to a number of trust accounts established by deeds or other instruments of trust and accepted by the State for purposes of supporting a particular park facility. The monies given under these trust instruments, and accepted by the State for these purposes, cannot be diverted to wholly extraneous purposes. Such a diversion would be a violation of the explicit terms of the trust by which the donor gave the State the monies involved, and which the State accepted and is now responsible for administering. By way of example, funds in trust accounts held by the State for purposes of managing Baxter State Park cannot be diverted to the General Fund for purposes having no relationship to Baxter State Park or management of its trusts or activities. This rule applies not only to the principal amount originally given and accepted under trust but also to income from that trust. Bogert, Trusts and Trustees, § 866. 90 C.J.S., Trusts, § 437.

Charitable Donations Given to Support Certain Park Facilities But Without Specific Instruments of Trust

Over the years, the Bureau of Parks and Recreation has also received monies designated by the donors, and accepted by the State, to be used for particular park facilities but without an explicit trust instrument. In the cases described by Mr. Hartman, the donor made clear his or her intentions with respect to the uses for which the monies would be spent, and the State accepted the funds with that explicit understanding. In some cases, the State's intention was manifested by a financial order signed by the Governor. In other cases, the State's acceptance of the money, and of the responsibility to spend it for the purposes expressed by the donor, was manifested in correspondence.

Originally, the Bureau of Parks and Recreation accepted these gifts and bequests pursuant to 12 M.R.S.A. § 602(10-A), which gave the Bureau authority for this purpose. Monies were then placed in special accounts to be expended for the purposes designated by the donors and accepted by the State. Recently, the Legislature has enacted a more detailed statutory authority for the Bureau to accept donations for this purpose, and has provided for placing these monies in "dedicated accounts according to the specified purposes and intents of the donors." 12 M.R.S.A. § 605-A; P.L. 1991, c. 591.

Under the circumstances, diversion of these monies to the General Fund pursuant to Part KKK would be unlawful. Where the State, acting pursuant to legislative enablement, accepted

these monies as a charitable donation for a specified purpose, the State placed itself under a duty to use these gifts for the purposes stated. If a charitable organization accepts a gift for a specified purpose, it is bound thereby. 15 Am. Jur. 2d Charities, §§ 5, et seq.; Restatement of Trusts, Second, § 348; Bogert, Trusts and Trustees, § 324; St. Joseph's Hospital v. Bennett, 22 N.E.2d 305 (N.Y. 1939); Town of Winchester v. Cox, 26 A.2d 592 (Conn. 1942); American Institute of Architects v. Attorney General, 127 N.E.2d 161 (Mass. 1955). It is the statutory obligation of the Attorney General to enforce the due application of funds given or appropriated to public charities and to prevent breaches of trust in such matters. 5 M.R.S.A. § 194; Scott on Trusts, § 348.1.

In sum, where donations have been made to and accepted by the State for explicitly stated purposes relating to the benefit of a park facility, the State has a legal responsibility to expend the monies for these purposes subject to exceptions not relevant here. The State generally cannot divert these monies to a wholly unrelated purpose.

Bond Issue Accounts

Similarly, monies raised by bond issues cannot be diverted to uses that have no relationship to the authorization voted upon by the electorate. Article IX, § 14 of the Maine Constitution provides that bonded indebtedness may be incurred upon enactment by two-thirds of both houses of the Legislature and ratification by the voters at a general election. In authorizing such a bond issue, the Legislature must specify the purposes for which the proceeds will be used. Once the bond issue has been ratified as provided by this section of the Constitution, the monies cannot be redirected by a legislative budget enactment to some unrelated purpose. See attached Opinion of the Attorney General dated May 16, 1991 to Representative Paul Jacques.

Public Reserved Lands Accounts

Accounts administered by the Bureau of Public Lands for purposes of managing and supporting the State's public reserved lands are likewise impressed with a trust, although its historical origins as well as its purposes are different than the donated charitable trusts described above. Under the Articles of Separation, by which Maine became a State and which are incorporated as Article X of the Maine Constitution, the public reserved lands were set aside for certain designated purposes. These lands are impressed with a public trust, recognized by the State's Supreme Court, that make them

different from lands owned by the State over which it has absolute proprietorship. Opinion of the Justices, 308 A.2d 253 (Me. 1973); Cushing v. Cohen, 420 A.2d 919 (Me. 1980); Cushing v. State, 434 A.2d 486 (Me. 1981). The Legislature has likewise recognized the public reserved lands as comprising a public trust. 12 M.R.S.A. § 556(1). Monies derived from the sale and/or management of these lands are placed in special accounts to be utilized for designated purposes consistent with the trust. 12 M.R.S.A. §§ 581 - 590. Monies in these accounts, being derived from public trust property, are likewise impressed by the trust. 90 C.J.S., Trusts, § 437; Bogert, Trusts and Trustees, § 866.

The Legislature, acting on behalf of the People of the State, has some degree of latitude, subject to judicial review, to actively manage its trust responsibilities over these lands, provided that it does so in a manner which is consistent with the trust purposes. Opinion of the Justices, supra. Thus, acting in its capacity as trustee, twenty years ago the Legislature determined that the public reserved lands, that had been originally set aside in each township for use by the minister and the school, should instead be devoted to a broader base of public uses, and might be traded and consolidated, so as to be more useful to the citizens of the State. In passing upon the validity of this alteration in the uses to which the public reserved lands would be dedicated, the Justices of the Supreme Court emphasized that the newly enacted trust purposes must be compatible with those of the original Articles of Separation. Opinion of the Justices, supra.

By contrast, the across-the-board transfer from all accounts to the General Fund under Part KKK was designed for purposes of closing a projected shortfall in the General Fund. It was not intended to be an exercise by the Legislature of trust responsibilities over the public reserved lands. While, in the Opinion of the Justices, supra, the Court found permissible the Legislature's explicit exercise of its trust responsibilities in providing for a broader array of public uses of the public reserved lands, we believe that a different result would very likely occur were the court to review the broad application to the public reserved lands trust accounts of the across-the-board budget transfer measure in Part KKK. Accordingly, Part KKK should not be applied to the public reserved lands trust accounts.

Submerged Lands Accounts

Also administered by the Bureau of Public Lands is the State's program for management of the publicly owned submerged lands. Like the public reserved lands, submerged lands are

public trust assets. This fact is recognized in the common law, by the courts as well as by the Legislature. Opinion of the Justices, 437 A.2d 597 (Me. 1981); 12 M.R.S.A. § 559(1). By law, monies derived from management of these trust assets are placed in separate accounts to be used in a manner related to their designated public trust purposes. 12 M.R.S.A. §§ 557-A - 558-B.

The Legislature, when explicitly acting in the capacity of trustee, may be capable of making discrete determinations as to how the trust properties will be used, and of even releasing certain properties that are no longer useful to the trust. Opinion of the Justices, supra. These legislative determinations are subject to review by the judiciary. Because public trust assets are involved, the courts will apply a "high and demanding standard of reasonableness" to determine compliance with the State's trust responsibilities. Id. The application to these trust accounts of Part KKK, as an across-the-board transfer from all accounts to the General Fund, could not, in our opinion, survive that "high and demanding" standard of judicial review. The enactment of Part KKK was not intended by the Legislature to be an exercise of trust responsibilities over these assets. Accordingly, Part KKK should not be applied to the submerged lands trust accounts.

While the types of accounts discussed above are impressed with different fiduciary responsibilities of the State, the conclusion as to each is the same: Part KKK should not be applied to these accounts insofar as it would effect an unrestricted diversion of trust monies to General Fund uses without any articulated relationship to the trust purposes or assets involved.

JP:msg

Attachment

cc: Jack Nicholas, State Budget Officer, Bureau of the Budget
(w/attachment)
C. Edwin Meadows, Commissioner, DOC (w/attachment)

434 A.2d 486
Supreme Judicial Court of Maine.

Charles R. CUSHING, et al.
v.
STATE of Maine, et al.

Argued May 8, 1981. | Decided Aug. 24, 1981.

Successors in interest to grantees under deeds, which were executed between 1850 and 1875 and which conveyed rights to cut timber and grass from public reserved lots, brought action for declaratory judgment as to their rights. After remand, 420 A.2d 919, the Superior Court, Kennebec County, again entered judgment in favor of the successors in interest in accordance with original report of referee, and appeal was taken. The Supreme Judicial Court, Roberts, J., held that: (1) the deeds did not convey right to cut trees not in existence at time of the conveyances; (2) statute, which authorized state land agent to sell right to cut and carry away timber and grass from all public reserved lots, was not intended to authorize sale of anything more than existing growth; and (3) record revealed no conduct during the period in question that would unequivocally manifest an intent to include future growth in the conveyances.

Judgment vacated. Declaratory judgment entered.

Nichols, J., dissented and filed opinion.

Attorneys and Law Firms

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Before WERNICK, GODFREY, NICHOLS and ROBERTS, JJ.

Opinion

ROBERTS, Justice.

In May 1973, the plaintiffs¹ brought an action for declaratory judgment in Superior Court, Kennebec County, pursuant to 14 M.R.S.A. ss 5951-5963, seeking an adjudication of their rights and status as successors-in-interest to grantees of deeds from the State of Maine, between 1850 and 1875, conveying rights to cut timber and grass from the public reserved lots. Their suit was prompted by the so-called "Schepps Report," issued by the Department of the Attorney General in January 1973. That *488 report expressed conclusions concerning several aspects of the State's rights and powers with respect to the public reserved lots, including the opinion that the rights conveyed under timber and grass deeds excluded certain sizes and species of trees, and the "distinct possibility" that these rights had expired since timber in existence at the time of the conveyance had all been cut.

The ensuing proceedings, which culminated in October 1980 with an order of remand from this Court, are described in greater detail in Cushing v. Cohen, Me., 420 A.2d 919 (1980). As we explained in that opinion, the defendants first filed a motion to dismiss the complaint, asserting the state's sovereign immunity as one of the grounds for dismissal. The defendants later filed an answer and counterclaim seeking a declaratory judgment converse to that sought by the plaintiffs. This responsive pleading stated that it was filed subject to, and without waiving, the motion to dismiss. The State of Maine was designated as a counterclaimant even though it had not been named as a party to the original action. No action was taken to have the State added as a party pursuant to M.R.Civ.P. 21. Subsequent pleadings filed by the plaintiffs avoided naming the State of Maine as a party defendant. Subsequent pleadings and amended pleadings filed by the State agencies continued to leave ambiguous whether the Attorney General was undertaking to make the State a party defendant and whether he intended to abandon the protection of sovereign immunity.

In October 1974 the parties agreed to submit the case to a referee, pursuant to M.R.Civ.P. 53. By stipulation, the parties narrowed the submission to two issues: whether or not the public lot cutting rights related only to timber in existence at the time of the grant and whether or not those rights related to all sizes and species of trees. They reserved all other issues² and entered into an Agreed Statement of Facts comprising over 1,000 pages and more than 250

exhibits. Two days of evidentiary hearings were also held. The Referee issued his report in May 1979, deciding both issues in favor of the plaintiffs. The Superior Court overruled the defendants' objections, accepted the Referee's Report and entered judgment for the plaintiffs as recommended by the Referee. The defendants appealed.³

On that appeal, we vacated the judgment and remanded the case to Superior Court for proceedings to determine whether the State of Maine was a party defendant; to determine whether the State was an indispensable party and, if so, to take formal action to join the State as a party; and to determine whether the action was precluded by the State's sovereign immunity. *Cushing v. Cohen*, Me., 420 A.2d 919, 927-28 (1980).

On remand, pursuant to a stipulation by the parties, the Superior Court ordered the State of Maine to be joined as an indispensable party to the action.⁴ In order to deal with the possible bar of sovereign immunity, the plaintiffs moved, pursuant to M.R.Civ.P. 41(a)(2), for voluntary dismissal of their complaint. The Superior Court granted the motion and further ordered "That the counterclaims of Defendants (including the State of Maine) shall remain pending for independent adjudication." The Superior Court then determined that sovereign immunity was not applicable to the counterclaims because the State had "affirmatively and voluntarily sought an independent adjudication," and again entered judgment in favor of the plaintiffs in accordance with the original report of the Referee. On December 22, 1980, the defendants filed the instant appeal from that judgment.

*489 The issue of the State's sovereign immunity is no longer before us. The Legislature, by a Resolve approved on February 18, 1981, and effective immediately, gave its consent to this suit⁵ and thereby waived any bar that may have been presented by sovereign immunity. Due to this action by the Legislature, we need not determine the validity of the Superior Court's determination that sovereign immunity was inapplicable to the action, and we express no opinion thereon.

I

Before we address the merits of the appeal, a brief history of the public reserved lots is in order.⁶ Before Maine became a state, Massachusetts maintained a policy of reserving, from

grants of its public domain lands, certain lots for named public uses, including the use of the ministry and the schools.⁷ See *Opinion of the Justices*, Me., 308 A.2d 253, 270 (1973). When Maine became a state, the Articles of Separation, Item Seventh, required similar reservations to be made in all grants of unlocated land within Maine:

All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located which have been or may be made by the said Commonwealth (of Massachusetts), before the separation of said District (of Maine) shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State. ... and in all grants hereafter to be made, by either State, of unlocated land within the said District, 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. ...

This requirement, as part of the Articles of Separation, was incorporated into the Maine Constitution.⁸

In 1824, the Maine Legislature responded to this constitutional requirement by providing:

That there 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 hereafter direct.

*490 P.L. 1824, ch. 280, s 8.⁹ The Legislature also provided that as townships became incorporated, title to these public reserved lots would become vested in the inhabitants of the town. P.L. 1824, ch. 254.¹⁰ Legal title to public reserved lots in unincorporated townships was held by the State, as a trustee. See *Opinion of the Justices*, Me., 308 A.2d 253, 269-70 (1973); *Dillingham v. Smith*, 30 Me. 370, 381 (1849).

[1] As the State made grants from its public domain, the grantees took their land subject to these reservations for public uses, but the public reserved lots were often not "located," i. e., not partitioned from the township or tract out of which they were reserved.¹¹ Statutory procedures allowed the proprietors of a township to designate the actual metes and bounds of the reserved lot, and location could be

accomplished by agreement between the State Land Agent and the proprietors or by judicial proceedings.¹² In 1850, the Land Agent was "authorized and required" to procure the location of the reserved lots in all townships and tracts where they had not already been located by the proprietors. P.L. 1850, ch. 196, s 3. Nevertheless, more than one-third of the public reserved lots were never located.¹³ In townships where the public reserved lots are unlocated, the State is a tenant in common with the owners of the rest of the township. See *Hammond v. Morrell*, 33 Me. 300, 305 (1851); see also *Mace v. Ship Pond Land & Lumber Co.*, 112 Me. 420, 92 A. 486 (1914).

From 1830 to 1850 the State tried various methods of managing the public reserved lots in the unincorporated areas in an attempt to deal with the widespread problem of timber trespass, i. e., theft of timber. In 1831, the Legislature put the State Land Agent in charge of the public reserved lots and directed him to "preserve the same from pillage and trespass." P.L. 1831, ch. 510, s 9. In 1842, responsibility for the public reserved lots was shifted to the County Commissioners,¹⁴ and in 1845 they were authorized "to grant permits for cutting timber" on the public reserved lots in unincorporated townships in their counties, "not to exceed a permit for one six ox team on any one lot in each year." P.L. 1845, ch. 149. In 1848, after criticism of the manner in which the County Commissioners had managed the funds received from the sale of timber permits,¹⁵ the Legislature transferred custody of the public reserved lots to special state agents, gave them authority to grant similar limited cutting permits, and provided that all income would be held in the state treasury. P.L. 1848, ch. 82.

In 1850, the Legislature enacted the law which gave rise to the conveyances with which we are now concerned. The State *491 Land Agent was given care and custody of the public reserved lots "in all townships or tracts of land unincorporated or not organized for election purposes."¹⁶ P.L. 1850, ch. 196, s 1. The act also provided:

The land agent is hereby authorized and directed to sell for cash, the right to cut and carry away the timber and grass from off the reserved lands referred to in the foregoing section which have been located, excepting however the grass growing upon any improvements made by any actual settler, the right to continue until the tract or township shall be incorporated or organized for plantation purposes; and

whenever any tracts or townships of land may be hereafter granted, either by the state or by the commonwealth of Massachusetts, or by both jointly, or when any tract or township may have been sold, but in which the reserved lands have not been located in one of the modes provided by law, the land agent of this state is hereby directed to sell the right to cut and carry away the timber and grass from off the lands reserved, until such township or tract shall be incorporated or organized as aforesaid, to the person or persons who shall or may own such tract or township, at the same rate per acre as the tract or township shall or may have sold for, making however, such reasonable deduction for the soil as in the opinion of the agent should be made: provided, such purchaser of the tract or township may elect to purchase such right; but in case such party refuses to buy the right aforesaid, the land agent is authorized to sell the same to any other person.

Id. s 2. In addition the 1850 Act directed that income from the public reserved lots, including proceeds from the sale of cutting rights, be kept in separate accounts for each township, to be held by the state treasurer until the township incorporated. Id. ss 5 and 6.¹⁷

From 1850 to 1857 the Land Agent reported the sale of cutting rights on more than 230,000 acres of public reserved lots, including most of the cutting rights now at issue. During that period the Land Agent consistently used a printed form containing the following language:

That I, _____ Land Agent of the State of Maine, by virtue of authority vested in me by an act of the Legislature of this State, entitled "An Act in relation to lands reserved for public uses," approved August 28th, 1850, and in consideration of _____ dollars to me paid by _____ of _____ in the County of _____ the receipt whereof I hereby acknowledge, have granted, bargained and sold, and do by these presents bargain and sell unto the said _____ his heirs, executors, administrators and assigns, the right to cut and carry away the timber and grass from the reserved lots in Township _____ excepting and reserving, however, the grass growing upon any improvements made by an actual settler, said right to cut and carry away said timber and grass to continue until the said township or tract shall be incorporated, or organized for Plantation purposes, and no longer.

The Revised Statutes of 1857 made minor changes in the language of the 1850 Act.¹⁸ *492 The legislation was also modified in 1870, 1874, and 1878.¹⁹ Despite changes in the statutes, the Land Agent continued to use essentially the same

language²⁰ in all instruments conveying public lot cutting rights until after 1875.²¹

The plaintiffs are successors in interest to the grantees under these conveyances made during the period from 1850 to 1875.²² They have conceded that, for all practical purposes, all growth in existence on the date of conveyance is no longer in existence and all trees now on the land represent second or subsequent growth. Plaintiffs claim that they have the right to continue to make successive harvests of all forest growth of every description on the public reserved lots, whether or not it was in existence on the date of the original conveyance from the Land Agent. The defendants claim that the conveyances included only the right to cut timber then in existence. The defendants also claim that "timber" should be defined to include only trees of certain sizes and species.

II

We emphasize, at the outset, the narrowness of the issues before us. The parties have stipulated that the only issues for determination in this proceeding are:

1. Whether or not the public lot cutting rights granted by the State of Maine during the period 1850-1875 related to and conveyed only the right to cut timber which was in existence at the time of the grant or whether such rights also included the right to cut timber thereafter coming into existence.

*493 2. Whether or not the public lot cutting rights granted by the State of Maine during the period 1850-1875 related to and conveyed only the right to cut species and sizes of trees considered at the time of the grant to be suitable and merchantable for then prevailing commercial purposes, such as, without limitation, building houses or ships, or being squared off and cut into beams, rafters, planks and board, or whether on the other hand, such rights related to all or other sizes and all or other species of trees.²³

The parties further stipulated that "all other issues" were reserved²⁴ and that:

It is expressly understood and agreed that such doctrines as estoppel, acquiescence, waiver, laches, or prescription,

which plaintiffs might wish to raise in a subsequent case ... are not issues in this proceeding.

The Referee recommended entry of the following judgment:

1. The public lot cutting rights now owned by plaintiffs which were granted by the State of Maine during the period 1850-1875 related to and conveyed the right to cut timber which was in existence at the time of the grant as well as the right to cut timber thereafter coming into existence, and
2. That said cutting rights related to and conveyed the right to cut all sizes and species of trees.

To arrive at that recommendation, the Referee interpreted what he found to be the "clear and unambiguous" language of the 1850 statute, quoted above, and concluded that the grantees had received the right to make successive cuttings of all forest growth that was then existing or might come into existence before the organization or incorporation of the township. While not finding that the statutory language was ambiguous, the Referee reinforced this conclusion by finding that the legislative purpose in enacting the statute also supported an intent to sell the right to all present and future growth. The Referee also found that the subsequent performance of the purchasers and the State Land Agents lent further support to his interpretation. The Superior Court endorsed the reasoning of the Referee and entered judgment for the plaintiffs in accordance with his recommendation.

On this appeal, therefore, we are presented only with these narrow issues as they were framed by the parties and the Referee.²⁵ We are not deciding the present rights of the parties in light of their conduct and that of their predecessors over the past 130 years. We consider only whether the Superior Court erred in accepting the Referee's determination of what was conveyed to the original grantees during the period from 1850 to 1875.

[2] [3] [4] In reviewing the Superior Court's judgment, we decline the defendants' invitation to engage in our own independent evaluation of the evidence presented to the *494 Referee. The fact that the record consists of documentary evidence does not entitle the parties to a trial de novo on appellate review. See *Dunton v. Eastern Fine Paper Co., Me.*, 423 A.2d 512, 514-15 (1980). Moreover, the critical issue raised on this appeal is not the factual significance of documentary evidence, but the legal significance of documents granting rights in real estate. It is a proper part of our appellate function to question the legal accuracy of the Referee's interpretation of those documents. See *Gillespie*

v. Worcester, Me., 322 A.2d 93 (1974); Bank of Maine v. Giguere, Me., 309 A.2d 114, 117 (1973).

III

[5] The Referee stated that the statute was the controlling document which must be interpreted because the conveyance could not exceed the authority thereby conferred. We agree that the Land Agent could not exceed the authority delegated to him by the Legislature. See *Bragg v. Burleigh*, 61 Me. 444, 446 (1871). For that reason, the language of the statute, as well as the language of the deed, must be considered. See *Abbott v. Chase*, 75 Me. 83, 90 (1883). Nevertheless, interpretation must begin as in an ordinary transaction between private parties with the language of the instrument of conveyance. As long as the Land Agent acted within the bounds of his statutory authority, the subject of the conveyances is not everything the Land Agent was authorized to convey or everything the Legislature intended to authorize him to convey, but only what he succeeded in conveying by the actual instrument of conveyance.

[6] We have frequently repeated that the cardinal rule for interpretation of deeds is the intention of the parties as expressed in the instrument itself. "It is the intention effectually expressed, not merely surmised." *Penley v. Emmons*, 117 Me. 108, 110, 102 A. 972, 973 (1918). See *Sargent v. Coolidge*, Me., 399 A.2d 1333, 1344 (1979). If the language of the deed is ambiguous and the intention of the parties is in doubt, the court may then resort to rules of construction and may examine the deed in light of extrinsic circumstances surrounding its execution. See, e. g., *Gillespie v. Worcester*, Me., 322 A.2d 93, 95 (1974); *C Company v. City of Westbrook*, Me., 269 A.2d 307 (1970); *Bradford v. Cressey*, 45 Me. 9, 14-15 (1858).

[7] In each conveyance of the public lot cutting rights now claimed by the plaintiffs, the interest conveyed by the Land Agent was:

The right to cut and carry away the timber and grass from the reserved lots ..., said right to cut and carry away said timber and grass to continue until the said town ship or tract shall be incorporated, (or organized for Plantation purposes) and no longer.²⁶

We disagree with the Referee's conclusion that this language was sufficient to convey the right to cut trees not in existence at the time of the conveyance.

A

The Referee appears to base this conclusion on the observation that there was not a sale of timber and grass *per se*, but rather a sale of the right to go on the land and cut and carry away timber a right the parties have characterized as a profit a prendre in gross. We are unable to find any practical or legal distinction between a grant of exclusive *495 cutting rights and an outright sale of timber. Either characterization describes an interest in land. Neither is a mere easement or incorporeal right. See *Beckwith v. Rossi*, 157 Me. 532, 534, 175 A.2d 732, 734 (1961) (profit a prendre in gross is treated as an interest in the land itself); *Emerson v. Shores*, 95 Me. 237, 239, 49 A. 1051, 1052 (1901) (growing timber is part of the realty); *Hill v. Lord*, 48 Me. 83, 100 (1861) (right to take seaweed from the land of another is not an easement but a right to take a profit in the soil); 1 *Thompson*, *Real Property* ss 136-37 (1980). Our previous decisions have spoken of the grant of a right to cut timber as equivalent to a grant of the timber itself. See *Brown v. Bishop*, 105 Me. 272, 277, 74 A. 724, 727 (1909); *Walker v. Lincoln*, 45 Me. 67, 70 (1858); *Small v. Small*, 35 Me. 400, 401 (1853).

No case has been called to our attention to support the theory that a grant of cutting rights without more conveys the right to continue cutting second, third, and successive growths after the existing growth is exhausted.²⁷ See, e. g., *M. & I. Timber Co. v. Hope Silver-Lead Mines, Inc.*, 91 Idaho 638, 428 P.2d 955 (1967) (grant of "the right and privilege to remove any and all timber" created profit a prendre and included only timber in existence at time of conveyance and not future growth after that had been harvested). At most, a grant of cutting rights, as distinguished from the sale of the timber itself, has been construed to include timber coming within the scope of the conveyance by growth after the date of conveyance but before any cutting takes place. See *McMillan v. Gurdon Lumber Co.*, 189 Ark. 628, 74 S.W.2d 631 (1934) (for the dissenting opinion, see 75 S.W.2d 229).²⁸ Since the only timber now in existence on the public reserved lots is not in that category of interim growth, but consists of successive generations of trees, the construction adopted in *McMillan* would not provide a basis for recognizing a distinction in this case.²⁹

*496 B

The Referee also relies on the indefinitely long duration of the cutting rights to support his conclusion that there was a right to cut whatever growth should come into existence before the terminating event. This reasoning is erroneous because it fails to recognize the twofold character of a timber deed. In *Penley v. Emmons*, 117 Me. 108, 111, 102 A. 972, 973 (1918), we emphasized the distinction between the scope of a timber grant and its duration, i. e., between “what may be cut under the grant” and “when the right to cut may expire.” Here it is clear that the right to cut continued until the terminating event incorporation or organization of the township. If that event was far in the future or never took place, the grantees would have an indefinitely long time within which to exercise their right “to cut and carry away the timber.” But that right applies only to whatever timber was originally included within the scope of the grant. It is still necessary to determine whether the language “the timber and grass from the reserved lots” includes or excludes growth not then in existence.

The defendants argue that the proper rule for determining the scope of a timber grant is that the grant conveys only the timber in existence at the time of the sale unless a contrary intention is manifested by clear and definite language. Such a rule seems to follow from our decision in *Donworth v. Sawyer*, 94 Me. 242, 47 A. 521 (1900), in which we interpreted an 1850 deed conveying timber on public lands then owned by the Commonwealth of Massachusetts. We held that a grant of “all the pine and spruce timber standing on said Township” gave the grantees the right to cut trees standing on the date of the deed, along with the increase between the conveyance and the cutting, but did not entitle them to cut trees that had sprung up since the date of conveyance. The plaintiffs argue that *Donworth* does not apply to their deeds, which are not expressly limited to “standing” timber. They argue that the omission of any terms such as “on,” “now growing on,” or “being upon” supports the Referee’s conclusion that the grant was not limited to existing timber.

While such terms as “standing” or “now upon” are frequently set forth in timber deeds, their absence is not sufficient to make the deed a conveyance of a right to cut trees not then in existence. No case has come to our attention in which a

court interpreted a timber grant to include such future growth without also finding words in the instrument of conveyance that clearly and unambiguously expressed an intent to include something more than the timber in existence at the time of the grant. See *Herron v. Rozelle*, 480 F.2d 282 (10th Cir. 1973) (Oklahoma) (“any future timber, that may in the future grow”); *Baca Land & Cattle Co. v. Savage*, 440 F.2d 867 (10th Cir. 1971) (New Mexico) (“all the timber, trees and wood and increment thereof”); *Colleton Mercantile & Mfg. Co. v. Gruber*, 7 F.2d 689 (E.D.S.C. 1925) (“all pine timber now standing, or which may be standing or otherwise, during the term hereinafter named”); *Baxter v. Mattox*, 106 Ga. 344, 32 S.E. 94 (1898) (timber “now upon, or that may hereafter grow upon” the land); *Baker v. Kenney*, 145 Iowa 638, 124 N.W. 901 (1910) (“all timber and growth of timber ... forever”); *Clap v. Draper*, 4 Mass. 266 (1808) (“all the trees and timber standing and growing on said land forever”); *Franke v. Welch*, 254 Or. 149, 458 P.2d 441 (1969) (“all timber growing, grown or to be grown”).

[8] Ordinarily a grant of timber includes a right to have the existing trees and such rights in the soil as are necessary for nourishment and support of those trees. *Donworth v. Sawyer*, 94 Me. 242, 254, 47 A. 521, 524 (1900). A right to cut future growth, however, involves not only the awkwardness of conveying something that does not exist, but necessarily includes rights to use the soil for cultivation. For these reasons, courts in other jurisdictions have uniformly refused to presume that the parties to a timber deed intended a conveyance *497 of timber not yet in existence. See, e. g., *Vandiver v. Byrd-Matthews Lumber Co.*, 146 Ga. 113, 90 S.E. 960 (1916) (“nothing in the deed to indicate that the parties intended to establish a nursery for cultivation of sprouts and saplings”); *Putnam v. Tuttle*, 76 Mass. (10 Gray) 48 (1857) (right to trees other than those growing on the date of conveyance “would be in effect a right in the soil itself”); *Hardison v. Lilley*, 238 N.C. 309, 78 S.E.2d 111 (1953) (court would not presume that the parties intended to create an easement in the land for the cultivation and growth of trees); *Bragg v. Newton*, 98 Vt. 102, 126 A. 494 (1924) (adopting reasoning of *Putnam v. Tuttle*).

[9] We conclude that ordinarily a timber deed, whether in the form of a deed of the timber outright or in the form of a conveyance of the right to cut and remove timber, does not operate to convey the right to cut future growth; in the absence of words clearly manifesting an intent to include more, the deed conveys only the growth in existence at the time of the conveyance. Reading the Land Agent’s deeds in light of

this rule, we see no words manifesting such an intent.³⁰ Therefore, these deeds clearly were ineffective to convey an interest in any timber that was not in existence on the date of the conveyance.

IV

[10] In the absence of any express language, extrinsic surrounding circumstances would ordinarily not be sufficient to prove conveyance of something not expressly included in the deed. As the Referee observed, however, this is indeed a case of novel impression. While we endorse the general rule followed in other jurisdictions, no other case involves facts or circumstances even roughly analogous to those of this case. The historical background of this dispute, as well as the language used in the statute and in the instruments of conveyance, is unique. Therefore, it seems appropriate to follow the example set by the Referee. Although we do not find the language ambiguous, we will examine extrinsic factors that might manifest an intent to convey the rights now asserted by the plaintiffs. See *Bradford v. Cressey*, 45 Me. 9 (1858).

A

[11] The language of the authorizing legislation, to the extent that it differs from the language of the instruments of conveyance, does not suggest that the Legislature intended to authorize the sale of anything more than the existing growth. Whereas the Land Agent's printed form conveys the right to cut timber and grass "from" the reserved lots, the 1850 statute authorized sales of the right to cut timber and grass "from off" the reserved lots. While the language in the printed form did not change from 1850 to 1875, later statutes referred to the "timber and grass thereon"³¹ and "timber and grass on"³² the public reserved lots. We do not perceive that any of these statutory phrases manifests an intent to authorize the sale of timber not then in existence on the land.

The Referee attached significance to the statutory provision directing the Land Agent to sell the cutting rights on unlocated public reserved lots

to the person or persons who shall
or may own such tract or township,
at the same rate per acre as the tract
or township shall or may have sold

for, making however, such reasonable deduction for the soil as in the opinion of the agent should *498 be made: provided, such purchaser of the tract or township may elect to purchase such right....

P.L. 1850, ch. 196, s 2. See *Coe v. Bradley*, 49 Me. 388 (1862). The Referee concluded that this language was "a clear indication that both prices reflected one common denominator, the right to cut future growth, in one case forever, in the other case until the occurrence of an event which might occur in the very distant future or never."

The Referee's conclusion is not, however, the only rational interpretation of this provision. As the defendants argue, it is also reasonable to conclude that the "common denominator" was the value of the timber in existence at the time of purchase. The Referee's equation also does not take into account the fact that the public lot cutting rights, unlike the interest held by the owner of the township, were not subject to taxation during the period from 1850 to 1875.³³ Furthermore, we would hesitate to draw any conclusion about the subject of the conveyances from a statutory provision that applied only to unlocated lots.

B

The Referee concluded that even if ambiguity existed in the statute's language, the circumstances surrounding its enactment show that the Legislature's purpose would be served "only if all future cutting rights were conveyed." (Emphasis in original.) The parties agree that the Legislative purpose was a desire to deal with the problem of timber trespass on the public reserved lots. The defendants argue, however, that the trespass problem only involved timber then in existence and that once the right to cut that timber was sold, there would be nothing left to steal from the State.³⁴ It is not necessary to conclude, as did the Referee, that the Legislature also intended to permanently relinquish control over whatever might grow in the future on the public reserved lots.

The Referee's conclusion that the State must have intended to convey future growth rests in part on his statement that the Legislature "must be deemed to have been aware that in most instances Plantation organization would be delayed for many years and in many instances might never occur." The

defendants argue that the evidence does not support a finding that the Legislature thought these townships would never be settled. The Legislature had provided that public lots only be reserved in townships "suitable for settlement," P.L. 1824, ch. 280, and had provided for separate accounts to be maintained for each township until it was incorporated. P.L. 1850, ch. 196, s 6. This circumstance appears, in any event, to relate not to the scope of the grant but to its duration. See Part III-B, *supra*. It seems reasonable to conclude that the scope of all the grants was intended to be the same, even though the duration would vary depending on when, if ever, the township became organized or incorporated. Although the purchaser of public lot cutting rights in a township that never became organized would have more time in which to remove the timber, it seems unlikely that he was also intended to receive more timber than the purchaser in a township that became organized soon after the conveyance.

*499 The Referee suggested that, unless the State completely relinquished ownership of all future growth, it would have had to maintain a "veritable army of foresters" to police the public reserved lots and ascertain that purchasers were cutting only the timber in existence at the time of conveyance. Even if the State would have needed such an "army" a subject about which we need not speculate the need would not have presented itself until many years later when subsequent growth reached marketable size. This factor cannot be significant for determining the Legislature's intent in 1850, in the absence of any evidence that the State contemplated this possible future enforcement problem. Moreover, the suggestion that the Legislature was aware of the need for future enforcement begs the question by assuming the Legislature actually contemplated future generations of marketable timber.

The Referee stated that the Legislature "was of course aware that over future years and even generations successive crops of valuable forest growth would grow upon the lots." While the Legislature may have had a common-sense awareness that there would be second growth, it cannot be presumed that the Legislature knew that later growth, after the removal of trees that were then hundreds of years old, would ever be valuable. The defendants argue that the evidence demonstrates, to the contrary, that reforestation and sustained yield forestry were not known in 1850 and there was no pulpwood industry to provide a market for young trees. In the absence of any indication that the Legislature entertained any thought of future generations of valuable timber, we find no clear manifestation that it intended to convey such timber away.

The Referee's findings about these factual circumstances, even to the extent supported by the evidence, do not uniformly and invariably point to the conclusion urged by the plaintiffs and adopted by the Referee. We consider these circumstances to be equally consistent with the narrower interpretation advocated by the defendants. The legislative objective of salvaging the value in the timber before it was destroyed by trespass appeared to be equally well accomplished by conveying only the timber then in existence.

[12] Finally, the Referee's report suggests that contemporaneous and subsequent performance of the parties is evidence of their intent and therefore can be used to construe the meaning of the conveyances. This approach can apply only to the conduct of the parties who actually participated in the original conveyance not to conduct many years later by subsequent grantees and by successors to the holders of public offices. See *Lewiston and Auburn Railroad Co. v. Grand Trunk Railway Co.*, 97 Me. 261, 267, 54 A. 750, 752 (1903). As an indication of the contemporaneous understanding of the parties, the plaintiffs urge us to consider instances where the Land Agent conveyed public lot cutting rights in townships that had been substantially stripped of timber under prior cutting permits or through trespass or fire. The defendants argue that none of these lots was completely devoid of timber and that the low prices received by the Land Agent reflected the sale of a small amount of timber rather than a sale of potential future growth. The defendants also argue that the Land Agent's Reports demonstrate that the prices received for the sale of cutting rights were always based on the value of the timber then standing on the land. While the evidence in the record is equivocal, we see no clear indication that the Land Agent ever sold cutting rights on public reserved lots that were completely without timber and no indication that he ever expressly sold rights to potential future growth or determined a price on the basis of such potential.

As further indication of the parties' "practical construction" of the timber deeds, the Referee mentions the failure of the various state agencies ever to attempt to resell the cutting rights or to challenge the purchasers' cutting of successive growth. Since any action with respect to *500 subsequent generations of trees would have been taken by subsequent generations of landowners and public officials, such action or inaction cannot be considered determinative of the intent

of the parties who actually participated in the original conveyances.

[13] [14] Similarly, we attach no significance to the tax treatment of the public reserved lots. The public lot cutting rights were not subjected to any taxation until after 1887. See note 33, *supra*. Subsequent tax valuations and assessments which tend to treat the cutting rights as perpetual interests are not evidence of what the State originally intended to convey. The defendants also point out that the plaintiffs have been taxed on the basis of what they themselves claimed to own, not on any determination made by State officials. The record reveals nothing else in the conduct of the parties during the period in question that unequivocally manifests an intent to include future growth in these conveyances of public lot cutting rights.³⁵

V

If this were an ordinary transaction between private parties, we would not be willing to infer an intent to convey future growth, where such intent is not manifested by the language of the deed. We are all the more reluctant to allow that inference to be drawn here where the grantor was the sovereign acting in a special capacity as trustee of the public reserved lots.

[15] The ordinary rule that a deed is construed most strictly against the grantor and in favor of the grantee, e. g., *Rusha v. Little, Me.*, 309 A.2d 867, 870 (1973), does not apply when the grant is from the sovereign and is not purely a commercial transaction. *Donworth v. Sawyer*, 94 Me. 242, 252, 47 A. 521, 523 (1900). The general rule is that public land grants are to be construed favorably to the government. See *United States v. Grand River Dam Authority*, 363 U.S. 229, 235, 80 S.Ct. 1134, 1138, 4 L.Ed.2d 1186, 1191 (1960); *3 Sands, Sutherland Statutory Construction* s 64.07 (4th ed. 1974). The sovereign will be presumed to have conveyed away no more than is necessary to achieve its purpose. See, e. g., *State Box Co. v. United States*, 321 F.2d 640, 641 (9th Cir. 1963).

[16] The State holds title to the public reserved lots as trustee and is constrained to hold and preserve these lots for the "public uses" contemplated by the Articles of Separation. See *Opinion of the Justices, Me.*, 308 A.2d 253, 271 (1973). In light of this constitutional restriction, we should not assume that the State intended to convey such an interest in the land as would impair for the indefinite future its ability to provide

for the management of the public reserved lots. While we do not express any opinion on the ultimate limits of the State's power to convey interests in the public reserved lots to private parties, we note that the Referee's report fails to recognize the possibility of such limits. The Referee's examination of the surrounding circumstances focused exclusively on the State's desire to reach a solution to its management problems, and did not consider other aspects of the State's responsibility as trustee of the public reserved lots. The importance of the State's duty as trustee, and the State's awareness of that duty, are inconsistent with the Referee's conclusion that the State's purpose required the statutes to be given a broad interpretation. The narrower interpretation urged by the defendants appears to be equally consistent with the State's purpose as ascertained from the language of the statutes and other extrinsic circumstances, while also avoiding exposure to the possibly grave consequences of exceeding the constitutional limits upon the State's power as trustee.

VI

We conclude that the Superior Court erred in adopting the Referee's answer to the first question posed by the parties, because *501 the Referee erred in his interpretation of the instruments of conveyance. The proper interpretation of the timber and grass deeds leads to the conclusion that the State conveyed only the right to cut trees in existence on the date of the conveyance. It is not necessary to address the second question, i. e., whether or not "timber" included all sizes and species of trees. The parties have conceded that, as a practical matter, all forest growth that was in existence on the date of the conveyances is no longer in existence. Therefore, regardless of whether or not the original conveyances included the right to cut all sizes and species of trees, everything that was included in those conveyances has now been exhausted.

The entry is:

Judgment of the Superior Court vacated.

Judgment to be entered declaring as follows: The public lot cutting rights granted by the State of Maine during the period 1850 to 1875 conveyed no right to cut timber not in existence on the date of the conveyance.

WERNICK and GODFREY, JJ., concurring.

NICHOLS, J., dissenting.

NICHOLS, Justice, dissenting.

I cannot join in the judgment of the majority announced this day.

I am persuaded by the logic of the Report of Referee that he reached the correct result. I am buttressed in that view by the circumstance that, after his Report was challenged in Superior Court, that court accepted his Report and adopted the Referee's conclusions. I am reinforced in that view by our Court's statement in *State v. Mullen*, 97 Me. 331, 338, 54 A. 841 (1903), that a grantee under such a deed as those at issue here held the right to cut timber on the reserved lots "until incorporation of the township" with no suggestion by our Court that the grantee, or his successor in interest, was limited to the timber existing at the time of the grant.¹

It is my individual view that we should affirm the judgment of the Superior Court.

At the outset all agree that the interests in the reserved lots conveyed by the several deeds under which these Plaintiffs derived their titles were profits a prendre.² The majority agrees there is no ambiguity in the language of these instruments. The controversy, then, is over whether the timber interests created thereby were limited to timber in existence at the time of the respective grants.

I submit that the interests were not so limited.

In the first place, notwithstanding that "standing timber," "timber standing upon such real estate" and "trees or grass standing or growing on such lands" were familiar terms to legislators and conveyancers in that long ago day,³ I find it significant that neither the Legislature of 1850 in authorizing these grants nor the State Land Agent in making these grants chose to limit them to standing timber. Here the broad language of the grant was:

the right to cut and carry away the timber and grass from the reserved lots ... said right ... to continue until the said Township or tract shall be incorporated or organized for Plantation purposes and no longer.

That right continued, I submit, not only until the timber then standing was harvested, but until the occurrence of the terminating *502 event the incorporation or organizing of the municipality.

Such an interpretation of the instruments is consistent with the rule of the Massachusetts case which was already on the books when the State Land Agent gave this series of deeds. *Clap v. Draper*, 4 Mass. 266, 267 (1808). In that case the conveyance was of the right to cut and carry away all trees and timber "standing and growing on said land forever." Speaking through Chief Justice Parsons, the Massachusetts court ruled that such language effectively comprehended not merely the trees and timber then standing but "all the trees and timber standing and growing on the close forever."

In the second place, as we interpret the language of the deeds in controversy we must look to the four corners of each instrument. In a possible eagerness to reach a result we cannot consider only a part of the language and disregard the rest. Today's majority concludes that the grantees under these deeds and their successors in interest were entitled to harvest only a single crop. Do they limit these parties to a single crop of grass? When they say that the terminating event fixes, not the scope, but the duration of the interest conveyed by the deed, are they suggesting that the only grass conveyed was the crop then in existence, but that the grantee might have upward of a century to harvest that crop? It suffices to say that the same language is used in the instrument with reference to the timber and the grass. Neither in P.L. 1850, ch. 196, nor in the deeds given by the State Land Agent is any distinction drawn between the two crops. We should interpret this provision of a terminating event in a manner that is as rational for one crop as it is for the other.

In the third place, I am concerned over the difficulties ahead as a result of the majority's conclusion that of all the timber and grass now standing on the reserved lots the Plaintiffs own only the timber and grass which was in existence at the time the deeds were given to their predecessors in interest. A few trees may obviously be that old. Vastly more trees may obviously be young growth. In between stand trees the age of which is not so apparent and which may well be the subject of controversy. These are difficulties which would be avoided under the judgment of the Superior Court.

In the fourth place, I am troubled by what almost appears to be an attempt to rewrite the history of that turbulent era in the Maine woods. Timber and meadow grass on thousands of acres were being lost to forest fires, not all of

natural origin. Pillage of these reserved lots by trespassers was commonplace. The State Land Agent was selling in a competitive market because, early in this period at least, Massachusetts was still disposing of the lands in Maine which belonged to that commonwealth, and sales were being made from other large tracts, such as the Bingham purchases.⁴ The State was, as the Referee noted, eager to get title as far as practicable into private parties who might be able to deal more effectively with the continuing problem of trespassers. Nevertheless, the majority's opinion implies that experienced businessmen of that period were ready to pay good money for a single crop of timber and a single crop of grass, not with a view to harvesting each crop at the optimum season, but sometime over a period of several decades.

beyond the crop then in existence, and then citing one Idaho case for the proposition which the majority would make the rule of this case. *M. & I. Timber Co. v. Hope Silver-Lead Mines, Inc.*, 91 Idaho 638, 640, 428 P.2d 955, 957 (1967). The Plaintiff in that case, however, claimed under a deed to "all that standing timber." In the deeds being interpreted in the case at bar there was no limitation to timber standing or to *503 grass growing at the times of the several grants.

To me the broad language of the grant, set forth above, is clear and unambiguous. I would give it its plain meaning.

All Citations

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Finally, I am disturbed by the majority's declaring that a conveyance of cutting rights without more conveys no rights

Footnotes

- 1 Plaintiffs are Charles Cushing; Great Northern Nekoosa Corporation; International Paper Company; Prentiss & Carlisle Company; and Bradford Wellman, Richard Wheaton, and Peter B. Seamans, as trustees of a trust.
Named as defendants were the state Attorney General, the state Forest Commissioner, the Commissioner of the Department of Conservation, and the Director of the Bureau of Public Lands. As explained *infra*, the State of Maine has since been joined as a party.
- 2 See Part II *infra*.
- 3 The defendants' first attempted appeal, in September 1979, was remanded to the Superior Court, pursuant to M.R.Civ.P. 54(b), because judgment had not been entered on the counterclaims. On that remand, the Superior Court entered a judgment on the counterclaims to reflect the same adjudication made on the plaintiffs' complaint. The defendants then appealed again, in November 1979.
- 4 Since the State was previously named as a counterclaimant, we interpret the stipulation and order to result in joinder as a party defendant and counterclaimant.
- 5 Resolves, ch. 1 (1981) provides:
Consent of Legislature. Resolved : That to the extent that consent of the Legislature is necessary for the Attorney General to seek a final adjudication of the issues presented by the State for determination in *Cushing v. Cohen*, Law Court Docket No. Ken. 81-31, such consent is hereby granted. The Attorney General, on behalf of the State of Maine, is authorized to proceed, in his discretion, with such suit, and all prior involvement of the State in the proceedings, both in the Superior Court, Kennebec County, Civil Action Docket No. 1740-73, and in the Law Court, Docket Nos. Ken. 79-31 and 81-31, is hereby confirmed and ratified.
- 6 For further historical and background information see Opinion of the Justices, Me., 308 A.2d 253 (1973); Schepps, *Maine's Public Lots: The Emergence of a Public Trust*, 26 Me. L. Rev. 217 (1974).
- 7 For example, Acts and Resolves of Massachusetts, 1786, ch. 40 (November 9, 1786), establishing a lottery for the sale of fifty townships in Lincoln County, provided:
that there be reserved out of each Township, four lots of three hundred and twenty acres each, for public uses, to wit, one for the use of a public Grammar School forever, one for the use of the Ministry, one for the first settled Minister, and one for the benefit of public Education in general, as the General Court shall hereafter direct.
- 8 The Articles of Separation, Item Ninth, provided:
These terms and conditions, as here set forth, when the said District shall become a separate and Independent State, shall, ipso facto be incorporated into, and become and be a part of any Constitution, provisional or other, under which the Government of the said proposed State, shall, at any time hereafter, be administered; subject however,

to be modified, or annulled by the agreement of the Legislature of both the said States; but by no other power or body whatsoever.

The Articles were adopted as section 5 of article X of the Maine Constitution. P.L. 1821, Vol. I, at 45-50. See Opinion of the Justices, Me., 308 A.2d at 268-69.

9 The current version of this provision is 30 M.R.S.A. s 4151. In 1973, as part of a major revision of the legislation governing the public lots, P.L. 1973, ch. 628, this statute was amended to provide that the public reserved lots are for "the exclusive benefit of the State of Maine" rather than for the town. Section 4151 also now provides that "Title to such reserved public lots shall be in and all future earnings attributable thereto shall belong to the State of Maine for management and preservation thereof as state assets."

10 This provision is now included in 13 M.R.S.A. s 3161, but applies only to towns incorporated and in existence on January 1, 1973.

11 The land reserved for public uses is commonly referred to as the "public lots" or the "reserved lots," whether or not the acreage has been physically located. The terms "public lands" and "public domain" refer to all state-owned land.

12 See P.L. 1821, ch. 41; Me.Rev.Stat., ch. 3, s 14 (1841); Me.Rev.Stat., ch. 5, ss 8-9 (1850). The current versions of the provisions for location of public reserved lots are 30 M.R.S.A. ss 4151 and 4153.

13 As of 1963, there were approximately 398,000 acres of public reserved lots in unincorporated areas, of which approximately 156,000 acres were unlocated. Of the approximately 320,000 acres on which timber and grass had been sold, approximately 153,000 acres were unlocated. State of Maine Forestry Dept., Report on Public Reserved Lots at 37-38 (1963).

14 P.L. 1842, ch. 33, s 21. P.L. 1844, ch. 129, s 5, authorized the County Commissioners to sue for trespass on the public reserved lots.

15 See Report of the Joint Standing Committee on State Lands and State Roads, House Doc. No. 20, 27th Legislature (1847).

16 In 1852 the Act was amended to give the Land Agent care and custody of public reserved lots in townships organized for election purposes. P.L. 1852, ch. 284. At that time, an unincorporated township could be organized into a plantation "for the purpose of elections" upon written application to the county commissioners by three or more inhabitants who were eligible voters. P.L. 1840, ch. 89, codified at Me.Rev.Stat., ch. 4, ss 70-78 (1857). Organization for election purposes was discontinued by P.L. 1870, ch. 121, s 17. Plantation organization is currently governed by 30 M.R.S.A. ss 5602-5622.

17 In 1973 the Legislature terminated the provision for separate accounts and provided for the income from public reserved lots in unincorporated areas to be held in a general management fund. P.L. 1973, ch. 628, s 15; 30 M.R.S.A. s 4163.

18 The 1857 Revised Statutes, ch. 5, s 11 provided:

The land agent shall have the care of the reserved lands in all townships or tracts, until they are incorporated, or organized into plantations, and the fee becomes vested in the town, or is otherwise parted with. He may from time to time, sell the timber and grass thereon, or the right to cut the same, for cash, except the grass growing on improvements made by an actual settler, until so incorporated, or organized, for such sum, as he thinks just and reasonable. When so sold, he shall give the purchaser a permit under his hand and seal, setting forth the terms of the contract, which shall be recorded in the office. The proprietors of the township or tract shall have the option to become purchasers thereof at the rate per acre for which the township or tract was sold.

In *Bragg v. Burleigh*, 61 Me. 444 (1871), we held that cutting rights conveyed by the Land Agent's timber and grass deed, while this statute was in effect, terminated upon organization of the Township for either "plantation purposes" or "election purposes."

19 P.L. 1870, ch. 135, s 2 deleted the language "or organized into plantations" and "or is otherwise parted with." It replaced the language "until so incorporated, or organized," with "until incorporated into a town." Resolves of 1874, ch. 319 provided:

That the land agent ... is authorized and directed to sell at public auction and convey all the remaining timber lands, and interest of the state in all timber lands held in fee by the state unconditionally and not heretofore otherwise appropriated, reserving lots for public uses. ... Also for cash, the right to cut timber and grass on all lands reserved for public uses, not heretofore conveyed; said right to continue until the township in which said lands are respectively situated shall be organized into a plantation or incorporated into a town.

P.L. 1878, ch. 51 directed the Land Agent to sell at public or private sale all lands belonging to the State, "and also the right to cut timber and grass on lots reserved for public uses in any township or tract of land until the same is incorporated or organized into a plantation."

20 See note 26 infra.

- 21 In 1876 the Legislature directed the Land Agent to "bring to a termination all unsettled business connected with the land office, relating to the lands belonging to the state; to the end that the office may be discontinued at the earliest practicable moment." P.L. 1876, ch. 119. In 1891, the Land Agent became the Forest Commissioner. P.L. 1891, ch. 100 s 1. The position of Land Agent was abolished in 1923 and the Forest Commissioner became the caretaker of the public lots. P.L. 1923, ch. 196. In 1975, the Legislature established the Bureau of Public Lands within the Department of Conservation and the Bureau is now charged with the care, custody, control, and responsibility for management of the "public reserved lands." P.L. 1975, ch. 339; 12 M.R.S.A. s 552(1)(A) (Supp.1980). Management of the public reserved lands is also governed by 30 M.R.S.A. s 4162.
- 22 When this litigation began, approximately 320,000 acres were in dispute. Through settlement negotiations with the State, the plaintiffs have since relinquished their claims to approximately 145,000 acres. The plaintiffs currently claim rights on a total of 175,000 acres of public reserved lots. The plaintiffs have also indicated that the determination of the issues in this proceeding will affect the tax consequences of their settlement arrangements.
- 23 The parties have agreed upon "public lot cutting rights" as a neutral term for the interests being claimed by the plaintiffs.
- 24 Ordinarily we might not approve of such an artificial isolation of the issues. Since this is not an ordinary suit between private parties seeking a declaration of their rights under an ordinary deed or contract while attempting to foreclose consideration of issues raised by their subsequent performance, we understand why the complexity and uniqueness of the subject matter led the parties to proceed in this manner.
- 25 We are concerned that the phrasing of the issues in the parties' stipulation and in the Superior Court judgment may be unclear. The term "timber thereafter coming into existence" could be read to refer only to trees that came into being during the period after the conveyance but before any cutting took place. Depending on the definition of timber, it could also include trees that were too small to qualify as "timber" on the date of conveyance but grew to marketable size before any cutting. The Referee's report, however, makes it clear that the term includes second growth and successive generations of trees that have come into being after at least one complete cutting. As a practical matter, there is no need to explore the distinction between timber coming into existence after the conveyance and timber coming into existence after a cutting. The parties have agreed that under either characterization, all timber now on the land is "timber thereafter coming into existence."
- 26 Due to a statutory amendment in effect during 1873, the conveyances during that year omitted, by handwritten modification of the printed form, the bracketed language. For conveyances made during 1874 and 1875, the Land Agent used a new printed form in which the final phrase was "until the said township or tract shall be incorporated into a town or organized into a plantation and no longer."
- The language of these conveyances is virtually identical to the language of the first authorizing statute, P.L. 1850, ch. 196, s 2, which authorizes and directs the Land Agent to sell:
- the right to cut and carry away the timber from off the reserved lands ..., the right to continue until the tract or township shall be incorporated or organized for plantation purposes....
- Aside from the changes in the final phrase, the operative language of the printed form was not modified to reflect subsequent changes in the wording of the authorizing statutes.
- 27 Plaintiffs rely primarily on two California cases. In *Crain v. Hoefling*, 56 Cal.App.2d 396, 132 P.2d 882 (1942), a landowner's conveyance of "only the agricultural and grazing rights" without conveying the fee and with explicit reservation of "any and all tunnel, mineral, timber and water rights," entitled the owner's successor to continue cutting successive growth of timber. But a conveyance of the "sole right and privilege to cut, fall and remove from" a second parcel "all the pine and spruce timber upon said land" conveyed only rights to timber then upon the land. In *Buffum v. Texaco, Inc.*, 241 Cal.App.2d 732, 50 Cal.Rptr. 852 (1966), the court held that a 1902 deed of "all the timber standing, lying and contained" on the land conveyed only timber that was merchantable in 1902.
- It is not clear to us that the results in these cases rested on a distinction between "timber" and "the right to cut timber."
- If there is such a distinction in the law of California, we do not adopt it.
- 28 In *McMillan*, the court distinguished between the usual contract for sale of timber and a "license and privilege to cut all the timber which the purchaser desired" and held that the grantee had a right to "all the timber it desired on the land at any time during the life of the contract." The parties had only a ten-year contract, and their dispute involved trees that had grown to merchantable size or become merchantable by reason of changes in market conditions since the date of conveyance.
- 29 We reject the plaintiffs' contention that the Legislature recognized such a distinction by authorizing the Land Agent, with respect to the public reserved lots, to "sell the timber and grass thereon or the right to cut the same." Me.Rev.Stat., ch. 5, s 11 (1857). This language of the Revised Statutes did not represent a new legislative enactment but was a codification of P.L. 1850, ch. 196. Section 2 of that 1850 Act authorized sales of "the right to cut and carry away the timber and

grass,” but section 5 referred to “sales of the timber and grass.” Subsequent legislation, referring to the Land Agent’s authority under the 1850 Act, speaks of “sales of the timber and grass.” Resolves of 1851, ch. 365; P.L. 1852, ch. 284. The legislative reports that preceded the 1850 Act also used the terms interchangeably. E. g., Report of the Joint Standing Committee on State Lands and State Roads, House Doc. No. 20, 27th Legislature (1847). An 1859 legislative report, referring to the sale of timber on other public lands, stated:

It makes no difference whether these contracts are in the form of permits for so many years, or sales of the timber with the right to enter and take it off, for so many years; as our courts have decided that the latter amounts only to permits for that time.

Report of the Joint Standing Committee of State Lands and Roads, House Doc. No. 12, 38th Legislature at 2 (1859).

The language cited by the plaintiffs simply reflects this treatment of the two terms as equivalent.

30 The plaintiffs have argued that the inclusion of the right to cut grass an annual crop prevents the conveyances from being limited to timber then in existence. Although both parties have assumed that the deeds included successive annual crops of grass, and not merely the grass then in existence, that question has not been raised or decided. The parties agreed that the grass was valuable primarily as food for the draft animals used in timbering operations. We do not consider the “and grass” portion of the deeds to be a clear manifestation of an intent to convey successive “crops” of timber.

31 1857 Revised Statutes, ch. 5; P.L. 1870, ch. 135.

32 Resolves of 1874, ch. 319; P.L. 1878, ch. 51.

33 Resolves of 1885, ch. 237, made the first provision for “valuation of the timber and grass on the reserved lands ... for the purpose of taxation.” A valuation made pursuant to that resolve was adopted by Resolves of 1887, ch. 29.

34 The attitude of the times is reflected in an 1842 Report to the Massachusetts Legislature from the Land Agent to Public Lands in Maine recommending that if certain public lands remained unsold, licenses to cut timber should be granted:

I would recommend that licenses to cut timber be granted on each township, sufficient to protect it from trespassers, even if such licenses be continued until the timber is wholly taken away, and then, as there will no longer be any danger of depredation, from the fact of there being nothing left to pilfer the soil may be retained, till its intrinsic worth is better known, and properly appreciated, then it can readily be sold for agricultural purposes.

Massachusetts Legislative Documents, Senate Doc. No. 6, at 7 (1843).

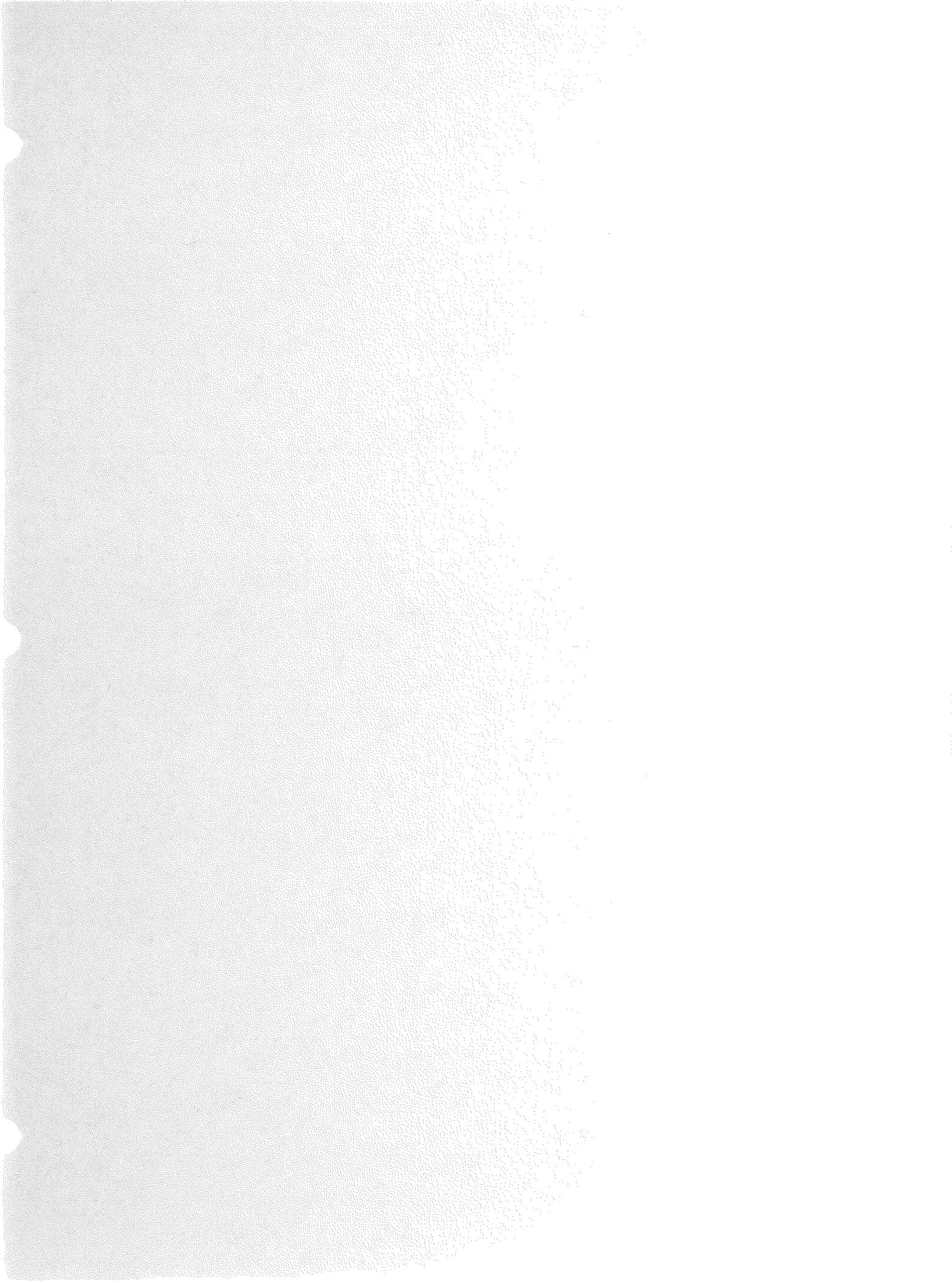
35 We express no opinion on the question of the effect, if any, the parties’ subsequent conduct may have under such doctrines as estoppel, acquiescence, waiver, laches, or prescription, which are by the parties’ agreement not at issue in this proceeding.

1 At issue in that case decided some 50 years after the enactment of our 1850 statute was the right to cut timber on the reserved lots after a portion of the township had been incorporated as the town of Millinocket.

2 A profit a prendre is a right by one to take a part of the soil or produce of the land of another. *Beckwith v. Rossi*, 157 Me. 532, 534, 175 A.2d 732, 735 (1961). It may be a personal right, and therefore held in gross, or it may be a right held as an appurtenance to other land. It is a license coupled with an easement. Restatement, Property s 399(b) (1944); 3 H. Tiffany, *Real Property* 427 et seq. (3d ed. 1939).

3 See, e. g., *Clap v. Draper*, 4 Mass. 266 (1808); *Erskine v. Plummer*, 7 Me. 447, 450 (1831); R.S., 1840, ch. 3, ss 5, 8, 41; ch. 112, s 38; P.L. 1844, ch. 123, s 19.

4 See R. Wood, *A History of Lumbering in Maine, 1820-1861*, ch. III “The Timberlands” (1971); D. Smith, *A History of Lumbering in Maine, 1861-1960*, ch. 7 “Lumbering and Land Sales 1860-1890” (1972).

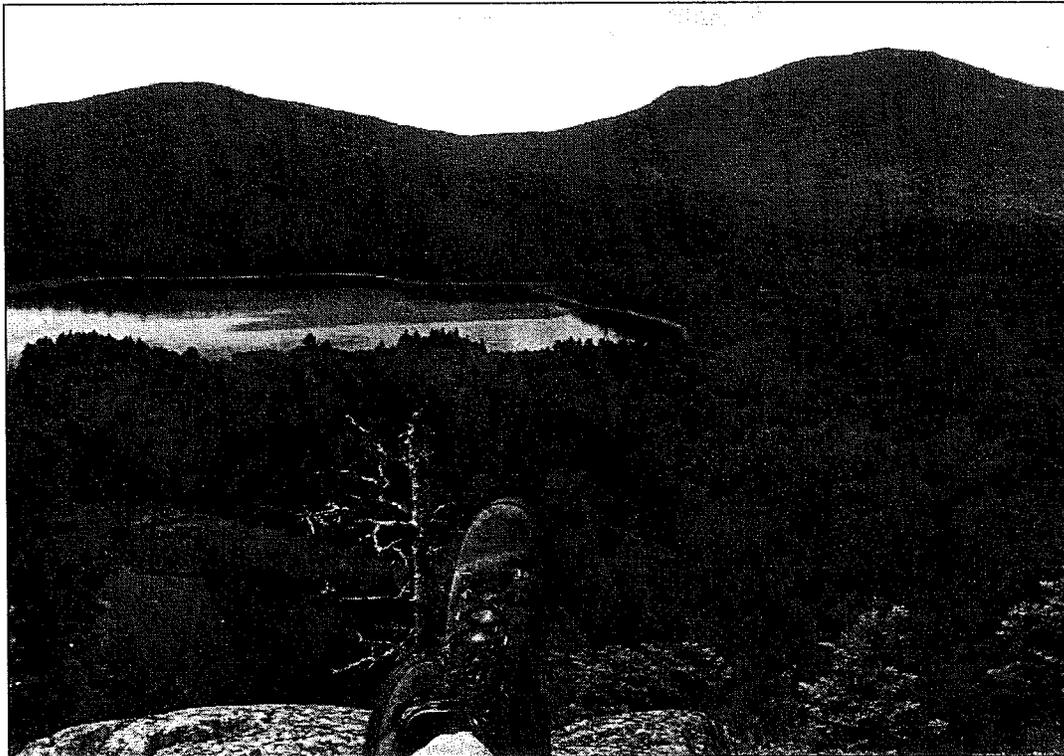


FY 2014 ANNUAL REPORT

to

the JOINT STANDING COMMITTEE
on AGRICULTURE, CONSERVATION AND FORESTRY

**MAINE PUBLIC RESERVED, NONRESERVED,
AND SUBMERGED LANDS**



View from Hiking Trail Across Little Moose Unit

**MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION
AND FORESTRY**
Bureau of Parks and Lands

March 1, 2015

FY 2014 ANNUAL REPORT
Maine Department of Agriculture, Conservation and Forestry
Bureau of Parks and Lands

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Cover Photo: View from Hiking Trail Across Little Moose Unit – Rex Turner

I. INTRODUCTION

The Bureau of Parks and Lands (BPL) within the Department of Agriculture, Conservation and Forestry (DACF) is responsible for the management and administration of Maine's Public Reserved and Nonreserved Lands, Submerged Lands, Coastal Islands, conservation easement lands, and other lands as provided by law.

This report constitutes required annual reporting pursuant to:

- 12 MRSA §1853, 1839 and elsewhere
- 12 MRSA §1850(1) and 1836(1) and elsewhere related to vehicular access to Bureau lands
- 12 MRSA §1805 and 1853 related to ecological reserves on Bureau lands.

The report is submitted by March 1st of each year to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF). It provides an overview of the scope of the Bureau's responsibilities and information on the Bureau's management activities during fiscal year 2014 (FY 2014). As required, the report includes information on gates and barriers that prevent public vehicle access to Public Reserved and Nonreserved Lands (Public Lands), recreation facility fees charged for the use of these lands, and a status report on Ecological Reserves. Also included in the report is information on timber, recreation and wildlife management carried out on Public Lands during the fiscal year. Income and expenditure information is provided for fiscal year FY 2014 and a report is also included for the upcoming FY 2016 budget. The ACF Committee has the obligation to report by March 15th to the Appropriations Committee on the Bureau's Public Lands upcoming FY 2016 budget.

The "Lands" division of the Bureau is a dedicated revenue component of the agency, funding almost all of its administrative, planning, management and operational activities from revenue generated from the land base, with some additional sources of funds provided through various grant programs.

The management of Public Lands is directed by statute. Title 12 MRSA §1833 and §1847 direct the Bureau to manage the Public Reserved and Nonreserved Lands (616,952 acres in FY 2014) "*under the principles of multiple land use to produce a sustained yield of products and services in accordance with both prudent and fair*

business practices and the principle of sound planning." In addition, management of Public Reserved Lands, the majority of Public Lands, must "*demonstrate exemplary land management practices, including silvicultural, wildlife and recreation management*" (Title 12 MRSA §1847).

Fifteen-year, multiple-use plans for the major properties guide the Bureau's Public Lands management activities. Benefits from the wise management of these lands include:

- *Production of forest products*
- *Public Access to recreational opportunities*
- *Enhancement of wildlife habitat*
- *Protection of unique natural and cultural resources*

The Bureau also has responsibility for managing and reporting to the ACF Committee public trust rights to Submerged Lands and Coastal Islands. When granting leases for the use of Submerged Lands, the Bureau includes conditions to maintain customary and traditional public access, navigation, and commercial marine uses.

II. FY 2014 HIGHLIGHTS

Forest Certification – Since 2002, the Bureau's forest management activities have been certified as sustainable under two independent certification systems: the Forest Stewardship Council (FSC®) and Sustainable Forest Initiative (SFI®). Each year the Bureau's forestry operations and overall forest management system are "audited" by these two certification systems, with all criteria addressed over a period of three years for SFI certification and a "full" audit for FSC conducted once every five years.

In 2014, the Bureau had annual surveillance audits under both the FSC and SFI programs. The auditors working with our certification agency, Bureau Veritas, visited thirteen separate sites on eight different townships in the Bureau's North Region, viewing exemplary timber harvests, innovative and efficient water crossings, diverse wildlife management practices, and well-planned recreation management. They were particularly impressed with the quality of road construction, commenting on the roadwork at numerous sites.

The Bureau intends to conduct forest management in compliance with the 2010-2014 certification standards, principles, and criteria of

both SFI and FSC programs for all upcoming audits, transitioning to the 2015-2019 revisions as required. The Bureau also intends to conduct several forest management operations under the outcome-based forestry model described below.

Outcome Based Forestry (OBF) – “Outcome Based Forestry” refers to a section of Maine’s Forest Practices Act that offers land managers added flexibility for timber management in exchange for up-front planning and expert review. The Bureau has conducted harvests under OBF in each of its three regions. In the North, the objective is the establishment of high value hardwoods, yellow birch and sugar maple, while creating hardwood browse for wildlife, along with a companion project to accelerate the development of core winter cover for deer.

Rapid growth of prime white pine sawtimber is the OBF objective in the Eastern and Western regions, accomplished by thinning to relatively low stocking to allow this windfirm species to grow with minimal competition. Operations are ongoing in the Western Region and have been completed in the East and North, though the work to accelerate deer winter cover. Permanent growth plots were established at the East’s OBF site, to track how the pines are responding to the treatment. Additional opportunities for working within OBF will be evaluated as they become apparent.

Timber Management Program - In fiscal year 2014, timber harvests from inventory on Bureau-managed lands totaled 166,500 cords, a 13% increase over FY 2013. Autumn of 2013 was one of the best for timber harvesting in recent memory, with almost no “fall mud season”, that four to eight week period between leaf drop and freeze-up when most harvesting is put on hold. Then winter conditions lasted several weeks later than is the average, and markets were very good. The Bureau and its contractors supplied wood to 45 mills statewide in FY2014.

Firewood Permit Program - Individual firewood permittee volumes totaled about 300 cords in FY 2014, similar to the year before. Logging contractors delivered over 2,800 cords of firewood to customers, so over 3,100 cords of firewood was supplied from Bureau-managed lands in FY 2014.

Sugar Bush Leases –The Lands Western Region currently has two sugar maple lease agreements, one at Bald Mountain Unit in Rangeley and one in Sandy Bay Township. The Bald Mountain operation consists of approximately 2,200 taps, and includes a tap system and a collection tank. The sap is processed off site. The Sandy Bay Township operation, when fully utilized, will include approximately 14,000 taps (currently nearing that). The operation also includes facilities to produce finished maple syrup. In the spring of 2014 the operation processed its first batch of maple syrup onsite.

Western Region staff continues to explore additional sugar maple opportunities in Sandy Bay Township and at other locations in the region. The Bureau secured bids in FY 14 to establish a second sugar bush lease on 300 acres in Sandy Bay Twp., with approximately 20,000 taps. A lease will be issued in FY 2015.

In the Eastern Region, a timber harvest in Codyville on approximately 100 acres of selected hardwood stands was designed to enhance sugar bush potential. Healthy sugar maples were retained at the desired spacing where present, with the top quality sawlog and veneer sugar maples harvested prior to any maple sugar operation. A lease offering is expected in FY 2015.

Wildlife Management – The Bureau manages 31,000 acres of deer wintering areas (DWA) on Public Lands, under the review and recommendation of IF&W through the IF&W Wildlife Biologist permanently and exclusively assigned to the Bureau. In FY 2014 BPL coordinated harvesting activities on 907 acres of DWA with IF&W.

In FY 2014 the Bureau entered into a Memorandum of Agreement with IFW to manage a 23,000 acre portion of the 43,000-acre Seboomook Unit for the federally threatened Canada lynx. The MOA describes management actions the Bureau will undertake during the 15 year term of the agreement such as timber harvesting activities that will maintain and enhance 6,200 acres of optimum habitat for snowshoe hare, the primary prey of lynx.

Recreation – The Bureau's Lands division is responsible for 393 campsites, over 150 miles of day hiking and backpacking trails (excluding 71 miles of Appalachian Trail located on state-owned lands), 35 trailered and hand-carry boat launching

sites, and approximately 275 miles of public access roads.

Managing these assets takes both time and resources. To help keep this manageable, the Bureau has a long history of working with recreation and conservation partners, and supplements funds received from timber sales with federal *Recreational Trails Program (RTP) grants*. RTP funds totaling approximately \$300,000 from federal FY 2013 and 2014 allocations were available for trails projects on Public Lands in FY 2014 and 2015. Many projects on Public Lands are on challenging terrain that requires a specialized skillset which the Bureau acquires through contracts with the *Maine Conservation Corps (MCC)*.

Recreational trails work in FY2014 focused on some of the Bureau's most popular trail destinations across the State including:

- hiking trails on the Cutler "Bold Coast" Unit, and a new drive-to campsite on Fifth Machias Stream in Washington County
- continued work on the "Great Circle Trail" on the Nahmakanta Unit in Piscataquis County - a backcountry loop connecting with the Appalachian Trail;
- remote hiking trails on the Deboullie Unit and the Scopan Unit in Aroostook County;
- hiking trails on the Tumbledown Mountain lands in Franklin County (restoration);
- work on hiking trails on Tunk Mt. in the Donnell Pond Unit, and on Bald Mountain trail on the Amherst Unit in Hancock County;
- a "singletrack" mountain bike trail at the Kennebec Highlands in Kennebec County;
- a hike and mountain bike trail extension project at Pineland Public Lands in Cumberland County

Moosehead Region Trails Planning: In FY 2014 the Bureau received funds from Plum Creek Company to continue planning for a regional non-motorized trail system in the Moosehead Lake Region, as a result of the terms of the approved Plum Creek Moosehead Region Concept Plan. This is an unprecedented trails opportunity involving a public-private partnership. The trails system, primarily to be developed through trail corridor easements on Plum Creek Lands, can also include improvements to trails on Public Lands. FY 2014 saw the beginning of trail construction for two

projects – including the Eagle Rock Trail originating on the Little Moose Public Lands.

Land Management Planning During FY 2014, the Bureau completed the Central Penobscot Region Management Plan covering over 79,000 acres of public lands including the Nahamakanta, Seboeis, Wassataquoik East Turner Mountain and Millinocket Forest Public Lands Units. In addition, 5-year Plan Reviews were completed on the Northern Aroostook, Downeast, and Flagstaff Region Management Plans, all having 15-year Plans adopted in 2007. A 5-year plan review involves a status report on implementation of plan recommendations, and identifying any new issues that might require a plan amendment. As described later, one of these, the Flagstaff Region Plan, was amended to address some new trails opportunities.

Submerged Lands and Coastal Islands Program Submerged lands are managed under the Public Trust Doctrine to ensure protection of the public trust rights of fishing, waterfowl hunting, navigation, and recreation. The Submerged Lands Program plays an important role in maintaining a balance among competing uses of submerged lands and resolving conflicts between public trust rights and the demand for private and commercial uses of these lands. Lease fees support shore and harbor management activities and improve public access.

The Bureau is responsible for managing coastal islands under public ownership. Funds from the submerged lands leases helped to support the Maine Island Trail Association (MITA) (\$50,000 in FY 2014), which manages recreation on public and private islands that are part of the Maine Island Trail. In FY 2014 MITA and the Bureau celebrated 25 years of partnership on the management of this island trail. The Trail system now extends 375 miles and consists of over 200 islands and mainland sites for day visits or overnight camping. This includes 50 BPL owned islands (five added in 2014).

The Bureau's brochure "Your Islands and Parks on the Coast" shows the location of approximately 40 State-owned islands suitable for recreational use and explains the visiting, camping, and resource protection policies.

Funds from the Submerged Lands program also support a position in the Department of Marine Resources within its Public Health Division shellfish program by transferring \$80,000 to DMR each year.

III. SCOPE OF RESPONSIBILITIES

HISTORY OF THE BUREAU

The Bureau of Parks and Lands is an agency within the Department of Agriculture, Conservation and Forestry. The Bureau of Parks and Lands was established through a merger of two previously separate Bureaus— the Bureau of Parks and Recreation and Bureau of Public Lands. The Bureau of Public Lands was created in 1973 to manage the state's interests in its "original public lots," which ranged from 1,000 to 1,280 acres and were set aside in each township as a source of revenue to support inhabitants when and if they became settled. In total, these included over 400,000 acres.

Beginning in the mid-1970s many of the original public lots were traded with lands of other landowners to consolidate the State's holdings into larger management units having greater public values (recreational, scenic, wildlife and ecological). Additional public lands have been acquired since 1990 largely through the Land for Maine's Future Program for the purpose of adding to these consolidated public lands, or creating new public lands to be managed for multiple uses including recreation, wildlife and forestry. Other lands, such as coastal islands, and surplus institutional lands were also assigned to the Bureau of Parks and Lands for management.

CURRENT LANDS AND PROGRAMS

The Bureau of Parks and Lands is now responsible for management of Public Reserved and Nonreserved Lands, State Parks and Historic Sites, the Allagash Wilderness Waterway, the Penobscot River Corridor and state-held coastal islands (see Appendix A).

In addition, the Bureau is responsible for protecting public rights and public values on certain lands. These include the public trust rights of fishing, waterfowl hunting, navigation, and recreation on submerged lands beneath coastal waters from mean low tide to the 3-mile territorial limit, on tidal portions of rivers, under natural Great Ponds, and under international boundary rivers. This responsibility also includes protecting public rights and values acquired from private landowners through conservation and public access easements donated to or purchased by the Bureau. Maine

statute authorizes the Bureau to acquire lands and interests in lands. Easements that provide for protection of public interests become a public trust responsibility for the Bureau which is supported by donated stewardship endowments and revenues from Public Reserved and Nonreserved Lands. Finally, the Bureau has an oversight role for public values associated with lands acquired by municipalities and local land trusts through the Land for Maine's Future Program with Bureau sponsorship.

In FY 2014, lands under the Bureau's ownership, management or oversight included

- 616,952 acres of Public Reserved and Nonreserved Lands held in fee;
- 2.3 million acres of marine and freshwater submerged lands and 1095 acres in publicly held coastal islands;
- 365,248 acres of conservation and recreation easements;
- 9,815 acres of Forest Legacy conservation easements delegated to the Bureau for enforcement by the US Forest Service;
- 378,140 acres of third-party conservation easements (the Bureau is a back-up Holder);
- 602,423 acres of public access rights granted by easement by three large private landowners;
- 85,265 acres of fee lands held as Parks, Historic Sites or Boat Access Sites;
- 968 acres of lands leased from or under agreement from others for management as Parks lands; and
- 52,326 acres of lands acquired by local interests through the Land for Maine's Future Program with Bureau sponsorship.

Beyond the Bureau's land management responsibilities, several programs within the Bureau support public recreational access and trails. These include the Boating Facilities program, which builds boat access sites on state lands and funds municipal boat access sites; the Snowmobile and ATV programs which provide grants to local clubs to build and maintain trails on both public and private lands; the Grants and Community Recreation Program, which distributes federal grant funds for state and local recreation projects; and the Maine Conservation Corps (MCC), which provides trail crews to construct or rehabilitate recreational trails using federal AmeriCorps funds and fees charged for MCC services. MCC trail crews are commonly used to improve trails on Bureau lands.

IV. LAND MANAGEMENT PLANNING

The Bureau owns 154 Public Reserved Land units and 14 Nonreserved Public Land units. The number of actively managed reserved and nonreserved units (not including lands leased to or managed by others, small islands, and lands with a minority common and undivided interest), is 151. These range in size from 60 acres to 47,440 acres.

The Bureau is statutorily mandated to manage Reserved and Nonreserved Lands for multiple public values. Land management planning is also a required element of forest certification. Bureau staff involved in managing Reserved and Nonreserved Lands include specialists in planning, forest transportation, wildlife, recreation, and field forestry. All collaborate to ensure a balanced approach to the management of the various resources on these lands.

The Bureau's *Integrated Resource Policy* (IRP), adopted in 1985 and revised in 2000, guides resource management decisions and governs management planning for all Public Reserved and Nonreserved lands. Management Plans are prepared consistent with the IRP and taking into consideration comments received from a defined public process. The planning process allocates areas for specific uses including:

- *Special Protection (Natural/Historic)*
- *Wildlife*
- *Recreation*
- *Timber*

These areas often overlap, creating zones where management is designed to accommodate a variety of uses. The relative impact of one use upon another is carefully weighed to establish a hierarchy of resource management that protects the most sensitive resources and uses, while allowing other management to continue. For example, planned timber harvests in deeryards can provide a sustained yield of forest products and deer browse, while maintaining the winter shelter value of these areas.

Management plans are prepared regionally for a period of 15 years, with five-year reviews. The Plans address all of the Reserved and Nonreserved lands within a planning region. The five-year review process provides an update on progress in implementing the Plan recommendations, and addresses any changing conditions that may warrant amendments to the Plan.

MANAGEMENT PLAN STATUS

1	Mount Abraham ¹	Adopted June 2007
2	Amherst	Adopted Dec. 2010
3	Bald Mountain ²	Adopted Jan. 2011
4	Bigelow Preserve ¹	Adopted June 2007
5	Chain of Ponds ¹	Adopted June 2007
6	Chamberlain	To do
7	Crocker Mountain	To do
8	Cutler Coast ³	Adopted March 2007
9	Dead Riv/Spring Lake ¹	Adopted June 2007
10	Deboullie ⁴	Adopted June 2007
11	Dodge Point	Adopted 1991
12	Donnell Pond ³	Adopted March 2007
13	Duck Lake ⁵	Adopted July 2009
14	Eagle Lake ⁴	Adopted June 2007
15	East Turner Mtn⁸	Adopted in 2014
16	Four Ponds ²	Adopted Jan. 2011
17	Gero Isl/Chesuncook	Adopted 1980
18	Great Heath ³	Adopted March 2007
19	Holeb	Adopted 1989
20	Kennebec Highlands	Adopted October 2011
21	Little Moose ⁹	Adopted 1988
22	Machias River ⁵	Adopted July 2009
23	Mahoosuc ²	Adopted Jan. 2011
24	Millinocket Forest⁹	Adopted in 2014
25	Moosehead ⁹	Adopted 1997
26	Nahmakanta⁸	Adopted in 2014
27	Pineland ⁶	Adopted Jan. 2011
28	Richardson ²	Adopted Jan. 2011
29	Rocky Lake ³	Adopted March 2007
30	Round Pond	Adopted 1992
31	Salmon Brk Lake Bog ⁴	Adopted June 2007
32	Scraggly Lake ⁷	Adopted August 2009
33	Seboeis⁸	Adopted in 2014
34	Seboomook	Adopted March 2007
35	Scopan ⁷	Adopted August 2009
36	Telos	Adopted 1990
37	Tumbledown Mt.	To do
38	Wassataquoik⁸	Adopted in 2014

¹ Flagstaff Region

² Western Mountains Region

³ Downeast Region

⁴ Northern Aroostook Region

⁵ Eastern Interior Region

⁶ Bradbury-Pineland Region

⁷ Aroostook Hills Region

⁸ Central Penobscot Region

⁹ Moosehead Region

Regional management plans are developed with robust public involvement. For each plan, a Public Advisory Committee is established representing local, regional, and statewide interests. These committees serve as forums for discussion of draft plans. Public meetings are held providing interested parties an opportunity to provide input on management issues and to

comment on plan drafts. After considering these comments, the Bureau submits the final Plan to the Commissioner, upon recommendation by its Director, and the Plan is effective upon the Commissioner's approval.

In FY 2014, the Bureau adopted the Central Penobscot Regional Plan which included 8 separate Units and 79,175 acres. The Bureau also completed 5-year reviews on the regional Plans for the Downeast Region (10 Units), Northern Aroostook Region (13 Units), and Flagstaff Region (18 Units). The Flagstaff Region review resulted in amendments to the Plan specific to the Bigelow Preserve, related to new mountain biking, cross-country skiing, and hiking trails networks in the area seeking to connect to the Preserve.

V. NATURAL/HISTORIC RESOURCES

NATURAL RESOURCE INVENTORIES (NRI's)

The Maine Natural Areas Program within the Department of Agriculture, Conservation and Forestry, Bureau of Resource Information and Land Use Planning conducts inventories of natural resources on lands managed by the Bureau of Parks and Lands under a Memorandum of Understanding. In general, inventories are done in advance of management planning to provide up-to-date information for development of Plans.

NRI's completed in FY 2014: MNAP staff conducted field work on Public lands in the Moosehead and Upper Kennebec regions in FY 2014 in anticipation of management planning scheduled to begin for those units in FY 2015. Examples of completed Natural Resource Inventories and associated management plans are available at the Bureau of Parks and Lands website at: www.parksandlands.com

ECOLOGICAL RESERVES

History, Status Related to Statutory Acres Limits. Ecological Reserves are designated areas containing representative native ecosystem types managed as special protection areas. They serve as benchmarks against which to measure changes in both managed and unmanaged ecosystems, to provide habitat unlikely to occur in managed forests, and to serve as sites for long term scientific research, monitoring, and education.

This annual report includes the status of these reserves, and the results of monitoring, scientific research and other activities related to the reserves (12 MRSA §1839 and §1853).

The Bureau is also required to notify the Committee when a management plan proposes designation of an ecological reserve (12 MRSA §1805). This section of the report addresses this requirement. The Bureau Director may designate Ecological Reserves on Bureau lands included in "An Ecological Reserves System Inventory: Potential Ecological Reserves on Maine's Existing Public and Private Conservation Lands," Maine Biodiversity Project, July 1998. The Director may designate additional reserves in conjunction with the adoption of a management plan, when that process includes public review and comment on the plan, and with notification to the Committee.

Since 2007, the Bureau has had an informal policy of deferring any additions to the ecological reserve system other than those required by the terms of the acquisition (and if recommended by the Ecological Reserves Scientific Advisory Committee), until management plans for all Public Reserved Lands have been updated under the 2000 IRP. As discussed below, the Bureau is constrained by statute on the number of acres that can be designated as an ecological reserve. Presently the Bureau is within 3,700 acres of that limit. Some areas have been noted in the recent management plans as potential additions to the ecological reserve system.

Original Reserves: In 2001, the Director designated thirteen Ecological Reserves totaling 68,975 acres on public reserved lands included in the above-referenced inventory (see table below). These original reserves were designated using the best available information at the time, with the understanding that adjustments may be needed as conditions on the ground are researched in conjunction with management plans.

The Downeast Region Management Plan (2007) adopted changes to three original reserves because of land acquisition for the Donnell Pond Unit, deed conditions affecting use of the Great Heath, and fieldwork on the natural communities at Cutler Coast. The Northern Aroostook Region Management Plan (2007) adopted changes to the ecological reserve at Deboullie where the boundary overlaps an area with developed facilities and significant public use. The total change in ecological reserve acreage resulted in a net

reduction of approximately 111 acres; resulting in the current acreage of 68,864.

Original Ecological Reserves Designated in 2001 and Modifications Adopted in 2007		
Name	Original 2001 Acres	Changes adopted in 2007
1. Bigelow Preserve ER	10,540	
2. Chamberlain Lake ER	2,890	
3. Cutler Coast ER	5,216	+5
4. Deboullie ER	7,253	-350*
5. Donnell/Tunk ER	5,950	+274
6. Duck Lake ER	3,870	
7. Gero Island ER	3,175	
8. Great Heath ER	5,681	-40
9. Mahoosucs ER	9,974	
10. Nahamakanta ER	11,082	
11. Rocky Lake ER	1,516	
12. Salmon Brk Lake ER	1,053	
13. Wassataquoik ER	775	
Total Acres	68,975	-111
Adjusted Total Acres	68,864	

* Estimated acres at this time

Additions Based on Acquisition Conditions: Between 2002 and 2004 the Bureau acquired three areas with the condition that they be, in part or in whole, designated Ecological Reserves: Big Spencer Mountain, the Saint John Ponds and Mount Abraham. These areas were formally designated as Ecological Reserves as part of the Seboomook Unit Management Plan and Flagstaff Region Management Plan in 2007.

In 2006, as part of the Phase II acquisition of the Machias River project lands, 2,780 acres were conveyed to the state by the Conservation Fund subject to a deed restriction that the lands be designated as an Ecological Reserve. This area expanded by 400 acres an existing Reserve on Fourth Machias Lake on the Duck Lake Unit and added a 2,380-acre adjacent area that includes frontage along Fifth Machias Lake and Fifth Lake Stream. These additions to the Ecological Reserve system were adopted as part of the Eastern Interior Region management planning effort in 2009.

In 2009 the Bureau acquired 4,809 acres of land at Number Five Bog through a donation from The Nature Conservancy as a deeded Ecological Reserve.

Most recently, in June of 2013, the Bureau acquired the 12,046-acre Crocker Mountain parcel,

Ecological Reserves Designated as a Result of Acquisition Conditions	
Name	Acres
Big Spencer	4,242
Mount Abraham	5,186
St John Ponds	3,917
Machias River	2,780
Number 5 Bog	4,809
Crocker Mountain	~ 4,000
Total Reserves acquired through acquisition terms	24,934

subject to a funding agreement to designate approximately 4,000 acres as an ecological reserve.

Statutory Limits: By statute, the total land acreage designated as Ecological Reserves may not exceed 15% of the total acreage under Bureau jurisdiction or 100,000 acres, whichever is less. In addition, no more than 6% of the operable timberland on public lands may be designated as Ecological Reserves. Lands acquired after the effective date of the statute (2000) with a condition that the donated or acquired land be designated as an ecological reserve are not included when calculating acreage limits.

Presently Bureau fee lands, including Parks, Public Reserved and Non-reserved Lands, and Boating Facility lands, total 702,218 acres.

Ecological Reserves as a Proportion of Total Acres Under Bureau Jurisdiction in FY 2014*	
Land Type	Total Fee Acres
State Park Lands	84,713
Boat Access Lands	552
Public Reserved Lands	612,317
Non-reserved Public Lands	3,635
Unregistered Coastal Islands	1,095
Subtotal	702,218
Land acquired on condition of ecoreserve designation	-24,934
Total	677,284
Lesser of 15% of Lands under Bureau Jurisdiction or 100,000	100,000

The 15% limit would then be applied total acres less 24,934 acquired with deed restrictions; or 101,592 acres. This means that 100,000 acres is presently the actual upper limit with regard to the first statutory condition.

Regarding the 6% rule, there are approximately 418,500 acres of operable timberland on Public Reserved and Non-reserved Lands, with approximately 21,400 acres of these located in qualifying reserves. This is roughly 3,700 acres below the 6% limit set in statute, and is the maximum acreage that could be added under the current landholdings.

Ecological Reserves as a Proportion of Operable Timberland Acres on Public Lands in 2012*	
<i>Land Type</i>	<i>Operable Timberland Acres</i>
Total Operable Lands	418,500
6% of Operable Lands	25,110
Operable Acres in Qualifying Reserves	21,400
Net available acres for ER designation	3,700
*Operable timberland acres are lands held in fee, not including Ecological Reserves designated as a condition of the acquisition. Operable acres on Ecological Reserves include modifications adopted in 2007(see previous table).	

Ecological Reserve Monitoring: An annual Memorandum of Understanding with the Maine Natural Areas Program (MNAP) enables the collection of baseline ecological data for the Bureau's Reserve inventory. This monitoring fulfills two key purposes of the enabling legislation for Ecological Reserves: that they serve as a "benchmark against which biological and environmental change may be measured", and that they serve as sites for "ongoing scientific research, long term environmental monitoring and education". These surveys are conducted in accordance with established monitoring guidelines. This ongoing effort will provide information necessary for measuring ecological changes on Reserves over time. In 2010, with the completion of baseline monitoring at Number 5 Bog Ecological Reserve, baseline monitoring on all BPL ecological reserves was completed.

In FY 2014, MNAP conducted its second year of the 10-year re-sampling effort by revisiting the long term forest monitoring plots established in 2002. These forest monitoring plots were established to complement the sampling plots used by the US Forest Service's Forest Inventory and Analysis (FIA) Program. There are nearly 500 FIA-like permanent plots across 17 State Reserves. Adapting the FIA protocol allows MNAP

to compare results with those generated by the Maine Forest Service for Maine and by USFS for the broader region. During FY 2014 MNAP revisited 152 permanent monitoring plots in the following Reserves: Salmon Brook Lake, Duck Lake, Rocky Lake, Cutler, Mount Abraham, and Deboullie. As of summer 2014, MNAP reported it had completed the 10 year 're-sampling' on more than 320 of these plots. Information from this long term monitoring program will yield insights into how Maine's natural forests and natural communities are changing over time.

Monitoring reports may be found at MNAP's website at the Bureau of Natural Resource Information and Land Use Planning within the Department's website : <http://www.maine.gov/dacf>

Ecological Reserves Scientific Advisory Committee: An Ecological Reserves Scientific Advisory Committee was established in the mid-1990s to provide guidance regarding the inventory and assessment of a potential Ecological Reserve system in Maine. The committee produced a status report on Ecological Reserves in 2009 ("*Ecological Reserves in Maine: A Status Report on Designation, Monitoring, and Uses*"); available at the Natural areas website cited above.

The role of the Committee includes reviewing potential Ecological Reserve additions according to science-based criteria that new Ecological Reserves must meet.

Research on Ecological Reserves: State Ecological Reserves have been used for more than 15 ecological research and sampling projects, and researchers include staff from 8 universities, ranging from the University of Maine at Presque Isle to the University of Missouri, and research institutions ranging from the New York State Museum to the National Institutes of Health.

HISTORIC AND CULTURAL RESOURCES

The Bureau's 15-year Management Plans include information on the history of BPL parcels included in the Plan. This information is taken from historic reports, input from the Maine Historic Preservation Commission (MHPC) and the public process for Plan development. The MHPC is the lead agency in identifying and protecting significant historic resources requiring preservation on the State's ownership, including designating historically sensitive areas for special protection.

VI. WILDLIFE RESOURCES

A key component of the Bureau's integrated resource management program is coordinating land management activities with fisheries and wildlife habitat enhancement. Since 1984 a wildlife biologist from the Maine Department of Inland Fisheries and Wildlife (IF&W) has been assigned to the Bureau through a cooperative agreement between the two agencies. The primary responsibility of the biologist has been to develop and implement a habitat management program for Bureau-managed lands. Wildlife management activities conducted in FY 2014 on lands managed by the Bureau were as follows:

Wildlife Inventory and Survey Work. During this reporting period, waterfowl brood counts were completed in early June and repeated in early July at five (5) man-made and natural impoundments under Bureau management. A high elevation bird survey was conducted at Coburn Mountain as part of a New England wide effort coordinated by the Vermont Institute of Science.

Habitat Management. Eighty six (86) waterfowl nesting boxes were maintained by regional staff. With assistance from a seasonal position, eighteen (18) acres of old field were mowed at five (5) sites and invasive species control was conducted on nine (9) acres at 7 sites. Five additional acres of old field on the Days Academy parcel were reclaimed by a contractor bringing the field complex there to 32 acres. Contracts for routine beaver control activities were developed by BPL regional offices. There were no wetland management activities involving maintenance of existing siphon pipe/fence installations required and no new structures were built.

Seeding Program. 127 acres of herbaceous seeding was established on thirty-one (31) Public Lands parcels for wildlife forage and erosion control.

Deer Wintering Areas (DWAs):

The Bureau monitors and assesses DWAs on public lands as part of its management strategy. Aerial surveys for deer activity are conducted on BPL managed lands when travel conditions for deer are restrictive using IF&W protocols. This information is used to delineate cooperative winter

habitat management areas for deer and other softwood dependent wildlife. No surveys were conducted during this reporting period due to a lack of restrictive snow conditions. In FY 2014 BPL coordinated harvesting activities on 907 acres of DWA with IF&W.

Lynx Habitat Management. The Bureau has entered into a Memorandum of Agreement with IF&W to manage a 23,000 acre portion of the Seboomook Unit for the federally threatened Canada lynx. The MOA describes management actions the Bureau will undertake during the 15 year term of the agreement such as timber harvesting activities that will maintain and enhance 6,200 acres of optimum habitat for snowshoe hare, the primary prey of lynx.



Canada
Lynx – photo by
Dorothy Fescke

Harvest Prescriptions. The wildlife specialist reviewed timber harvest plans for compartments totaling 9,875 acres of Public Lands for fish and wildlife habitat compatibility and potential habitat enhancement.

Research Requests. Special activity permits for 6 research projects were issued.

Forest Certification. The biologist assigned to BPL participated in the concurrent Sustainable Forestry Initiative (SFI) and Forest Stewardship Council (FSC) annual audit. Planning and administration for fisheries, wildlife, and biodiversity issues related to forest certification conditions were addressed as required.



Whitetailed
Deer

VII. RECREATION RESOURCES

The Bureau's Lands Division is responsible for 393 campsites, over 150 miles of day hiking and backpacking trails (excluding 71 miles of Appalachian Trail located on state-owned lands), 35 trailered and hand-carry boat launching sites, and approximately 270 miles of public access road.

FY 2014 PROJECTS

In accordance with management plan commitments, and in response to public demand, the Bureau continued to develop or make upgrades to recreation facilities on its lands. A summary of FY 2014 projects follows.

Western Region: In FY 2014, this Region maintained 194 campsites, worked with ATV and snowmobile clubs with trails on Public Lands, and continued its partnerships with organizations assisting BPL in managing public recreation facilities, including with the Damariscotta River Association, Belgrade Region Conservation Alliance, Mahoosuc Land Trust, Parker Pond Association, New England Mountain Biking Association, Maine Appalachian Trail Club, and Northern Forest Canoe Trail (see PARTNERSHIPS on page 15). In addition to routine maintenance, a number of projects were undertaken in the Western Region. The Region was assisted by an AmeriCorps Environmental Educator placed at the Bigelow Preserve, and by MCC crews for many projects.

Bigelow Preserve. A 900 hour Maine Conservation Corps Environmental Steward position assisted management efforts and visitor education at the Preserve.

Tumbledown Mountain. In FY 2014 BPL continued hiking trail rehabilitation efforts on two miles of trail.

Dodge Point. The trailhead welcome kiosk was upgraded.

Pineland. Continued trail construction efforts were undertaken to link the South Loop Trail to a multi-use trail corridor owned by Central Maine Power. In FY 2014 the Pineland Public Lands portion of trail construction completed. As a result, trail linkages now exist at both Bradbury Mountain State Park in

Pownal and at Pineland Public Lands, with the power corridor trail in between. Work also continued on the Pineland trails.



Portion of the South Loop Trail Constructed in the Pineland Public Lands

Kennebec Highlands. Work continued to develop a single track bicycle trail originating at the Round Top trailhead. Labor from the Central Maine Chapter of the New England Mountain Bike Association continued work on 1.5 miles of bike trail.

Parker Pond Islands. Western Region Lands was assisted by the Parker Pond Association in improving signage on the Parker Pond Islands owned by the Bureau.

Little Moose. Trail construction began on the Eagle Rock Trail, a 3.7 mile trail leading from the northern boundary of the Little Moose Public Lands to a rock outcrop with dramatic views of the Moosehead Lake Region. The trail is primarily located on public trail easements on Plum Creek property but will add greatly to the overall allure of the Little Moose Public Lands.

Winter Trailhead Maintenance

The Bureau maintained plowed parking areas at trailheads to popular winter trail destinations including the East Outlet of Moosehead Lake, Range Trail and Little Bigelow trails on the Bigelow Preserve, Dodge Point Unit in Newcastle, two trailheads on Kennebec Highlands, and the trailhead to Big Moose Mountain on the Little Moose Unit near Greenville.

Eastern Region: In FY 2014 the Eastern Region maintained 130 campsites and over 100 miles of hiking trail; worked with snowmobile and ATV clubs with trails on Public Lands and with a number of other partners on maintenance of public recreation facilities, including the Seboeis Lake campowners in controlling water levels with the Bureau owned dam, the Downeast Coastal Conservancy who housed MCC workers, the Town of Amherst on the Amherst Community Forest – a Public Reserved Unit; and the Donnell Pond Campowners Association on road maintenance and plowing to the boat launch. The Region was again assisted by MCC crews on a number of projects.

Seboeis. A new section of public access road was added to the southern parcel acquired in 2011.

Nahmakanta. Trail development continued on the Great Circle Trail to enhance Nahmakanta as a backcountry hiking destination offering several loop trail options ranging in duration from moderate day hikes to multi-day backpacking excursions.

Cutler Coast. The Maine Conservation Corps, funded through the Recreational Trails Program, continued work rehabilitating trails at the Cutler Coast Trail.



Trail Signs on the Cutler Unit

Amherst Community Forest. MCC crews completed trail work including relocation of a portion of the Bald mountain trail.

Machias River. A new drive-to campsite was added on Fifth Machias Stream. This campsite is also accessible from a local ATV trail.

Donnell Unit: Work continued on the Tunk Mountain Trail.

Winter Use Trailhead Maintenance: The Bureau plowed the parking lot at the boat launch at Donnell Pond to facilitate winter activities on the lake and the Unit.

Northern Region: In FY 2014 this Region maintained 69 campsites and 36 miles of hiking trails; collaborated with 6 motorized trail clubs; and provided access to numerous water bodies. The Northern Region continues to partner with North Maine Woods, the Allagash Wilderness Waterway, the Penobscot River Corridor, and Baxter State Park to manage recreation. MCC crews assisted in a number of projects.

Deboullie. Staff replaced 4 privies on the Deboullie Unit. The Maine Conservation Corps constructed 1.5 miles of hiking trail and performed numerous trail upgrades. Staff constructed trailhead parking at the Denny Trail.

Scopan. MCC constructed a new, 3 mile hiking trail on Scopan Mt. using funding from the Recreational Trails Program (RTP). Trailhead parking, a vault toilet, and kiosk were installed.

Salmon Brook Lake Bog. Installed a new privy at the Salmon Brook Lake Bog Unit day use area.

PUBLIC INFORMATION

During FY 2014, the Bureau continued to develop, revise, and distribute information on the location of hiking trails, campsites, and other recreation facilities and opportunities available on Bureau lands. This was accomplished primarily via the Bureau website.

Website Updates. The Bureau continues to use its website www.parksandlands.com to provide photos, maps, and facility information for most of its Parks and Lands. As resources allow, enhancements are added to increase its usefulness to visitors and to the broader conservation and environmental education communities. A newly

redesigned Departmental website was released in 2014.

Downeast Sunrise Trail Downloadable Guide: A Guide is available on the Bureau's website under the Find Parks and Lands feature (Multi-Use Trails option), created through a collaboration with the Sunrise Trails Coalition. Completed in the Fall of 2013, it highlights trail amenities, trailside attractions, and interesting nearby destinations. Among the destinations promoted are the Public Lands: Cutler Coast, Rocky Lake, Great Heath, and Donnell Pond.

Online Outdoors in Maine Mini-brochure: In FY 2014 an online guide to recreation facilities at State Parks and Public lands was completed. It shows recreational features available at 36 of the most popular Public Reserved Lands properties, including camping, boat access, fishing, trails, and historic and scenic features .

Cobscook Trails Coalition Trail Guide. In FY 2014 the Bureau worked with a coalition of interests who developed a trails map and guide for the Cobscook Bay and Bold Coast Region of Washington County. The brochure includes trails on the Bureau's Cutler Coast Unit along with trails on IF&W lands and a number of local land trust and community trails in this most eastern area of the State.

Map and Guide Brochures. Using Recreational Trails Program funds, the Bureau has begun to develop a series of in-depth brochures to post online and make available in printed form. To date these include the Cutler Coast, Rocky Lake, Donnell Pond, Mahoosuc Unit, Nahmakanta, and Deboullie Units.



Information about non-motorized trails on Parks and Lands may be found on the Maine Trail Finder

website (www.mainetrailfinder.com), operated by the nonprofit Center for Community GIS in Farmington. The Bureau works with the Center to develop online trail descriptions and interactive maps, which are then posted on the website. To date, 38 trails or trail systems located on Maine Public Lands and 57 trails/systems at State Parks

and Historic Sites appear on the website. Additionally, with support from the Maine Outdoor Heritage Fund and the Recreational Trails Program, the Bureau has worked with the Center to expand trail listings on the website, adding trails managed by other groups such as land trusts, municipalities and the National Park Service.

RECREATION MANAGEMENT STAFFING

One year-round and six seasonal rangers were involved in recreation management activities in FY 2014. The seasonal rangers were responsible for recreation facilities maintenance and construction, and informing visitors about Bureau rules. The Western Lands Region continued its Volunteer Campground Host program at two Bureau-owned campgrounds on Moosehead Lake: Cowan's Cove and Spencer Bay. These campgrounds are free to the public, and like all Bureau campsites, stay is limited to 14 days in a 45-day period. The volunteers oversee these campgrounds in return for extended stays at the campground.

Also in FY 2014, the Western Lands Region utilized the AmeriCorps Environmental Educator program and Recreational Trail Program grants to provide a resident staff person at Bigelow Preserve to assist the full-time Preserve Manager with recreation management.

FEES

Fees are generally not charged on Public Reserved and Nonreserved Lands managed by the Bureau. However, in some circumstances fees are charged because these lands are within or accessed through private recreation management systems (NMW and KI-Jo-Mary); or because the Bureau has contracted the management with nearby recreation providers having similar management objectives (South Arm Campground and Baxter State Park). Fees charged in FY 2014 on Public Reserved Lands are described below.

North Maine Woods Recreation Management

This is a privately operated system involving 3 million acres of primarily private lands where public recreation is allowed subject to fees collected at a series of checkpoints. Approximately 95,500 acres of Public Reserved Lands managed by the Bureau, including Baker Lake, Deboullie, Round Pond, Chamberlain, Telos, Gero Island, and the North

Branch, South Branch and Canada Falls portions of Seboomook are within the North Maine Woods (NMW) system. To access these lands, the public passes through NMW checkpoints, where fees are paid for day use and camping. (NMW camping fees apply, except for campsites on the Allagash Wilderness Waterway and the Penobscot River Corridor, where Parks fees set for those campsites apply.) Visitors then travel over roads on private land within the NMW system.

In FY 2014, NMW day use fees were \$7.00/person for residents and \$10.00/person for nonresidents. Camping fees were \$10.00/person/night for Maine residents and \$12/person/night for nonresidents. Fees are retained by NMW for facility maintenance and development, except that the camping fees are returned to the Bureau when the Bureau assumes maintenance responsibilities, as at Deboullie.

Penobscot River Corridor. The Penobscot River Corridor (PRC), managed by the Bureau's Parks program, includes campsites on Public Reserved Lands on Gero Island on Chesuncook Lake, and on a portion of the Seboomook Unit (Seboomook Lake, South and West Branches of the Penobscot River, and Canada Falls Lake). PRC staff maintain the campsites at these locations, and charge Bureau-set camping fees. In FY 2014, PRC camping fees were \$4/person/night for residents and \$8/person/night for nonresidents. When these areas are accessed via a NMW Checkpoint, NMW day use fees (\$7.00 and \$10.00 per person respectively for residents and nonresidents) are also charged for the day traveled in and the day traveled out and retained by North Maine Woods to cover operating costs for the checkpoint system. If the trip involves passing through only one NMW checkpoint, a single day use fee is charged (as in trips originating at Seboomook and ending at the takeout on lower Chesuncook Lake).

An exception to this general rule is that the NMW day use fee is charged for all trip days for access to the PRC sites on the South Branch, North Branch, and Canada Falls Lake as these allow vehicular access to the entire NMW system.

Camping fees at sites operated by the PRC on Seboomook are collected onsite by a ranger or with "iron ranger" collection boxes. However, visitors to these areas that pass through checkpoints operated by North Maine Woods, Inc., pay camping fees at the checkpoints, which are

then paid to the Bureau (a portion of the fees is retained by NMW to cover administrative costs.)

KI-Jo Mary Recreation Management System.

Similar to the NMW system, this is a privately operated gated system involving 175,000 acres of primarily private lands where public recreation is allowed subject to fees. The 960-acre Bowdoin College Grant East Public Reserved Land lies within this system.

Day use fees (\$7/person/day resident and \$12/person/day nonresident) are charged at checkpoints in Katahdin Ironworks and West Bowdoin College Grant for access to this property and other lands within the system. Camping is \$10/person/night for residents and \$12.00 per night for non-residents. Public access to the Nahmakanta Unit, which abuts the KI/Jo-Mary System, is free from the west, but if accessed from the south via the KI/Jo-Mary System, a day use fee for the day-in and day-out applies. Exit from Nahmakanta through the south will also involve a fee, if access was gained from the west.

South Arm Campground. The Bureau leases campsites on Richardson Lakes (Upper Richardson Lake) to South Arm Campground, a privately owned campground on adjoining private land. In FY 2014, the campground owner charged \$18.00 (including tax) per night per site. The campground retains a portion of this fee to cover its costs for maintenance of the 12 campsites and the Mill Brook public boat launch facility at the north end of lake.

Baxter State Park. Management of campsites at the west end of Webster Lake at Telos has been assigned by mutual agreement to the Baxter State Park Authority (BSPA), and the sites are subject to BSPA rules and policies. Most use of Webster Lake is connected with the Webster Stream canoe trip, which traverses the northern end of Baxter State Park.

Bear Bait Permit Program. By state rule (04-059-Chapter 54), a permit from the Bureau is required before placing bait for bear on Public Reserved and Nonreserved Lands that are not managed jointly with another entity. The permit program is administered by the Bureau's three regional offices. Since 2006, the annual permit fee has been \$30 for a personal bait site and \$65 for a commercial bait site. In FY 2014, the Bureau issued 378 bear bait

permits: 174 for personal sites and 204 for commercial sites, with permit revenues totaling \$18,480.

PARTNERSHIPS

For some properties, the Bureau has entered into partnership agreements with other organizations to assist in managing recreational use. Noteworthy examples of partnerships in place in FY 2014 are described below.

Appalachian Trail (AT). The Bureau continued its partnership with the Maine Appalachian Trail Club (MATC) to accomplish stewardship and trail maintenance along 43 miles of the AT corridor in the Bigelow Preserve, the Mahoosucs, Four Ponds, Bald Mountain, and Nahmakanta Unit. An additional 28 miles of the AT is located on lands within state parks or on lands subject to Bureau-held conservation easements.

Bigelow Preserve. In addition to providing trail maintenance of the AT on the Bigelow Preserve, an agreement is in place with the Maine Appalachian Trail Club to ensure a summer staff presence at the more heavily used areas of the Appalachian Trail; in particular, the Horns Pond campsite near the center of the Bigelow Range.

Coastal Islands. The Bureau continued its partnership with the Maine Island Trail Association for the management of certain state-held islands along the coast of Maine that are part of the Maine Island Trail.

Cutler Coast. The Downeast Coastal Conservancy provided support for Maine Conservation Corps work crews doing trail reconstruction on the Cutler Coast in FY 2014.

Dodge Point. An ongoing arrangement is in place with the Damariscotta River Association to assist with the maintenance of trails and facilities.

Frenchman's Hole, Mahoosucs. A partnership is in place with the Mahoosuc Land Trust to assist in the maintenance of this day use area.

Grafton Loop Trail. The Bureau continues to be an active member of a coalition of nonprofit organizations and private landowners that

developed this 39-mile hiking trail in the Mahoosuc Mountains. The trail branches off from the Appalachian Trail in the Mahoosucs public lands and continues east over private land to Puzzle Mountain, where it rejoins the Appalachian Trail.

Kennebec Highlands. This property is managed in part through a partnership with the Belgrade Regional Conservation Alliance.

Northern Forest Canoe Trail (NFCT). The Bureau has a growing relationship with the multi-state NFCT, which promotes canoe and kayak trips and stewardship across many public and private properties in Maine.

Machias River Corridor. The Bureau cooperates with the Maine Atlantic Salmon Commission, the U.S. Fish and Wildlife Service, NOAA, Project SHARE and local watershed councils to protect and enhance Atlantic salmon habitat in this area.

Maine Huts and Trails (MHT).

In 2007, the Bureau worked with MHT to facilitate the development of a network of large huts connected by trails. The Bureau holds a conservation easement over portions of the trail, and as authorized by the legislature, a short section of the trail crosses over the Bigelow Preserve. Since 2009, the Bureau and MHT have cooperated on a connector trail from the Flagstaff Lake Hut to trail systems on the Bigelow Preserve and through to the Poplar Stream Falls Hut south of the Preserve. The new Stratton Brook Hut's connector trail passes through Bureau land in the Town of Carrabassett Valley. The growth of the Huts and Trails network will require ongoing cooperation between the Bureau and MHT.

Plum Creek. As part of the Moosehead Lake Region Concept Plan, Plum Creek and the Bureau are now working cooperatively to implement a provision by which the Bureau is granted the right, through easements, to establish a non-motorized trail system in the Moosehead Lake Region on Plum Creek and/or Bureau lands. Up to 121.8 acres of trail easements may be developed (potentially resulting in up to 40 or 50 miles of trail, depending on the width) and a fund has been established by Plum Creek for trail planning and construction.

VIII. TIMBER RESOURCES

The Bureau manages the natural resources on the lands under its care through a carefully planned multiple use program that balances timber management with all other resource values. Timber revenues support the Bureau's Public Reserved and Nonreserved Lands management costs, including provision of recreation facilities and opportunities, and wildlife management. Other public benefits include contribution to the local economy through employment opportunities for contractors and supply of raw materials to area mills, provision of low-cost firewood through the Bureau's firewood harvest permit program, and demonstration of exemplary multi-aged management focused primarily on mature quality timber.

TIMBER INVENTORY

An important facet of the timber management program is examination and inventory of the forest resource. Benchmark field data acquired in 1999 provided detailed timber, site, and natural resource measurements. This inventory was fully updated in 2011 and continues to be important for both forest management planning, and third-party forest certification auditors.

Status of Current Inventory and Annual Allowable Cut (AAC). The landbase-wide inventory completed during the autumn of 2011 shows that the total merchantable timber volume on just over 400,000 acres is about 9.3 million cords. This is an increase of about two cords per acre since 1999. Compared to the 1999 volumes per acre, the current inventory shows that all softwood species have increased, especially white pine and hemlock. Spruce remains the most common species, and it's per acre volume is more than 75% higher than the statewide average. Among hardwoods, beech, paper birch, and aspen have decreased in volume while most other hardwoods remained about the same. The drop in paper birch and aspen comes both from the mortality of overmature stems on these relatively short-lived species, and Bureau harvests targeting them because of that overmaturity. Natural mortality in beech is an increasingly common statewide phenomenon across essentially all landowners.

When both the inventory increase and the harvest volumes during the previous twelve years are considered, the net growth rate on the Bureau's Public Reserved and Nonreserved Lands is 18 percent higher than that for Maine's forests as a whole. As a result, the yield curves from which the AAC was calculated have been reworked using the new and greater stocking levels, with adjustments for timber harvests essentially achieving the existing AAC over the past six years. This resulted in the AAC being increased for FY2013 and beyond by about 20%, from 115,000 to 141,500 cords (as previously reported for CY 2012).

During 2012/2013 the Maine Forest Service (MFS) expressed concern about the high timber inventory (merchantable cords/acre) being carried on Public Reserved lands. MFS advocated for the Bureau to reduce its inventory and lower its discount level to avoid continued increases in stocking, excess mortality, and lessen risk from spruce budworm and other potential insect/disease problems.

For a number of years the Bureau has discounted (reduced) the calculated annual gross growth by 15% to determine AAC because not all growth occurs on acres with sufficient volume to harvest economically or is accessible. This rate was applied to intentionally increase stocking levels until new inventory information was obtained. With new inventory information now available the discount rate may be adjusted to 10%, which would limit future increases in timber inventory across the landbase, while adding 8,350 cords to the annual allowable cut.

Carrying higher levels of inventory does come with the risk of higher levels of mortality and 2006 MFS data indicates that the level of mortality on public lands was 13% higher than that on total forest ownership surveyed. However, net growth on public lands was also higher than the state average by 18%.

Regarding the risk of losses from a spruce budworm outbreak, spruce budworm impacts historically have become epidemic throughout northern New England and eastern Canada every 30 to 40 years. Populations are building to our north, and it seems likely that this major threat to the State's fir and spruce resource will arrive in large numbers sometime in the next three to five years.

To address concerns of mortality and risk, the Bureau intends to gradually reduce the current merchantable volume per acre, 23 cords per acre, by about 6.5% over a twenty-year period, to a stocking level of 21.5 cords per acre. To accomplish this will require that the timber harvest objective be increased to 180,000 cords per year from the current AAC of 141,500 cords per year. The Bureau intends to increase the target harvest level to 160,000 cords for FY2016 and to 180,000 cords for FY2017.

As harvest levels are increased, they will be guided by more up-to-date timber typing and a spatially explicit forest model. These tools will allow the Bureau to identify the most appropriate places to consider for achieving the increased harvest.

Late in FY2014 the Bureau sought proposals for a project to fully update the timber typing of the forestland, which had last been done landbase-wide in the mid 1990s. A contract was awarded and work begun on this project early in FY2015. This re-typing, when completed, will be an important resource for Bureau field staff when examining and prescribing management activities in the forest, and will be employed along with the data from the 2011 inventory to create an updated forest growth model based on the current timber types. It is anticipated that modeling will begin late in FY2015 or early in FY16, with initial results within three months of that time. Landbase-wide modeling must await air photo capture of the final 70,000 acres in autumn of 2015 and subsequent timber typing, and should be available early in calendar 2016.

In addition, the Bureau will establish a series of Continuous Forest Inventory (CFI) plots that will allow the Bureau to gather additional data on the health of the forest and to monitor the results of harvests by checking at approximately five-year intervals to evaluate whether the greater harvest is accomplishing the inventory reduction objective. It is expected that the Bureau will contract for the installation of these plots in FY 2016. In this evaluation, Bureau staff will also be looking at potential impacts to both timber and non-timber values, to ensure that management continues to follow the management mandates of the Bureau's enabling legislation and the overall direction provided in the Management Plans.

PRESCRIPTIONS

Planning for the timber management of Public Reserved and Nonreserved Lands is a two-step process:

- A management plan for the unit as a whole is prepared and adopted providing broad management direction;
- More detailed plans for discrete areas between 500 - 2,000 acres (known as compartments) are then developed for the unit.

Compartments are examined on a 15-year cycle to identify timber and wildlife resources and recreational opportunities. Based on the field examination and the information collected, work plans called "prescriptions" are developed to ensure adequate protection of special resources and a sustained yield of forest goods and services, which include timber, wildlife, and appropriate recreational uses.

Prescriptions in FY 2014. Bureau staff examined and prescribed 11 compartments totaling 13,000 acres for a wide range of resource management activities.

TIMBER SALES

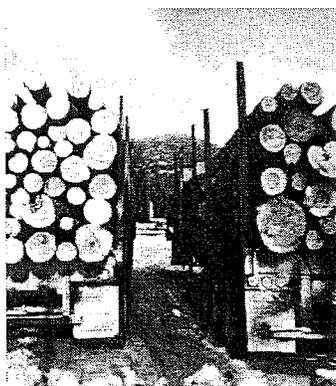
If a timber harvest is prescribed in a compartment, a timber sale is developed. The majority of timber sales are put out to competitive bid (highest responsive bid), following State rules and procedures governing the sale of State property and purchase of services. Occasionally sales are negotiated when no bids are received, for special circumstances, and for small volumes to allow new contractors to gain experience working on Bureau lands to Bureau standards.

In the past, most timber was sold as stumpage. Under this system, the contractor agrees to pay the Bureau a bid price per unit for each type of forest product harvested. Occasionally timber was sold using contracts for logging services (CLS). Under this system, the Bureau pays the contractor to harvest timber and deliver it to specified mills; these mills then pay the Bureau directly for these products. The Bureau has increasingly used this option over the past two fiscal years (see discussion below).

Once the timber contracts are awarded, Bureau foresters and forest technicians work closely

with contractors to ensure contract compliance, and that timber management objectives are met.

Bureau staff closely supervise each harvest by providing loggers with strict harvesting criteria. These criteria specify which trees are to be harvested. In some cases, the Bureau will mark individual trees for removal, such as when there are high value stands, or other high value resources in special management areas having specific Bureau harvest protocols such as riparian areas or deer wintering areas. Also, when working with a new contractor, the Bureau may mark trees in a demonstration area. All harvest operations are inspected by Bureau staff on a weekly basis; more often when individual situations warrant.



Timber Taken from
Day's Academy Grant

Contract Logging Services (CLS) Project.

In FY2014, the Northern Region continued to increase harvesting through CLS, from about 60% in FY 2013 to about 80% of its overall harvest volume. CLS sales were also conducted in each of the other regions. Objectives for CLS are two-fold: 1) to improve stability in achieving harvest goals, and 2) to enhance Bureau timber revenues. Where utilized, the feedback from the mills and contractors has been positive. The mills prefer contracting directly with the landowner. In Northern Maine, most logging contractors are used to working under CLS contracts, not stumpage contracts. CLS projects require increased up-front costs, which in turn will require a higher level of cash reserves to be maintained in order to be successful with this initiative.

Summary of Timber Sales in FY2014. The implementation of prescriptions in FY2014 is summarized below.

- A total of 177,000 cords was harvested from 14,100 acres. After deducting the portion of

biomass that came from tops and limbs (not included in AAC calculation), the harvest was 166,500 cords, significantly above the updated AAC of 141,500 cords, though the ten-year BPL harvest is still about 9 percent under the total allowable cut for that period.

- A total of 41 operations were ongoing in FY2014. These operations are a combination of newly established sales, and sales carried over from previous years, and do not include permits for firewood sales issued to individuals (see below).
- In concert with the Bureau's contractors, wood was marketed to 45 mills statewide.

Firewood Permit Program: Individual firewood permits totaling 300 cords were issued by the Bureau in FY 2014. This is similar to last year's volume. Firewood harvests by logging contractors remain high, with nearly 3,000 cords of firewood supplied by these contractors from lands managed by the Bureau.

Sugar Bush Leases – The Lands Western Region currently has two sugar maple lease agreements, one at Bald Mountain Unit in Rangeley and one in Sandy Bay Township. The Bald Mountain operation consists of approximately 2,200 taps, and includes a tap system and a collection tank. The sap is processed off site. The Sandy Bay Township operation, when fully utilized, will include approximately 14,000 taps (currently nearing that). The operation also includes facilities to produce finished maple syrup. In the spring of 2014 the operation processed its first batch of maple syrup onsite.

Western Region staff continues to explore additional sugar maple opportunities in Sandy Bay Township and at other locations in the region. The Bureau secured bids in FY 14 to establish a second sugar bush lease on 300 acres in Sandy Bay Twp., with approximately 20,000 taps. A lease will be issued in FY 2015.

In the Eastern Region, a timber harvest in Codyville on approximately 100 acres of selected hardwood stands was designed to enhance sugar bush potential. Healthy sugar maples were retained at the desired spacing where present, with the top quality sawlog and veneer sugar maples harvested prior to any maple sugar operation. A lease offering is expected in FY 2015.

FY2014 Harvest and Market Analysis. Timber harvested in FY 2014 on Bureau lands from inventory totaled 166,500 cords (177,000 cords including biomass). The FY 2014 figure is 18% above the current Bureau-established “allowable cut” of 141,500 cords. This was accomplished with the assistance of very favorable weather through fall and winter, plus strong markets. In FY 2014, three major wind events in the Northern Region resulted in the harvest of several thousand cords of blowdown. Also, for the multi-year sale on the south part of the Holeb Unit which was coming to an end, with the final acres lying at the end of 25+ miles of road being used only by the Bureau, we took advantage of the extended period of frozen-ground harvesting to complete the sale. Even though this resulted in several thousand extra cords being harvested, it avoided the expense of plowing all that road to finish the harvest a year later.

The average price paid to the Bureau per cord was 20% higher in FY2014 than it had been in FY2013 (and FY2013 had been 18% higher than FY 2012.) On average, the stumpage rates for individual products rose somewhat, but the increased revenue from CLS plus some better markets for utilizing hardwoods enabled the significant rise in average price per cord. The hardwood harvest of 57% of total volume continues the Bureau objective of increasing the proportion of softwoods by preferentially harvesting hardwoods: the current yield curves show softwoods producing 62% of net growth and hardwoods just 38% of that growth. Since only 5% of the hardwood volume was sawlogs and veneer, these harvests are also increasing overall resource quality and value by targeting the poorer quality and over-mature stems.

As part of its multiple use management, the Bureau will continue to emphasize maintaining the multi-year harvest volume at a level near the allowable cut, while continuing to practice the highest quality silviculture. However, operational issues and natural events can affect harvest volumes both positively (as noted above for FY 2014) and negatively, such as when economic conditions result in poor markets, and weather events reduce harvest levels.

HARVEST OPERATION CHALLENGES

In the recent past, the Northern Region had difficulties in securing contracts for harvests, especially for winter harvests. The winter is the best time to harvest wood and usually when most of the harvesting activity occurs. Contributing to the difficulty is an equipment and labor shortage, especially the latter. Since 2011, the Bureau has significantly increased the proportion of CLS contracts for timber harvest operations to create more stability for both the Bureau and contractors.

To address the threat of a spruce budworm outbreak, the Bureau has for decades discriminated against the more budworm-susceptible balsam fir when harvesting, resulting in a spruce-to-fir ratio much higher than for the state as a whole. Going forward, this fir-targeting practice will be intensified, both by taking the otherwise healthy younger fir that might have been retained in the absence of budworm, and in some alteration of harvest plans to focus on areas with higher fir components.

BOUNDARY LINES

The Bureau progressed on the maintenance of boundary lines, with 41.3 miles maintained in FY 2014. This is an area that can use more attention as additional resources become available.

EXEMPLARY MANAGEMENT MANDATE

By Maine Statute (12 MRSA § 1847) the Bureau must manage Public Reserved Lands “to demonstrate exemplary land management practices, including silvicultural, wildlife and recreation management practices.” Towards this, the Bureau’s forest management is guided by dual third party certification - the Sustainable Forestry Initiative (SFI) and the Forest Stewardship Council (FSC) programs; a Silvicultural Advisory Committee, and participation in the Cooperative Forest Research Unit (CFRU)

Forest Certification. The Bureau was awarded certification of its forestlands under the Sustainable Forestry Initiative (SFI) and the Forest Stewardship Council (FSC) programs in 2002. These third-party audits were conducted to determine if these lands were being managed on a sustainable basis. The Bureau underwent the two audit programs

simultaneously, a rigorous and unique process. The audit included a field analysis of forest management practices at selected sites around the state, and an analysis of the Bureau's financial, personnel, policy development, and record-keeping systems.

Successful completion of the FSC/SFI systems qualified the Bureau to enter into the "chain of custody" program to market its "green-certified" wood. Since 2003, green-certified wood has been marketed from Bureau managed lands.

Following its initial certification, a Bureau-wide certification team was implemented to address "conditions" and "minor non-conformances" stipulated in the audit reports, including: significant enhancements to forest inventory data; development of a computerized forest-modeling program; a timeline for updating management plans for the entire land base; improvements in the use of Best Management Practices to protect water quality; and new commitments to public outreach and education programs. The Bureau is required to meet these conditions within certain timeframes in order to keep its certification status in good standing over the five-year certification period.

Certification Accomplishments in 2014. This year the Bureau underwent the annual surveillance audits required to maintain certification between full audits. The audit was done by an agency new to BPL in 2011, Bureau Veritas. Their auditors visited sites throughout the Eastern Region, though a major early November snowfall limited where they could explore. Accompanied by the appropriate Bureau field staff, auditors looked at harvest areas on ten separate operations within the region. Auditors were especially complimentary toward the condition of recently harvested stands, several major water crossings, and recreation management, especially for aesthetics. They did find one minor crossing where the operator, instead of moving elsewhere, had used a skidder bridge in muddy conditions, resulting in some siltation. The crew was immediately moved, and the site was stabilized the following day. The proposal for increasing the Bureau harvest levels was discussed with the auditors during both the opening and closing meetings. In their opinion, this increase could be accomplished well within the standards and criteria of both FSC and SFI certification programs.

Silvicultural Advisory Committee. In 1986, the Bureau established a Silvicultural Advisory Committee with representatives from environmental groups, academia, and forest managers from public and private landowners, to review and critique forest management policies and practices on public lands. Each year the Bureau sponsors a field trip on which the Committee examines work the Bureau has completed or is planning, providing valuable input to staff through on-site dialogue.

Committee Tour in 2014: The field tour was held during August of 2014 in the Northern Region, and had numerous themes, among them harvests from stands that have had multiple harvests under BPL management, spruce budworm, cedar management, and harvest quality evaluation. On the first day the group visited several smaller lots plus the Salmon Brook Lake Bog Unit. It was on this latter tract that management of dense cedar stands and planning for the potential spruce budworm infestation were explored. On the Beaver Brook (T13T5) Public Lot we viewed a harvest from 5-6 years ago, evaluating the residual stand and the progress of regeneration, both of which are doing well.

Day two began on the Scopan Unit, where we discussed potential maple sugarbush establishment, then looked at several locations where a selection harvest was ongoing in hardwood and mixedwood stands. Possible release of high value harvests from the dominant beech regeneration was also discussed, as was appropriate harvest technology and control. From there we traveled to the Oxbow Public Lot, and looked at where terrain had dictated yarding to a Public Use Road, which is generally not Bureau practice. Here it had been done in winter, when the road was seldom used by recreationists, with very little impact on the visual character. We then visited a newly begun operation, where a second-entry selection harvest was being conducted. As with a number of Northern Region contractors, the Bureau has acquired I-Pads that are being mounted in the harvest machinery, making control and monitoring of the harvest much more efficient.

Cooperative Forest Research Unit (CFRU). The Bureau participates in a research cooperative, originally formed in 1975 in response to the spruce budworm outbreak at that time. Membership includes forest landowners (BPL and 26 private landowners representing 8.3 million

managed forest land acres), representatives of two wood processors, and 6 corporate/individual members. Together, contributions amount to approximately \$500,000 per year to support research projects of interest to the members. With the threat of another spruce budworm outbreak, research is again focused on that issue. The Bureau contributes proportionate to acres in managed timberland, approximately \$23,000/yr.

IX. TRANSPORTATION



Management Road Construction at Nahmakanta

The Bureau continued to improve road access within its public lands, focusing primarily on recreational needs and implementation of its timber management program. There are currently about 275 miles of public use roads on Public Lands.

BRIDGES

In FY 2014, the Bureau's Eastern Region rebuilt the Seboeis Stream bridge; the Western Region re-decked two bridges on the Bigelow Preserve; the Bemis Stream bridge (Richardson Unit) and the Kelly Dam Road bridge (Sandy Bay Twp Lot); and the Northern Region replaced the Imlos Stream bridge on the Telos Unit.

ROADS & ACCESS IMPROVEMENTS

Timber Management Road Construction. To facilitate both summer and winter timber harvesting activities across the state, approximately 59 miles of road were constructed or reconstructed in FY 2014.

Public/Shared Use Roads Each year the Bureau contracts for maintenance services for grading and brushwork on public use roads and shared use

roads. In FY 2014, approximately 65 miles of public use roads were maintained under contract in the Northern region, 100 miles in the Western Region, and 198 miles in the Eastern region (112 miles of public use roads and 86 miles of management roads designated for shared ATV use) for a total of 363 miles of public use/shared use road maintained under contract. These figures include 10 miles of new public use roads in the Eastern Region (8 miles of newly constructed public use road on the Seboeis unit, and 2 miles of new road on the Duck Lake and Nahmakanta Units) and 2 miles of improved public access road on the Bigelow Preserve (East Flagstaff Road) in the Western Region.

X. PUBLIC ACCESS

Eighty four percent of the Public Reserved Lands were accessible to the public without fee or special arrangements in FY 2014. There are a few circumstances where public vehicle access is limited or restricted. The following is a report of barriers that affect primary motor vehicle access *as required in 12 MRSA § 1853*.

EXTERNAL GATES TO PUBLIC LANDS

North Maine Woods Checkpoints. There are seven checkpoints, staffed seasonally, controlling primary access from Maine points to 95,000 acres of Public Reserved Land within the nearly three million acre North Maine Woods area, including Deboullie, Round Pond, Chamberlain, Telos, and portions of Seboomook. These checkpoints are all on private land and facilitate management of recreational use on both public and private land. See also discussion on fees on pages 12-13.

KI/Jo-Mary Checkpoints. The Katahdin Iron Works checkpoint controls access to the 960-acre public lot in Bowdoin College Grant East. A gate has been funded and operated by the Bureau at the border between Nahmakanta and the KI/Jo-Mary system at Henderson Brook. This controls access from Nahmakanta into the KI/Jo-Mary system. In 2009 the checkpoint was converted to an electronic gate, which is operated remotely from the Route 11 Checkpoint. See also discussion on fees on pages 12-13.

Cary Plantation, Aroostook County. A locked cable gate on private land restricts access to this 230-acre parcel.

Magalloway Plantation, Oxford County. A locked metal gate on private land restricts access to this 1,000-acre parcel.

Cupsuptic Gate, Franklin County. A staffed gate leased by the Kennebago Camp owners' Association on private lands limits access to the 62-acre public lot in Stetsontown Twp. on Kennebago Lake. A public access agreement with the Association allows up to three vehicles at any one time to access the lake via the public lot, and to park at the Grants Camps lease site located on the lot.

Davis Township Lot, Franklin County. A locked gate on the private road north of the Dallas Plantation Public Lot was added in 2010, restricting use of the Loon Lake Road out of Rangeley to access the Bureau's Davis Twp Lot on Kennebago Lake. However, this lot can still be accessed via the Bridge Road off Route 16 in Langtown Mill (Lang Twp).

Seboeis Plantation Lot, Penobscot County. A new external gate was installed on a private road by the camp owners' association, after repeated vandalism of private camps, limiting vehicular access to the 1136-acre Seboeis Plantation lot.

INTERNAL GATES

The Bureau maintains 24 internal gates for safety purposes, to protect sensitive areas, to limit vehicle traffic on service roads, or to control certain recreational uses. None of the barricades restrict foot traffic into these areas. Many of these barriers are left open during the winter season to allow safe passage by snowmobiles.

LAND OPEN TO HUNTING

Public Law, Chapter 564 of the 123rd Legislature, amending 12 MRSA § 1847 sub-§ 4 (Public Reserved Lands Statute), requires that lands open to hunting on Public Reserved Lands include at least the acreage open to hunting on January 1, 2008. Since 2008, no land has been removed from the acreage available for hunting at that time.

The law also requires the Bureau to report annually to the Inland Fisheries and Wildlife Committee the acreage of Public Reserved Lands available for hunting, and any changes from the January 1, 2008 levels. There were 587,184 acres of Public Reserved Lands on January 1, 2008; of which 586,505 were available for hunting (excludes three small game preserves). At the close of CY 2012 the Bureau reported total acreage available for hunting 600,591 acres. In June 2013 the Bureau acquired 12,046 acres on Crocker Mountain, bringing the total available for hunting to 612,637 (over 99% of Public Reserved Lands). This is the acreage available in FY 2014 as well.

XI. LAND TRANSACTIONS

ACQUISITIONS

There were no acquisitions of lands in FY 2014. The Bureau did acquire by donation several hiking trail easements in the Moosehead Region during this period, as part of the partnership effort with Plum Creek pursuant to a requirement of its Moosehead Region Concept Plan (see Recreation Highlights on page 3).

The Bureau's Forest Legacy program manages federal Forest Legacy Program grant funds and other grant funds (including Land for Maine's Future funds) and private donations that acquire forest lands with high public recreation and wildlife values and working forest easements. There were two open projects in FY 2014: Orbeton Stream Forest easement in Madrid, Franklin County (a 5,774 acre- working forest); and East Grand Lake -Orient in Aroostook County (5,992 acres in fee, and 1,494 acres in working forest conservation easement). In addition, in FY 2014 the Bureau was a partner in processing grant agreements for two Forest Legacy grants for projects selected for FY 2014 federal funding: Cold Stream Forest Project in Somerset County, a fee acquisition of 8,150 acres focused on brook trout and deer wintering habitat, and Little W Twp inholding to the Seboomook Unit, a 72-acre fee acquisition.

IMPACTS TO VEHICULAR ACCESS

Pursuant to various sections of law, "if an acquisition is made that does not include guaranteed public vehicular access; the Bureau shall describe the acquisition (in this report) and the

justification for that acquisition.” There were no land acquisitions in FY 2014.

DISPOSTIONS

There were no dispositions of Public Lands in FY 2014.

XII. SUBMERGED LANDS

These lands are managed under the Public Trust Doctrine to ensure protection of the public trust rights of fishing, waterfowl hunting, navigation, and recreation. The Submerged Lands Program plays an important role in maintaining a balance among competing uses of submerged lands and resolving conflicts between public trust rights and the demand for private and commercial uses of these lands.

Project/Permit Applications. In FY 2014, the Submerged Lands Program processed 136 applications for proposed and existing waterfront structures and dredging projects. Sixty three (63) leases and easements were granted and an additional 73 projects were determined to require no conveyance. With these new projects, the program now administers 1,996 conveyances.

Lease Rental Rate Changes. In 2010, the Program began implementing the lease rental rates that were approved by the legislature to improve equity statewide in conjunction with the repeal of a \$1,200 annual rental cap in 2009. The new rent structure provides fair compensation while reducing the average rental rates. In FY 2014, the Program continues its 5-year phase-in of rents for larger lease holders.

Constructive Easements. The Program continues to research information on constructive easements (structures in existence prior to October 1, 1975) to identify those that may require a submerged lands conveyance. To date, the Program has executed 873 new leases and easements for these structures.

Sunken Logs. One application to recover sunken logs from public submerged lands at Moosehead Lake was received in FY 2014. In total, 72 logs were recovered with a total volume of 8,240 board feet.

Water Quality Monitoring. In 2009, the legislature authorized funding from the submerged lands leasing program be provided to support water quality monitoring efforts at the Department of Marine Resources shellfish program. Funding at \$80,000 per year has been extended through FY 2016.

Tidal Energy Pilot Project. In 2012, the first tidal energy pilot project was installed on the seafloor at Cobscook Bay with testing and environmental monitoring continuing through FY 2014. Power generated by the facility connects to the grid by a submarine cable to the shore at Lubec. Eighty percent of the lease revenue is directed to the Renewable Ocean Energy Trust Fund and is utilized by the Department of Marine Resources for fisheries research and mitigation efforts associated with offshore energy projects.

XIII. SHORE AND HARBOR MANAGEMENT FUND

In 1991, the Legislature created the Shore and Harbor Management Fund in anticipation that annual revenues from the Submerged Lands Program would exceed operating costs. These funds could then be used to support shore and harbor management activities and improve public access.

In FY 2014, funds were provided to continue the rehabilitation of the public access pier at Colonial Pemaquid, begin the Maine Coast Mapping Initiative and support municipal harbor planning efforts such as improving pedestrian access to Wiscasset's waterfront. In addition, \$50,000 was provided to the Maine Island Trail Association in support of our continuing partnership for ongoing recreation management of State owned coastal islands.

XIV. COASTAL ISLAND PROGRAM

OVERVIEW

Maine's Coastal Island Registry was created in 1973 by the 106th Legislature as a means of clarifying title to 3,166 coastal islands by establishing and registering ownership. Most island owners have registered their islands. The Program

continues to receive periodic requests to register an island or make changes in existing registrations (address or ownership changes). There are also many requests for ownership information from persons with a general interest in Maine islands.

The Maine Island Trail is a water trail extending along the entire coast of Maine and includes both publicly and privately owned islands. The Bureau continues its partnership with the Maine Island Trail Association in the management and oversight of the State-owned islands on the Trail. In addition, the Bureau provides a brochure "Your Islands and Parks on the Coast" showing the location of approximately 40 State-owned islands suitable for recreational use and explaining the Bureau's visiting, camping, and resource protection policies.

V. ADMINISTRATION

OVERVIEW

The Bureau's forest management staff has increased by one position since 2002 (a forest technician position was filled in the Eastern Region in 2011), while acreage being managed has increased by 143,000 acres. Increased use of Contracted Logging Services, and increased harvesting from recent adjustments to annual allowable cut are expected to increase demands on administrative and forest management staff.

There also have been no staff increases for land management support, including management plans (required statutorily and for forest certification); or for easement and project agreement monitoring corresponding to the increased demands for these responsibilities over the last two decades. The Bureau now holds 64 easements which, since 2007, by statute must be monitored at least once every 3 years, and the 17 Forest Legacy easements (90% of the easement acreage) must be monitored annually. In addition, the Bureau has acquired over 100 LMF project agreements in the last 15 years. The Bureau continues to explore and utilize new technology and contracting to address this growing workload.

LEASES

Camplot Leases: The Bureau administers a Camplot Leasing Program for 291 residential camplots and 10 commercial sporting camps and campgrounds across the state. In FY 2014, the Bureau reissued camplot leases for a new five-year term (2013-2017), and made adjustments to the lease rental schedule to reflect any recent increases in tax-assessed values. The Bureau has a statutory requirement to charge lease fees based on these values. The camplot program also administers 8 tent site rental agreements.

Other Leases: The Bureau administers 62 leases on public lands, for a variety of purposes as shown below. These leases have terms that range from 5 to 25 years. 27 include annual lease payment provisions, and the remainder involve no payment or payment of a one time administrative fee to the Bureau. Leases in FY 2014 included:

- 17 utility corridor leases
- 10 agricultural leases
- 6 telecommunication facility leases
- 20 miscellaneous leases
- 1 dam lease
- 1 boat access lease
- 3 warden camp leases
- 1 University camp lease
- 2 University seismic research leases
- 2 Sugarbush leases

The no-rent leases include state lands leased to communities; recreation associations such as the Capital Area Recreation Association (CARA) ball fields in Augusta; nonprofit environmental organizations such as the Viles Arboretum in Augusta; municipal utilities for waterlines and pumping stations; and the Maine Warden Service for staff housing in remote locations. All no-rent leases either allow public access or are providing a public service.

Communications
Tower on
Bald Mountain
Unit
Rangeley



XVI. INCOME AND EXPENDITURES ACCOUNTING – FY 2014

OVERVIEW

The Public Lands Program (Lands Program or Program) has several different accounts established for specific purposes with statutory restrictions on their use. The Program is funded entirely from dedicated fund sources with no General Fund support. **The revised statutes require that financial summaries be prepared on a fiscal year basis instead of the previous calendar year summaries.** The figures presented below may not compare to those reported in previous years on a calendar year basis.

Public Reserved Lands Management Account (014.01A.Z239.22)

This account is restricted to uses related to the management of lands that have Public Reserved Lands status, which includes the original public lots, land acquired through trading Public Reserved Lands, and other lands designated as Public Reserved Lands. Sources of income to this account include revenue generated from the harvest of forest products, camplot leases and other special leases on the Reserved Lands, and interest on the account balance. In FY 2014, the Lands Program conducted timber harvests that yielded over 177,000 cords.

At the same time, expenses for personnel services, vehicle operations, information technology, and management costs for non-revenue generating activities have increased. Income for fiscal year 2014 was \$8,576,406 with expenditures of \$5,358,064. Because the Program's largest source of revenue is timber, income fluctuates from year to year in response to the amount of wood harvested and economic conditions that affect timber markets. The cash balance is drawn down when expenses exceed revenues. Revenue generated in fiscal year 2014 was \$3,218,342 more than expenditures, resulting in an account balance of \$5,919,450 as of June 30, 2014.

Income from the Reserved Lands Account supports most of the administrative, planning, timber, transportation, recreation, and wildlife management activities on the land base. The increase in revenue described above will support the increased cash balances needed for contracted logging services, and the Bureau's overall ability to support the Lands management program.

Not shown in either the income or expenditure figures above are the portion of monies received from camplot leases and timber sales that are shared with towns and plantations pursuant to 12 MRSA §1854. Based on the income received in calendar year 2013 (payable in 2014), the Lands Program revenue sharing amounts total \$182,889.53 paid to 15 towns and plantations.

Public Nonreserved Lands Management Account (014.01A.Z239.23)

This account is used for the management of lands not in the Public Reserved Lands System. These Nonreserved Public Lands include institutional lands (those lands considered surplus by other State agencies) assigned to the Bureau's Lands Program for natural resource management, and coastal islands. Income is primarily derived from agricultural leases, though the sale of timber contributes occasionally when timber harvests are completed on Nonreserved Lands. Income for fiscal year 2014 was \$3,727 with no expenditures ending with a cash balance of \$21,163. The cash balance is drawn down when expenses exceed revenues. The Lands Program plans its expenditures for each fiscal year based on a level of income it projects to receive from its various revenue sources. If projected income is not sufficient, then the Program determines whether the balance in its contingency fund is sufficient to carry it through until additional revenues are received. If both revenue projections and contingency funds are insufficient, then the Program postpones planned expenditures until revenue returns to an adequate level.

Submerged Lands Account
(014.01A.Z239.27)

The Submerged Lands Account is comprised of funds generated from leases and easements on the State's submerged lands. Most of the fund's income is derived from leases of coastal waterfront properties to allow commercial uses such as marinas, piers, and boatyards. Additional revenues were generated from application and easement registration fees and the sale of gravel. The legislature directed on-going transfers from the Submerged Lands Fund to the DMR Shellfish Fund of \$80,000 per year. Total revenues in fiscal year 2014 were \$800,623 with expenses of \$221,542. In addition, transfers of \$80,000 to DMR and \$700,000 to the Shore & Harbor account were made from the cash balance. The cash balance is drawn down when expenses exceed revenues. Funds for personnel services (salaries) comprise the majority of the program's budget. The cash balance at the end of fiscal year 2014 was \$529,216.

Shore and Harbor Management Fund (014.01A.Z239.29)

A Shore and Harbor Management Fund was established in 1991 to provide grants to municipalities and state agencies for harbor planning, public access, and similar local management activities on submerged lands. This account receives funds from the Submerged Lands account when income from leases exceeds the operating costs of the program. In 2014, \$700,000 of revenue was transferred from the Submerged Lands Fund. The Maine Coastal Program received a cash transfer \$150,000 with \$20,000 for municipal grants and \$130,000 for their Ocean Mapping Project. Other expenses in fiscal year 2014 were \$214,287 with \$60,000 for the management of the Maine Island Trail and Casco Bay state-owned islands and \$154,287 to support the Colonial Pemaquid Pier Project. Total revenues in fiscal year 2014 were \$700,502 from transfers from the Submerged Lands Fund and interest. This revenue contributed to a fiscal year-end balance of \$500,051.

Land Acquisition Fund
(014.01A.Z239.24)

Funds from this account are restricted by statute and the constitution to the acquisition of conservation lands, and acquisition-related costs. These funds cannot be used for operation or maintenance of existing land, and therefore, expenditures do not take place on a regular basis. Income that accrues as a result of sales, trades, or interest is carried forward until needed for future acquisitions. Income for fiscal year 2014 was \$994 against expenditures of \$25,708. Balance at the end of the fiscal year was \$771,762.

Income this year was derived from interest earned on the account balance and a few federal grant reimbursements. Expenses included various acquisition-related costs such as surveys and appraisals. In all cases, funds were expended in conjunction with other funding sources outside of the Bureau. Funds from this account are restricted by constitutional amendment (Article IX, Section 23) to the acquisition of lands having significant conservation and recreation value in the same county in which the sale of lands generating the funds took place.

Nonreserved Land Acquisition Fund
(014.01A.Z239.37)

This account was established to receive revenue from the sale of Public Nonreserved Lands. There was no income or expenses for fiscal year 2014. Balance at the end of the fiscal year was \$219,227 which was the same as the year before. Funds from this account are restricted by constitutional amendment (Article IX, Section 23) to the acquisition of lands having significant conservation and recreation value in the same county in which the sale of lands generating the funds took place.

Mackworth Island Trust Fund
(014.01A.Z239.30)

Section 2 of Chapter 102 Public Law 1998, authorized the proceeds from the sale of a 157 acre Bureau of Parks and Public Lands property in Colorado to be invested as a separate trust fund and managed by the State Treasurer for the benefit of Mackworth Island. In November 1999, the Colorado property was sold. The proceeds of \$60,000 have been deposited into this trust fund. A non-lapsing account receives interest income from the trust fund. This account is used to manage public recreational activities and related resources on land under the Bureau's care on Mackworth Island in Falmouth. Income for fiscal year 2014 was \$1,443 with no expenditures. The cash balance at the end of fiscal year 2014 was \$19,402 from the interest accrued to date.

Forest Legacy Fund
(013.01A.Z239.35)

This account was established to receive grant revenue from the federal Forest Legacy Program for purchase of unique valuable land and interests in land. Land acquisition projects are reviewed and approved at the national level. We also receive annual administrative grants that support the pre-acquisition costs for the Forest Legacy land purchases. Land for Maine's Future funds are typically used as match for these Forest Legacy grants to purchase land and interests in land. Total acquisition expenses in fiscal year 2014 were \$126,891.70 which included \$34,377.80 in administrative grant expenses. Total Forest Legacy revenues in fiscal year 2014 were \$146,951.78. At the end of fiscal year 2014 the account had a balance of \$5,704 for associated DICAP charges with the administrative grant.

Coastal Island Registry Fund
(014.01A.Z241.26)

This account was established to review new applications for island registrations. Most private coastal island titles have been reviewed so current program activity involves providing information to the public and occasionally reviewing application and deed information. Income for fiscal year 2014 was \$130 with no expenses. The cash balance at the end of fiscal year 2014 was \$920.

XVII. FINANCIAL REPORT FOR FY 2016

OVERVIEW

Pursuant to Title 12 M.R.S.A., Sections 1839 and 1853 the Joint Standing Committee on Agriculture, Conservation, and Forestry must review allocations for the Bureau of Parks and Lands dedicated funds and revenue accounts pertaining to Public Reserved and Nonreserved Lands for the upcoming fiscal year, and submit a written report to the Joint Standing Committee on Appropriations and Financial Affairs by March 15th. To assist in the preparation of that report, the Bureau is submitting information regarding Bureau income, expenditures, and management of the following nine dedicated accounts:

- *Public Reserved Lands Management Fund*
- *Public Lands Management Fund (Nonreserved Public Lands)*
- *Public Reserved Lands Acquisition Fund*
- *Public Nonreserved Lands Acquisition Fund*
- *Submerged Lands Fund*
- *Shore and Harbor Management Fund*
- *Coastal Island Registry*
- *Mackworth Island Trust*
- *Forest Legacy Fund*

These accounts derive revenue from the sale of forest products, from lease fees, from interest on cash balances, and from the sale of land. Programs funded by these accounts receive no support from the State's General Fund. The dedicated revenues in these accounts, supplemented by grants and other outside sources of revenue, must cover all operating expenses. The Bureau plans its expenditures for each fiscal year based on a level of income it projects to receive from its various revenue sources. If projected income is not sufficient, then the Bureau determines whether the balance in its contingency fund is sufficient to carry it through until additional revenues are received. If both revenue projections and contingency funds are insufficient, then the Bureau postpones planned expenditures until revenue returns to an adequate level. The Bureau has established internal financial management procedures to accomplish this process and reviews budgetary matters on a monthly and quarterly basis.

The Bureau continues to manage the State-owned Public Reserved and Nonreserved Lands (the "Public Lands Program") to produce timber on a sustained yield basis and within established levels for allowable harvest to generate revenue to support resource protection, wildlife, and recreation programs. The addition of new lands and management responsibilities places increasing demand on the Bureau. Recent increases in revenue in the Public Reserved Lands Management Fund are used to meet these additional responsibilities. Presented below are the FY 2016 budget allocations proposed for each of the ten dedicated accounts within the Bureau's Public Lands Program. These allocations represent the limits within which the Bureau must operate.

FY 2016 ACCOUNT SUMMARIES

1. Public Reserved Lands Management Fund Account # 014.01A.Z239.22

Income		Expenses	
Earnings on Investments	\$11,000	Personal Services	\$3,386,400
Rent of Lands*	\$920,000	All Other (not including STACAP)	\$1,245,489
Grants from State Agencies	\$150,000	Capital	\$0
Camplot Leases*	\$400,000		
Misc Rents & Leases	\$12,000		
Recreational Use of Lands	\$14,000		
Registration Fees	\$25,000		
Sale of Stumpage *	\$1,629,558		
Sale of Forest Products *	\$2,771,431		
Sale Timber/Gravel/Grass	\$2,400		
Recovered Cost	\$29,000		
Reg Transfer Personal Svcs	\$37,500		
Legis Transfer of Revenue	(\$118,279)		
DICAP**	(\$593,084)	STACAP	\$176,511
Total Income	\$5,290,526	Total Expenses	\$5,318,144.00

* Represents the major components of the Division's income stream.

** Consistent with state accounting practices, DICAP is shown as a "revenue debit," although it is actually an expenditure.

The Public Lands Program, as of June 30, 2014, had an account balance of \$5,919,450 in the Public Reserved Lands Management Fund which serves as its contingency fund. Because most of the Program's timber harvesting takes place during the winter (to minimize environmental impacts and potential conflicts with recreational users), there is a significant seasonal fluctuation in income. The contingency fund enables the Program to operate during the first half of the fiscal year when income is low and expenses are relatively constant. It also serves as a buffer to cover operating costs when expenses exceed revenues.

Increases in annual allowable cut (AAC) and transition from stumpage sales to contract logging services have resulted in increased revenue, and a need for increased cash balances to support contract logging services. Increased revenues will also support increased costs for personnel services, vehicle operations, information technology, management costs for non-revenue generating activities such as conservation easement monitoring, as well as deferred maintenance, development and installation of a continuous forest inventory system, management activities related to a potential outbreak of spruce budworm, and commitments to develop or expand recreational facilities.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Sale of Forest Products	\$1,923,569	All Other	
DICAP	(\$122,200)	Professional Services	\$640,000
		Rents (CFM)	\$100,000
		Road Maintenance	\$200,000
		All Other - STACAP	\$36,369
		All Other Subtotal	\$976,369
		Roads/Bridges Construction & Materials	\$825,000
		Capital Subtotal	\$825,000
TOTAL	\$1,801,369	TOTAL	\$1,801,369

This initiative provides funding for increased operating expenses including repairs to roads, maintenance contracts, capital construction materials and capital improvements to bridges and roads. Revenues are expected to increase from the harvest of additional timber from public lands at sustainable levels. Increases in all other are requested to address increased road repair and maintenance as well as other increases in operating costs to include contract costs for forest certification, Central Fleet Management rates, building rental rates, along with development of permanent inventory plots (continuous forest inventory), and the potential need to protect high value/importance forest stands from spruce budworm. The capital requests are for routine capital improvements on roads and bridges to support expanded timber harvest operations and maintain recreational trails and sites used by the public.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Sale of Stumpage	\$178,000	Capital - Equipment	\$178,000
TOTAL	\$178,000	TOTAL	\$178,000

This initiative provides funding for capital equipment replacements and new equipment.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Misc Rents & Leases	\$46,844	Personal Services	(\$237,998)
Sale of Stumpage	\$273,752	STA-CAP	(\$9,208)
Transfer unallocated	(\$166,953)		
TOTAL	\$153,463	TOTAL	(\$247,206)

These initiatives reallocate several positions due to the reorganization moving Public Lands to the Bureau of Forestry.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
		Personal Services	(\$79,212)
TOTAL		TOTAL	(\$79,212)

This initiative eliminates one vacant Forester I position.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Rent of Lands	\$19,970	Personal Services	\$19,970
TOTAL	\$19,970	TOTAL	\$19,970

This initiative provides funding for the approved reclassification of 3 Forester I positions.

2. Public Nonreserved Lands Management Fund Account # 014.01A.Z239.23

Income		Expenses	
Earnings on Investments	\$0	All Other (not including STACAP)	\$32,761
Rent on Lands and Buildings	\$2,500	Capital	
Sale of Stumpage	\$33,580	STACAP	\$761
DICAP**	(\$2,558)		
Total Income	\$33,522.00	Total Expenses	\$33,522.00

** Consistent with state accounting practices, DICAP is shown as a "revenue debit", although it is actually an expenditure.

The account has a balance of \$21,163 at the end of fiscal year 2014, which is used as a contingency fund to cover expenses that occur between the relatively small and infrequent timber harvests on these lands. Timber harvests scheduled for FY 15/16 will generate sufficient income to cover budgeted expenses.

3. Public Reserved Lands Acquisition Fund Account # 014.01A.Z239.24

Income		Expenses	
Earnings on Investments	\$2,100	All Other (not including STACAP)	\$201,672
Sale of Land	\$233,592	Capital	0
DICAP**	(\$26,217)	STACAP	\$7,803
Total Income	\$209,475.00	Total Expenses	\$209,475.00

** Consistent with state accounting practices, DICAP is shown as a "revenue debit", although it is actually an expenditure.

By statute, the money in this account is used only for purposes related to the acquisition of interest in land. Lands purchased with the funds from this account have Public Reserved Land status. These funds are necessary to acquire rights-of-ways, in-holdings, conservation easements, and additions to the existing land base. As in most years, it is difficult to predict the timing, income, and expenditures involved in potential land transactions. This budget allows the Bureau, if the opportunity arises, to acquire land or other interests within the available allocation. The "All Other" expenses are used to cover the cost of legal assistance for title searches, drafting deeds, appraisals, and related items. At the end of fiscal year 2014 this account had a balance of \$771,762. Funds generated from sales of properties may only be used for land acquisitions in the same county as required by the Constitution. This limits the Bureau's ability to use this fund to pursue acquisition projects in counties without funds.

4. Public Nonreserved Lands Acquisition Fund Account # 014.01A.Z239.37

Income		Expenses	
Earnings on Investments	\$0		
Sale of Land	\$70,754	All Other (not including STACAP)	\$60,542
DICAP**	(\$7,870)	STACAP	\$2,342
Total Income	\$62,884.00	Total Expenses	\$62,884.00

** Consistent with state accounting practices, DICAP is shown as a "revenue debit", although it is actually an expenditure.

The money in this account is used only for purposes related to the acquisition of interest in nonreserved land. Lands purchased with the funds from this account have Public Nonreserved Land status. These funds are necessary to acquire rights-of-ways, in-holdings, conservation easements, and additions to the existing land base. As in most years, it is difficult to predict the timing, income, and expenditures involved in potential land transactions. This budget allows the Bureau, if the opportunity arises, to acquire land or other interests within the available allocation. The "All Other" expenses are used to cover the cost of legal assistance for title searches, drafting deeds, appraisals, and related items. At the end of fiscal year 2014 this account had a balance of \$219,227.

5. Submerged Lands Fund Account # 014.01A.Z239.27

Income		Expenses	
Earnings on Investments	\$2,200	Personal Services	\$207,477
Rent of Lands	\$940,388	All Other (not including STACAP)	\$70,696
Reg Transfer Personal Svcs	(\$37,500)	STACAP	\$10,714
Transfer to S&H	(\$500,000)		
DICAP**	(\$36,001)		
Legis Transfer of Revenue	(\$80,000)		
Total Income	\$289,087	Total Expenses	\$288,887

** Consistent with state accounting practices, DICAP is shown as a "revenue debit," although it is actually an expenditure.

Most of the rental income for the program is not received until late in the fiscal year because rent payments are due in February. Like the Public Reserved Lands account, the Submerged Lands account carries a balance that funds the program through the first portion of the fiscal year. This account had a balance of \$529,216 at the end of fiscal year 2014. In 2011, the Bureau began implementing a revised lease fee schedule adopted in 2009 with larger rental fees being phased in over a 5-year period ending in 2014. As revenues improve over the phase-in period, the Bureau will continue to carefully manage expenses and anticipates transferring more of the balance to the Shore and Harbor Management Fund.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Rent of Lands	\$35,061	Prof Services-not by state	\$30,000
DICAP	(\$3,900)	STACAP	\$1,161
TOTAL	\$31,161	TOTAL	\$31,161

This initiative provides funding for increased contract costs for structure inventory and scanning application records.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Rent of Lands	\$150,000		
Transfer to S&H	(\$150,000)		
TOTAL	\$0	TOTAL	\$0

This initiative provides funding for ongoing grant expenditures and special projects (based on MOU with Coastal program).

Note: This account is proposed to be changed to account # 014.01A.Z241.27 in the budget.

6. Shore and Harbor Management Fund Account # 014.01A.Z239.29

Income		Expenses	
Earnings on Investments	\$500	Grants to Cities & Towns	\$150,085
Transfer from Submerged Lands	\$580,000	Grants to Public/Private Agencies	\$50,442
Total Income	\$580,500	Total Expenses	\$200,527

This account was set up by the legislature in 1991 in anticipation that the Submerged Lands Program would eventually yield revenues that could provide benefits to the public beyond what was needed to administer the program. These funds are set aside in a special account and made available to municipalities and state agencies for grants to enhance shore and harbor management, planning, and public access efforts. A portion of the fund is also available to support management programs on coastal islands under the Bureau's jurisdiction. As noted above, with the implementation of a new lease fee schedule, the Bureau anticipates improved funding for municipal coastal planning and public access projects over the next several years. At the end of fiscal year 2014 this account had a balance of \$500,051.

New Initiative

Dedicated Revenue	Income	Requested for 2016	Expenses
Transfer from Submerged Lands	\$150,000		
Transfer to Coastal Program	(\$150,000)		
TOTAL	\$0	TOTAL	

This initiative provides funding for ongoing grant expenditures and special projects (based on MOU with Coastal program).

Note: This account is proposed to be changed to account # 014.01A.Z241.29 in the budget.

7. Coastal Island Registry Fund Account # 014.01A.Z241.26

Income		Expenses	
Registration Fees	\$107	All Other (not including STACAP)	\$105
		STACAP	\$2
Total Income	\$107	Total Expenses	\$107

Funding in this program covers the cost of reviewing new applications for island registrations. Most private coastal island titles have been reviewed and current program activity, for the most part, involves providing information to the public and occasionally reviewing application and deed information. At the end of fiscal year 2014 the account had a balance of \$920.

8. Mackworth Island Trust # 014.01A.Z239.30

Income		Expenses	
Earnings on Investments	\$4,563	All Other (not including STACAP)	\$3,904
DICAP**	(\$508)	STACAP	\$151
Total Income	\$4,055	Total Expenses	\$4,055

** Consistent with state accounting practices, DICAP is shown as a "revenue debit", although it is actually an expenditure.

This account is used to manage public recreational activities and related resources on land under the Bureau's care on Mackworth Island in Falmouth, Maine. Section 2 of Chapter 102 Public Law 1998, authorizes the proceeds from the sale of a 157 acre Bureau of Parks and Lands property in Colorado to be invested as a separate trust fund and managed by the State Treasurer for the benefit of Mackworth Island. In November 1999, the Colorado property was sold. The proceeds of \$60,000 have been deposited into this trust fund. A non-lapsing account receives interest income from the trust fund. At the end of fiscal year 2014 the account had a balance of \$19,402, over and above the principle.

Note: This account is proposed to be changed to account # 014.01A.Z241.30 in the budget.

9. Forest Legacy Fund # 013.01A.Z239.35

Income		Expenses	
Federal Grants	\$41,148	All Other (not including STACAP)	\$36,500
DICAP**	(\$3,591)	STACAP	\$1,057
Total Income	\$37,557	Total Expenses	\$37,557

** Consistent with state accounting practices, DICAP is shown as a "revenue debit", although it is actually an expenditure.

This account is used for Forest Legacy grant expenses related to the acquisition of nationally approved Forest Legacy land parcels and any associated pre-acquisition costs. The figures above represent the All Other pre-acquisition budget. For the land acquisitions, financial orders are sent to the Governor for signature and to establish the capital needed for the land purchase. Land For Maine's Future funds are typically used as match for these Forest Legacy grants to purchase land. At the end of fiscal year 2014 the account had a balance of \$5,704 for the associated DICAP charges.

XVIII. CONCLUSION

Expenditures will be managed to operate within the Bureau's financial means for all accounts.

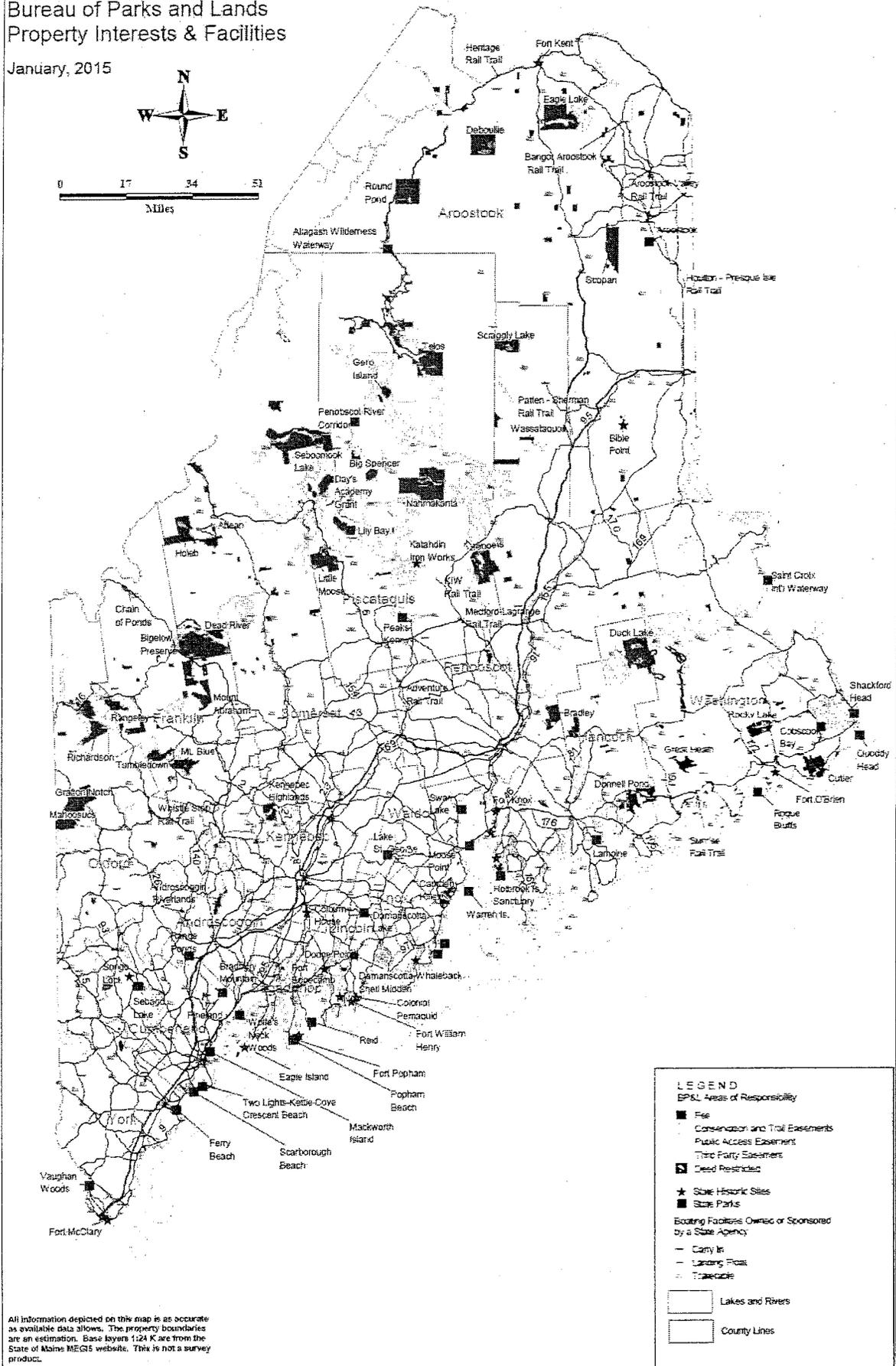
After three successive years of revenue exceeding expenditures, the Public Reserved Lands Management Fund is in position to meet increasing demands to cover rising costs in such areas as personnel services, health care, vehicle rental, information technology, and public information, while assuming management responsibility for more non-revenue generating acres and activities.

The annual allowable cut was increased in 2013 as a result of the recently completed timber inventory, and further increases will be realized with adjustments to the applied discount rate, and if stocking levels are reduced by 1.5 cords per acre, from 23 to 21.5 cords. The increase in allowable cut based on inventory growth, adjustments to the discount rate, and further reduction in stocking levels over time would suggest annual allowable cut targets of 160,000 cords for FY16 and 180,000 cords for FY17. This increased harvest effort will place increased demands on staff related to timber management responsibilities and will need to be balanced with continued demands related to non-timber responsibilities, including recreation.

These increased harvest volumes, coupled with the transition from stumpage sales to contract logging services for many sales, will result in increased revenue and improved financial stability to the Public Reserved Lands Management Fund. Funds are now available to support the increased cash balances needed for contracted logging services, invest in forest management activities such as timber stand improvements, forest inventory, and protection initiatives. In addition, funds should be adequate to address deferred operational activities such as boundary line and road maintenance, pursue commitments in adopted management plans to develop recreational facilities, and address capacity issues related to operational and support staff, as well as the growing responsibilities related to conservation easements.

Department of Agriculture, Conservation & Forestry
 Bureau of Parks and Lands
 Property Interests & Facilities

January, 2015



All information depicted on this map is as accurate as available data allows. The property boundaries are an estimation. Base layers 1:24 K are from the State of Maine MEGIS website. This is not a survey product.