

A Guide to Forming Road Associations



October 2019

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 State House Station | Augusta, Maine 04330-0017
www.maine.gov/dep | (800) 452-1942

ACKNOWLEDGEMENTS

The York County Soil and Water Conservation District (SWCD) created the original version of this manual in July 2004, with support from the Maine Department of Environmental Protection, Kennebec County SWCD, Cumberland County SWCD, Androscoggin Valley SWCD, the Maine Department of Transportation, FB Environmental Associates, and Dyer, Goodall & Denison Attorneys at Law. Revisions to reflect the amended private way fee assessment method (23 M.R.S. § 3103) were made March 2007. Major revisions were made in October 2009. Other revisions were also made in 2014 and 2019.

October 2009 Revision:

Project Coordinator: Kristin Feindel – Maine Department of Environmental Protection
Legal Review: Clifford H. Goodall – Dyer, Goodall and Denison, Augusta, Maine

Great appreciation goes to the following for their dedicated guidance and assistance:

Betsy Connor Bowen – Maine Alliance for Road Associations
Bill Gannon – 13th Street Road Association, Acton
Wendy Garland – Maine Department of Environmental Protection
Maggie Shannon – Maine Congress of Lake Associations

July 2014 & October 2019 Revisions:

Project Coordinators: Kristin Feindel & Amanda Pratt – Maine Department of Environmental Protection

2013 and 2017 updates to the Private Ways Law were incorporated, additional legal disclaimers were added, and web links were updated.

Copies of this document can be obtained from your local Soil and Water Conservation District or the Maine Department of Environmental Protection, or online at <https://www.maine.gov/dep/land/watershed/roadassociation.html> (please see last page of this document for contact information).

DISCLAIMER

This handbook is produced as a general, informal guide, and does not constitute legal advice about particular legal questions. You should consult with an attorney if you have any legal questions about road associations.

DEP Doc #DEPLW-1071

Table of Contents

INTRODUCTION.....	1
I. Benefits of Forming a Road Association	1
II. Types of Road Associations	3
Informal/Ad hoc Road Associations	3
Formal Road Associations	4
Characteristics of the 3 Types of Road Associations.....	7
HOW TO FORM A FORMAL ROAD ASSOCIATION	8
I. How to Start: Convene a Steering Committee	8
II. Planning to Get a Road Association Up and Running: What the Steering Committee Needs to Do.....	8
1) Develop a Mission Statement	8
2) Develop a Maintenance Plan and Budget.....	9
3) Develop an Association Budget.....	9
4) Determine Maintenance Fees.....	10
5) Develop Bylaws	13
6) Develop Recommendations for the Road Commissioner or Board	13
7) Hold an Informational Meeting.....	14
III. The Organizational Meeting.....	16
Statutory Road Association Organizational Meeting.....	16
Nonprofit Corporation Road Association Organizational Meeting	17
IV. After the Organizational Meeting: What To Do Next.....	18
Notify All Owners	18
If You are a Statutory Road Association – Consider Joining MARA ...	18
If You are a Nonprofit Corporation – File Forms and Annual Report ..	18
Implement Your Maintenance Plan.....	19
Hold Annual Road Association Meetings.....	19
RESOURCES	20
Online Appendices.....	20
Resource Directory	21

INTRODUCTION

This manual is intended to assist private road residents who would like to have a successful road maintenance program by forming a road association. Forming a road association can provide a way for road users to formally manage their roads in an organized and cost-effective manner. While the focus of the manual is on camp roads in lake and pond watersheds, most sections should be useful for all private roads.

I. Benefits of Forming a Road Association

1) **Improve road safety and drivability.**

The primary benefit is that having a maintenance program ensures the road is maintained so that the road will be free of potholes, ruts, and other problems that make the road dangerous and difficult to travel on.

2) **Reduce maintenance costs over time.**

Another major benefit is as Yankee thrift advises: an ounce of prevention is worth a pound of cure. In the long run, having and using a preventative road maintenance program really is less expensive than paying to fix a road once it has developed significant problems - and this process can be undertaken with much less effort when fellow road users join together.

\$1 spent in routine maintenance will save \$15 in capital repairs.

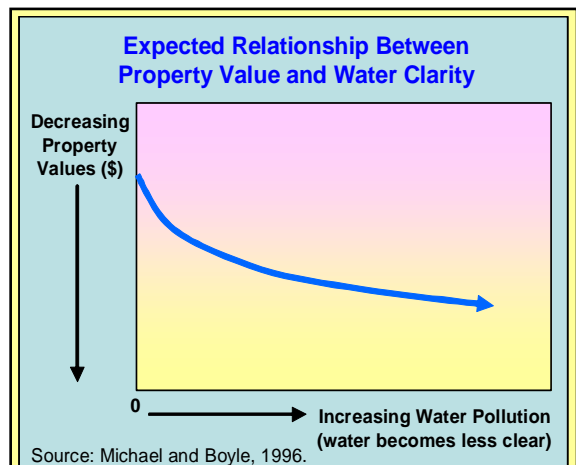
-Camp Road Maintenance Manual

3) **Provide liability protection for association members.**

Without a formal road association, whoever makes road maintenance decisions could be liable if anyone gets injured using the road. A formal road association provides limited immunity from civil liability for the association decision makers and an association can purchase liability insurance for the protection of the road commissioner, board of directors, and members. (23 M.R.S. § 1301(7), (9))

4) **Sustain the clarity and quality of your lake's water.**

An effective camp road maintenance program will also help protect your lake or pond from the negative impacts of soil erosion from your road. Many camp roads were either not properly constructed, or not properly maintained, or both. Because of this, rain and melting snow runoff erode the road. Soil erosion is actually the single largest pollutant source (by volume) to Maine lakes, and much of this is from camp roads. See the next page for more discussion of this connection.



5) **Protect the value of your lakefront property investment.**

Another consideration is the potential decrease of property values as a result of

For every 3 foot decline in water clarity, shorefront property values can decline as much as 10-20%.

- University of Maine Study

declining lake water quality. Due to soil erosion's impact on lake water quality, poor maintenance of your road could actually result in lowered value of your property. This is a strong financial incentive to join together with fellow road users to protect your individual and collective investments. Having a road association can also help to protect property values and marketability since many banks and the secondary mortgage market may deny construction and mortgage loans for properties on private roads that do not have road associations.

6) Establishing a road association can also:

- help open the lines of communication among community members
- provide a framework for centralized decision-making
- improve planning for and implementation of road maintenance
- legitimize the collection of road dues
- set up an impartial and efficient means for managing money
- establish legal authority
- allow possible use of town funds and equipment for road repair

The Impact of Camp Road Erosion on Lakes

How Do Camp Roads Impact Water Quality?

Camp roads frequently change natural stormwater drainage patterns. These changes can increase the potential for soil erosion by:

- reducing the ability of water to soak into the ground by stripping away the protective vegetative cover
- creating highly erodible pathways of exposed soils
- collecting drainage on the road and in ditches, increasing the overall flow, speed and volume of the runoff

How Does This Affect the Lake?

The nutrients attached to camp road sediment particles can be bad news for lakes. Phosphorus, a nutrient that is common on land, is a primary food for all plants, including algae. In natural conditions, the scarcity of phosphorus in a lake limits algal growth. However, when a lake receives extra phosphorus in the form of camp road sediment particles, algal growth increases dramatically. Sometimes this growth causes choking algal blooms, but more often it results in small, negative changes in water quality that, over time, damage the health and aesthetics of the lake.

When you see the water turn brown, sediment has been eroded into the lake. This suspended sediment can:

- irritate the gills of fish, making them prone to disease
- smother fish spawning and feeding grounds
- gradually fill in near shore, resulting in the loss of desirable shoreline (due to encroaching weeds, for instance)
- cause algal blooms, resulting from the attached phosphorus
- reduce levels of dissolved oxygen, resulting in fewer cold-water fish (i.e., salmon and trout)
- diminish recreational and aesthetic values of the lake



Improperly constructed and/or maintained shore-side roads can result in sedimentation to lakes and ponds.

II. Types of Road Associations

Road associations can be loosely formed or highly organized. Generally, the more organized the association, the easier it is to maintain the road and share the cost. Following are the basic types of organizations that are available for formation of a road association for an existing private road in Maine.

3 Types of Road Associations:

- * Informal or Ad hoc
- * Statutory
- * Nonprofit Corporation

Note: A road association can also be both a statutory and nonprofit corporation.

Informal/Ad hoc Road Associations

Informal Organization by Consent

Many private roads are maintained by a few individuals who take the initiative to oversee the maintenance and attempt to collect the costs from all the people that use the road. Most frequently, this is the result of a simple consensual arrangement when there are a few individuals that take the initiative and most, if not all, of the users voluntarily reimburse the maintenance expenses. These *ad hoc* arrangements work in many circumstances, but have a number of legal and liability problems. To begin with, the individuals who make the maintenance decisions can be held liable for injuries suffered by road users. Because of the informality of the arrangement, it may be very difficult to get insurance coverage and a property owner's insurance policy probably does not provide liability coverage for the entire length of the road. (For more information about liability, see Online Appendix K.)

There is also no legal mechanism for collecting maintenance costs from all of the other users if such costs aren't voluntarily paid. In addition, banks and secondary mortgage markets are reluctant to provide construction loans and mortgages for property on a private road with such an informal arrangement. This could mean that anyone wishing to sell his or her lakeside property may find that potential buyers are denied financing until a formal road association has been created.

Informal Organization by Signed Agreement

Another type of voluntary road association which is a little bit less informal is created by a written agreement similar to the Sample Road Maintenance Agreement that is in Online Appendix G. Entering into such an agreement, however, is purely voluntary and can be cancelled at any time. It does not have durability, and there is no way to require that all users of the road sign such an agreement. In addition, every time a property has new owners, a new agreement would be necessary. It may be possible to have liability insurance coverage for the officers and members. Collection of assessments can only be against those people who have an agreement in effect, and its enforcement would be based upon legal contract theory. Basically, this agreement is a contract for services.

Formal Road Associations

Statutory Road Association

Maine, for many years, has had what is commonly referred to as the “Camp Road” law. It is now formally entitled the “Private Ways” statute. (23 M.R.S. §§ 3101-3106). The statute should be reviewed periodically to see if it has been revised.

What are some of the requirements of the Private Ways law?

This law provides that when a private road is used by owners of four or more parcels of land, three of the owners can make written application to a notary public to call a meeting of all of the owners on the road. The meeting of owners is conducted just like a Town Meeting and includes voting on a budget, election of officers and any other decisions concerning the road. It is different from a Town Meeting in that absentee and proxy votes are possible as provided for in the statute. The law provides for the election of a commissioner or board of directors who will administer the road association for 12 months. The association does not have to re-form each year and continues to be in existence until dissolved by a majority vote of its members. For more details about the required actions to start up a statutory road association, refer to the Organizational Meeting section (page 15) in this guide and to the Maine Alliance for Road Associations Leadership Manual (www.maineroads.org). If you have any legal questions, you should consult an attorney.

What are some of the benefits of this type of road association?

The advantages are that it is a legal entity created by statute; the courts recognize its legitimacy, and it has the power to collect and enforce its assessments. It can buy liability insurance for its officers and members and it has been successfully used for many years on various lakes throughout Maine. Creating such an association also can be accomplished in as little as two months’ time and is relatively inexpensive to set up. It does not need any agreement signed by any of the owners. It does not need to be incorporated; it doesn’t pay taxes, and it doesn’t have to have any property interest conveyed to it in the form of road ownership or easement. It may also negotiate easements for the installation of a ditch, drain, culvert or other storm water management infrastructure.

If the road is in a lake watershed with threatened water quality and is contributing to the degradation of the lake’s water quality, a municipality may use public funds to repair or maintain the road for the purpose of protecting or restoring the lake water quality. In order to qualify for municipal assistance, the road must have either a statutory or nonprofit corporation road association and meet other qualifications noted in the Private Ways statute.

What about liability for this type of road association?

Unlike nonprofit corporations, statutory road associations do not have the civil liability protection that may be available to a corporation. As a result, the association should buy liability insurance to protect its officers and members against liability lawsuits. The

Private Ways Law

Title 23, M.R.S. §§3101- §3106. This statute was revised in 1997 and amended in 1999, 2005, 2007, 2009, 2013 and 2017. The statute is available at www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html. This publication has been updated based on amendments made in 2017.

settlement of some court cases has included the cost of insurance as “maintenance cost.” A recent amendment to the Private Ways Statute does provide officers and directors of a statutory road association with limited immunity from civil prosecution by owners or lessees of other lots for activities carried out in performance of their duties, such as determining repairs and maintenance to be undertaken, materials furnished, collection of money, and awarding of contracts. Associations formed under the statute should be careful to hire contractors who carry their own liability insurance so that the association will not be held liable for damages caused by defects in work done on the road. Volunteers working on the road are not immune from lawsuits resulting from personal injury or property damage due to road work performed. Also, statutory road associations are not immune from enforcement actions for violations of environmental laws under the jurisdiction of the DEP or a municipality. (See Online Appendix K for more information about liability.) If you have any questions about possible liability, you should consult with an attorney.

Nonprofit Corporation Road Association

This is the most formal legal organization for private road maintenance. The corporation is created through the Maine Secretary of State’s office, per the Maine Nonprofit Corporation Act. It requires the adoption of bylaws, the voluntary burdening of all of the lots using the road and

usually the deeding to the new corporation road ownership or an easement for the road from all of the abutting owners and users of the road. This type of association is often set up with the creation of new residential subdivisions with deed restrictions and covenants.

Nonprofit Corporation Act

Title 13-B. Available at:

www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html

Is this the same as a 501(C)(3) nonprofit corporation?

No. This nonprofit corporation is legally also known as a “mutual benefit” nonprofit corporation, since it benefits only the owners of property using the road. It is not a charitable corporation. It is not eligible for tax exemption and cannot get charitable postage status.

What are some of its distinctive characteristics?

There are two distinctive characteristics of the nonprofit corporation road association. The first is that it has indefinite duration as a corporation which is a separate and distinct legal entity from all of its members. The second distinctive characteristic is that it generally has some type of ownership interest in the road by the abutting landowners deeding the road ownership to the corporation while retaining a right to pass over it or by conveying an easement across the owner’s land for the road.

What type of road would this be good for?

This is a viable alternative for short private roads, when there are a limited number of owners on the road, or if a new residential subdivision is being created. For longer roads with multiple owners, it is still a good alternative, but the process for setting up such a corporation becomes more complicated. When there are multiple owners, there may need to be a Board of Directors created as well as the corporate officers, instead of simply having it managed by all of the members. In Rome, Maine, a nonprofit corporation was created in 2004 for over 30 different lots on a road almost five miles

long. It took two years and significant effort to achieve total participation and it had the leverage of a relocated road which owners could not use if they didn't join the corporation. In the long run though, such an effort may be worthwhile.

What are some of the benefits of this type of road association?

Because there is a conveying of property interest to a corporation with unlimited duration, the authority to assess maintenance fees runs with the land and goes on forever regardless of who owns the land and whether or not it has been conveyed to new owners. This type of corporation is eligible to buy insurance for its officers, members and directors.

If the road is in a lake watershed with threatened water quality and is contributing to the degradation of the lake's water quality, a municipality may use public funds to repair or maintain the road for the purpose of protecting or restoring the lake water quality. In order to qualify for municipal assistance, the association must be either a statutory or nonprofit corporation association and meet other qualifications noted in the Private Ways statute.

What about liability for this type of road association?

Nonprofit corporation road associations have the liability protections of a corporation. This means that individuals such as directors and officers acting for the corporation are not personally liable if their actions were undertaken in good faith at the behest of the Board. However, these individuals are not granted charitable limited immunity from prosecution for things they may have done in carrying out their responsibilities. Because of this, the association should buy liability insurance to protect its officers and members if they are sued by someone who may be injured using the road. Associations should be careful to hire contractors who carry their own liability insurance so that the association will not be liable for damages caused by defects in work done on the road. Volunteers working on the road are not immune from lawsuits resulting from personal injury or property damage due to road work performed. Also, nonprofit corporation road associations are not immune from enforcement actions for violations of environmental laws under the jurisdiction of the DEP or a municipality. (For more information about liability, see Online Appendix K.) Again, if you have questions about potential liability, you should consult with an attorney.

What are some of the negatives of this type of road association?

In addition to its complexity, one shortcoming of this type of organization is the fact that it is voluntary. There is no way to legally force all of the owners on an existing private road to burden their land to a nonprofit corporation which takes over the ownership and control of their road. If an owner does not sign on, then the assessment of maintenance fees against that owner may be unenforceable.



Characteristics of the 3 Types of Road Associations			
Characteristic	Informal or Ad hoc Road Association	Statutory Road Association	Nonprofit Corporation Road Association
Legal Framework	None, or legal contract theory	Private Way Law: Title 23 §3101-3106	Maine Nonprofit Corporation Act: Title 13-B
Formation time, complexity, and cost	Short, simple, inexpensive	Approx. 2 months, relatively simple, inexpensive	Long, complex, moderately expensive
Landowner participation	Voluntary	Not voluntary	Voluntary until agreement is signed
Needs agreement signed by all owners	No	No	Yes
Power to collect from all owners whether sign on or not	No	Yes	No
Assessment fee holds when property changes hands	No	Yes	Yes
Association duration	Can be cancelled at any time	Until dissolved by a majority vote	Indefinite
Liability coverage	Individuals liable; difficult to buy insurance	Board members, owners or commissioners may have civil liability immunity for association decisions; association able to buy insurance for officers and members	Individuals can be indemnified by corporation; association able to buy insurance for officers and members
Association has ownership interest in road	No	No	Yes
Need to file tax forms/pay taxes	No	Not usually	Yes
How banks regard	Mixed	Positively	Positively
Municipality may use public funds to assist maintenance	No	If work contributes to the protection or restoration of a great pond	If work contributes to the protection or restoration of a great pond
Must have annual meeting to adopt annual budget and hold election	No	Yes	Yes Check bylaws
Operates with bylaws	No	Optional	Yes

HOW TO FORM A FORMAL ROAD ASSOCIATION

I. How to Start: Convene a Steering Committee

Once you have determined a formal road association might be a good option for your road, you will want to convene a steering committee of fair-minded and diverse folks to get the association off the ground. This group will help with tasks that need to get done, plan to get the road association up and running, and generally provide support for the formation process. If you would like, use the “Forming a Road Association Worksheet – Start the Process” (Online Appendix R) to help start to plan for the process.

Basic Steps to Forming a Road Association:

1. Convene a Steering Committee
2. Plan to Get Up and Running
3. Hold an Informational Meeting
4. Hold an Organizational Meeting

When you meet with the steering committee, appoint a leader that will help guide the formation process. You will also want to appoint a database manager who will create and maintain the list of road association member names and contact information. Have just one person be responsible for keeping the membership list up-to-date.

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.

- Margaret Mead

II. Planning to Get a Road Association Up and Running: What the Steering Committee Needs to Do

While the following topics are those that will be discussed at the informational and organizational meetings, the steering committee should review the options and develop some recommendations in preparation so meeting attendees can be informed when they decide whether they want to form a road association or not, and what that means. Also, being prepared to answer questions and concerns makes a meeting go much smoother and is more likely to result in a positive vote.

Basic Planning Steps:

Develop:

1. Mission Statement
2. Road Maintenance Plan
3. Association Budget
4. Maintenance Fee Formula
5. Bylaws
6. Board
7. Informational Meeting

1) Develop a Mission Statement

A very important first step of forming a road association is developing a mission statement. Having a mission statement reminds association members what the purpose of the association is and helps guide your maintenance plan, and therefore budget. A good way to develop a mission statement is to start by listing everyone’s road concerns and then write the mission statement to address them. This draft mission statement can be presented at the informational meeting and then modified to address additional concerns of the group. As an example, the mission of 13th Street Road Association is “to facilitate the maintenance of our road to the benefit of all its members.”

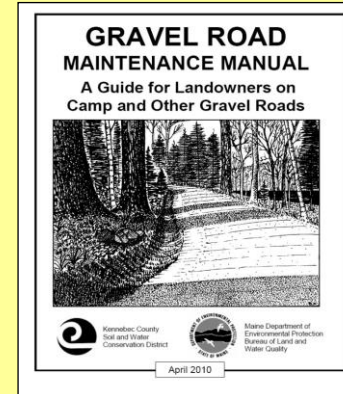
2) Develop a Maintenance Plan and Budget

Vigilant monitoring and maintenance are the keys to having a quality road for the least expense. Your maintenance plan should establish a schedule for surveying the road, grading and ditching, cleaning out structures such as culverts and detention basins, and for replacing culverts. The maintenance plan (and budget) should also include some provision for addressing unforeseen problems in a timely manner. If you are not familiar with proper road maintenance techniques, contact your local Soil and Water Conservation District or local contractor for assistance.

Steps to Develop a Maintenance Plan:

1. **Inventory the roads.** Determine the size and geographic extent of the road network as best you can.
2. **Assess the condition of the roads.** Each year, assess the condition of your road using the Camp Road Maintenance Manual (available at the camp roads maintenance website). Maintain a continuing record of the assessed condition of each road or road segment so that changes in condition can be noted easily and quickly.
3. **Determine specific road repairs.** Consult with your local Soil and Water Conservation District and/or contractor to select the most appropriate treatment to repair the road and get bids or estimates for the needed work. For a list of contractors certified by the DEP in erosion and sedimentation control, see the camp roads maintenance website (www.maine.gov/dep/land/watershed/camp/road/).
4. **Determine overall costs.** Add up the costs of each repair job to get a total estimate. When road surface problems are extensive, it is often necessary to select priorities and phase the project over a number of years.
5. **Establish priorities.** Determine criteria to use for selecting priorities and clearly state them in the maintenance plan. Assessment criteria could include the potential of the problem site to impact water quality, safety concerns, property value concerns, and nuisance factors, etc. You should plan to keep good roads in good shape (preventive maintenance) and establish a separate budget (or request a temporary increase) to reconstruct roads in poor condition. The amount and type of use a road receives will determine how often grading should be done. The maintenance plan should consist of the established priorities and a timeline, including any recommendations for phasing.

An excellent publication to help develop your maintenance plan:



Available at:

www.maine.gov/dep/land/watershed/camp/road/gravel_road_manual.pdf

*For gravel roads, the #1 solution to erosion is **proper routine grading** to restore the crown before it has broken down.*

3) Develop an Association Budget

A budget is simply a plan that identifies the financial resources required to properly maintain your road system. Once constructed, this plan assists in managing your road association's activities throughout the year. Establishing a schedule of key action and

decision points in this process allows adequate time for information gathering and decision making. Typically, the budgeting process should begin at least four months before the end of the fiscal year to ensure the budget is approved by the Board and general membership before the start of the new year.

The proposed budget needs to be communicated to the members along with the maintenance plan priorities and timelines for the next year. The members will also need to review actual income and expenses compared to the budget on a yearly basis and update and revise the budget to reflect changes during the year.

Keys to a Successful Budgeting Process

- Clearly identify maintenance and repair objectives.
- Establish a schedule of key action and decision points.
- Determine the financial resources needed and available to achieve objectives.
- Involve road residents in the process to improve accuracy of information and commitment to the plan.
- Document! Don't rely on memory. Write down assumptions. This will be very important in managing the budget throughout the year.

SAMPLE ROAD ASSOCIATION BUDGET	
PROPOSED 2009/2010 BUDGET FOR OWNERS OF PROPERTY ON LAKE DRIVE July 10, 2009	
BUDGET ITEM	
<i>Road maintenance:</i>	
Summer Maintenance (2 x grading and gravel)	\$3,000.00
Culvert thaw out	\$ 75.00
Winter Maintenance (plowing & sanding)	<u>\$2,565.00</u>
	<u>\$5,640.00</u>
<i>Operations:</i>	
Post Office, supplies (stamps, envelopes, etc.)	\$ 80.00
Liability Insurance	\$ 500.00 EST.
Attorney Fees	<u>\$ 600.00</u>
	<u>\$1,180.00</u>
<i>Contingency:</i>	\$2,000.00
Total to be assessed	<u>\$8,820.00</u>

See Online Appendix M for sample budget calculations for road maintenance and repair.

4) Determine Maintenance Fees

Maintenance Fee Creation

When creating fee assessments, one legal requirement for statutory and nonprofit road associations is that all property owners similarly situated must be similarly assessed. For the voluntary road association, since the fees are not enforceable anyway, the fee doesn't necessarily have to be fair because if someone doesn't want to pay it, they don't have to.

- Some factors that are often used when creating a fee formula:**
- Tax assessment value
 - Year round usage or not
 - Lot development or not
 - Number of dwelling units
 - Lot location
 - Length of road used
 - No differences – all lots the same

For statutory road associations, the statute states that the determination of fees must be fair and equitable and based upon a formula in the bylaws or approved at the annual road association meeting.

Creating the maintenance fee formula obviously can be a contentious issue. No two roads are the same and road associations have considered various factors in determining the formula. See the box above for some factors that are often used by road associations.

“To determine the most fair and acceptable maintenance fee, you must **put yourself in the position of each road user** and see the formula from all sides.”
– Bill Gannon, 13th Street Road Association

If an annual maintenance assessment goes to court for enforcement, the Court will look to see if the road association has the proper authority, was properly created, has an assessment formula that treats everyone similarly situated similarly and fairly, and whether the fees were actually being assessed for road maintenance. Maintenance is understood to include: plowing, sanding, ice removal, grading, graveling, ditching, drainage control, culvert cleaning and replacement, brush cutting, etc. within the road right of way. Courts have allowed insurance and operating costs to be included in the maintenance fee.

If the organization is strictly a road association, it can only make assessments for road maintenance (and insurance and administration). However, if it is a nonprofit corporation with broader purposes such as maintaining a beach or a water supply system, etc., it can require the payment of dues and the assessments can be for more than just road maintenance as long as the purposes, uses and formula are clearly spelled out in the corporate bylaws.

Road Association Type	Fee Formula Change Requirements
Statutory	Majority vote at annual meeting
Incorporated	Bylaws amendment
Voluntary – with contract	Amend contract
Voluntary – without contract	No conditions

Maintenance Fee Collection

Another area to consider is how the association will go about collecting maintenance fees.

Associations do not have to collect. Collections are ultimately a discretionary act. No association is absolutely required to collect all of its assessments. Like any other creditor it can simply forgive a debt. That may be the neighborly thing to do from time to time when an owner, because of sickness, employment, age, etc., simply can't pay that year.

Associations have collections options.

- *Recording a Notice of Claim* - Statutory road associations can record a notice of claim in the Registry of Deeds if assessments are more than 90 days delinquent. The recording cost may be added to the claim. A nonprofit corporation association can also record in the registry a notice of non-payment of assessments, but only in compliance with 23 M.R.S. §3104. A notice of claim filed in the registry of deeds expires 18 months from the date of recording, unless extended prior to the expiration by recording of a notice of extension of the notice of claim. A sample Registry Notice of Nonpayment is available in Online Appendix E.
- *Small Claims Court* - A number of statutory road associations and nonprofit corporation associations have successfully collected fees using Small Claims Court in Maine. The Maine Supreme Judicial Court case in Tisdale v. Rawson, 2003 ME 68, 822 A.2d 1136 reinforces the rights of a road association to collect assessments. The private ways statute authorizes the court to order the owner to pay the statutory road association's collection costs and attorney fees.
- For statutory road associations, before recording a notice of claim or beginning a civil action process, the commissioner or board must notify the delinquent owner in writing of the intended action if the debt is not paid within 20 days of the written notice. This notice must be sent at least 30 days before the intended action.

Associations can determine collection methods. Association members can limit the association by restricting how maintenance fees are collected.

- *Statutory Road Associations*
 - Fee collection restrictions should be put in the bylaws, or if there are none, should be voted on at the annual meeting. The sample minutes of the statutory road association in Online Appendix C has a provision "that there would be no court cases to collect unpaid assessments and/or there would be no recording of delinquent assessment payments in the Registry of Deeds without a two-thirds vote of the members present and voting at an Annual Meeting".
 - Statutory road associations can also collect interest on unpaid maintenance fees if so voted at their Annual Meeting or in their bylaws.
- *Incorporated Associations*
 - Bylaws for nonprofit corporation road associations should make provision for how the assessments will be collected. Bylaws can also provide for the collection of interest on unpaid maintenance fees and require the lot owner to pay the association's cost of collection, including its attorney fees.

5) Develop Bylaws

While bylaws are not required for statutory road associations, they are highly recommended as a way to record what the road association can or cannot do. Bylaws are required for nonprofit corporations. Bylaws should include such items as:

- A purpose statement, including the location of your road and that you have formed for the purpose of maintaining the road
- Who is eligible to be a member and vote
- What the dues are to be used for and how they will be collected
- Election of officers and duties
- When meetings will generally be held and how they will be called
- How absentee voting will be dealt with



Sample bylaws for a statutory road association are in Online Appendix D and for an incorporated road association in Online Appendix H.

6) Develop Recommendations for the Road Commissioner or Board

The steering committee should develop a list of recommended name(s) and roles for the road commissioner and/or road association board. Nonprofit corporation road associations are required by law to have a board of directors. Statutory road associations may have a road commissioner or board. While having only a road commissioner is legally sufficient for statutory road associations, most have chosen to have a board of at least three directors to help spread the work and the decision making.

The road commissioner or association board will manage the overall process of road maintenance. This will involve:

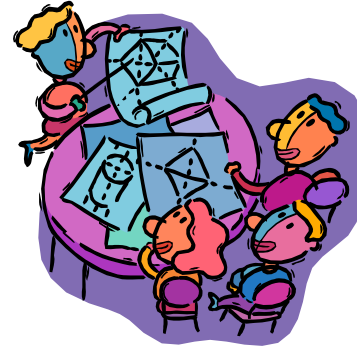
- seeking guidance on the specific maintenance needs of your gravel road
- getting estimates from and setting deadlines for contractors
- developing a budget
- collecting maintenance assessments
- serving as a contact for addressing road related issues

When selecting road association board members:

- Seek fair and balanced representation from all sections and interest groups on the road.
- Tap into the skills of road residents such as experience with road maintenance, running meetings and leading groups, and bookkeeping.
- Select one person to serve as the “road commissioner/president.” This person will serve as the primary contact for contractors to establish road repair and upkeep work.

7) Hold an Informational Meeting

While an Informational Meeting is not required, having this sort of kickoff meeting has worked well for larger road networks. The Informational Meeting provides a forum for road residents to talk through the issues on their road. The meeting can also serve as an opportunity to gain support for the formation of a road association.



Prepare for the Informational Meeting

Along with considering some of the topics mentioned above, there are a few other items that need to be done in preparation for the Informational Meeting. Choose a convenient place and time for the meeting, so most road owners can attend. Appoint someone from the steering committee to create and send out written invitations. Be sure to invite all property owners served by the private way to attend. Names and addresses of property owners can be obtained from property tax maps and information at the town office and for some towns may be available on the town's website.

Nonprofit Corporations

Draft Articles of Incorporation. If you are planning to form a nonprofit corporation road association, you should complete an Articles of Incorporation application so it can be voted on at the informational meeting. The application must include the name of the organization, purposes of the organization (can be the same as the mission statement), registered agent, whether the organization will have members, and board of directors. For more information and a link to the application, see Online Appendix F.

Get Sample Legal Forms. Assemble samples of legal forms you will likely want road association members to sign so they can get a better idea of what "signing on" will entail. A sample road maintenance agreement is in Online Appendix G, a sample of a Quit Claim Deed is in Online Appendix I and a Drainage Easement Deed is in Online Appendix J. These are legal documents, so you must consult with an attorney before finalizing these documents.

Promote the Formation of Your Road Association

The promotion of forming a road association needs to be a process that is suited to the number and nature of the people on your road. Keep in mind that people respond best to personal contact. However, it may take one or more promotion options to provide road residents with the needed background information and to encourage them to attend the Informational Meeting. Having some basic written information is good to have on hand during this promotion.

Promotion Options Include:

- door-to-door visits
- phone calls
- mailings or email
- articles in the lake association newsletter or local newspapers



At the Informational Meeting

At the meeting, set a pleasant tone by providing a friendly setting and refreshments. Encourage participation by asking for folks to identify concerns in a group discussion and list concerns for all to see. You will also want to remember to do the following:

- Circulate a sign-in sheet to collect all names & contact information including email addresses and any second home information
- Have someone take minutes
- In handout form, present suggestions on governance, fees, and maintenance and discuss various concerns and options
- When the time is ripe, take an unofficial vote on forming a road association. If yes,
 - Hammer out any remaining issues regarding governance, fees, maintenance, and implementation.
 - If you have decided to form a statutory road association:
 - Decide the time and place of the Organizational Meeting (be sure to allow for enough time to comply with the law concerning notice of meeting)
 - If you have decided to form a nonprofit corporation:
 - Complete and approve the Articles of Incorporation Application
 - Decide the time and place of the Organizational Meeting
- Thank everyone for participating

After the meeting, send the meeting minutes out promptly to everyone with property accessing the road, whether they were present or not.

For some guidelines for running effective meetings, see Online Appendix P. For descriptions of the various ways for groups to make decisions, including pros and cons of each and when to use each method, check out “Group Decision Making” in Online Appendix Q.

III. The Organizational Meeting

The Organizational Meeting is the official meeting where the road association is formed. Because of this, you must make sure you follow the specific requirements of the type of road association you are forming. If you are forming an informal road association, there are no requirements for an organizational meeting, but you could use the statutory requirements as a guide.



Statutory Road Association Organizational Meeting

The following describes the overall process for a statutory road association as it must occur per the Private Way Law at the time of this publication. This information is general information and should not be relied upon as legal advice. Be sure to consult with a lawyer and check the current statute since revisions have been common and you want to ensure you are meeting the requirements of the Private Way Law on the date of your meeting.

Proper Call of Meeting for Statutory Road Associations

The formation meeting must be called as required by the law and any errors in calling or conducting the meeting can result in the assessment being uncollectible. Three or more owners must call the meeting of all owners by having a notice of meeting warrant issued by a notary. At least 30 days prior to the meeting, the notice of meeting warrant must be distributed to all owners of parcels benefited by the private road. The notice must be sent, as a minimum, by U.S. mail to the addresses used by the town's tax collector. The warrant must include the time, place, purpose of the meeting, agenda, and items to be voted on, including, but not limited to, all proposed budget items or amendments that will determine the amount of money to be paid by each owner. Procedures for proxy voting by one owner for another and/or absentee voting should be stated in the notice of the meeting and forms for that purpose should be sent with the notice. A sample warrant and application for issuance of the warrant are in Online Appendix B and A, respectively.

Meeting Procedure for Statutory Road Associations

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through each section of the warrant and vote on each, using majority vote (required by the private way law) which can be done by a show of hands. Be sure to include any proxy and/or absentee votes as well. The statute requires the allowance of written proxy and absentee votes regarding repairs and maintenance needed and the amount of money to be paid by each owner for costs. If you have bylaws, use majority vote to vote on those as well. Be sure to discuss any sections that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending. Sample meeting minutes are available in Online Appendix C.

Nonprofit Corporation Road Association Organizational Meeting

This information is provided as general information and should not be relied upon as legal advice. If you are forming a nonprofit corporation road association, you are encouraged to retain the services of a qualified attorney to help with your specific situation. While the following describes the overall process for a nonprofit corporation road association as it must occur per the Maine Nonprofit Corporation Act at the time of this publication, be sure to check the current statute, and to consult with an attorney if you have any questions.



Prior to the Meeting – for Nonprofit Corporation Road Associations

Prior to or after the Organizational Meeting, you should file the Articles of Incorporation application with the Secretary of State. You will also need to gather information about getting a corporate bank account.

Proper Call of Meeting for Nonprofit Corporation Road Associations

The Maine Nonprofit Corporation Act requires that the organizational meeting must be held by a call of a majority of the incorporators or board of directors. Those calling the meeting must give the other incorporators or board members at least three days' written notice and the notice must state the time, place and purposes of the meeting. Of course, assuming the goal is to have all road users sign on to the road association, it is highly recommended to notify all road users about the meeting and give more notice than just three days.

Meeting Requirements for Nonprofit Corporation Road Associations

Designate a meeting Moderator who will lead the meeting and be sure to have a designated note-taker. Go through the bylaws and vote on each one, using majority vote (or a greater percentage vote if this is in your bylaws) which can be done by a show of hands. At this organizational meeting you must:

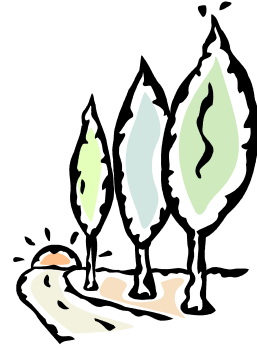
- Adopt bylaws.
- Decide if the organization will be run by members or a Board of Directors.
- Elect Officers.
- Authorize a corporate bank account.
- Authorize the payment of organizing expenses and filing fees.
- Authorize the establishment of a ledger and appropriate corporate records.
- Adopt a fiscal year for the corporation.
- Designate Chairpersons or members of committees.

You will also want to have any legal documents, such as any maintenance agreements, quitclaim deed, or drainage easements, signed by members at this meeting. Be sure to discuss any topics that do not have consensus and try to reach consensus since buy-in is very important and will provide a stronger foundation for your road association. After all meeting business is completed and has been voted on, officially adjourn the meeting and thank all for attending.

IV. After the Organizational Meeting: What To Do Next

Notify All Owners

After the Organizational Meeting, be sure to notify all owners of parcels benefiting from the road about the meeting outcome and send them the meeting minutes.



If You are a Statutory Road Association – Consider Joining MARA

The Maine Alliance for Road Associations (MARA) is an unaffiliated online community and information resource for road associations forming under the Maine Private Ways statute. There are no requirements to become a member of MARA, but by joining as indicated on the website, you can share problems and solutions with the MARA online community, access publications, receive email notification of private way statute changes and updates on road association events and concerns.

If You are a Nonprofit Corporation – File Forms and Annual Report

This information is provided for educational purposes only and is not to be relied upon as legal advice. Check with your attorney, online resources, and the current Maine Nonprofit Corporation Act (Title 13-B).

Record Bylaws – for Nonprofit Corporation Road Associations

For nonprofit corporation road associations, the signed bylaws or a memorandum of the bylaws need to be recorded in the Registry of Deeds. This document needs to list each owner and the Book and Page for each owner's deed.

Annual Report– for Nonprofit Corporation Road Associations

All nonprofit corporations must file an Annual Report by June 1 of each year (although the Secretary of State requests filings by April 1). There is a filing fee, as well as a late fee for filings received after June 1. You may download a form or file online at <https://www.maine.gov/sos/cec/corp/annual.html>

Federal Requirements and Forms– for Nonprofit Corporation Road Associations

As a nonprofit corporation, you will need to obtain a federal Employer Identification Number (EIN). This is simply a means of identifying the organization for tax and other purposes. You will also have to file IRS tax forms. See Online Appendix F for some general guidance and resources.

Implement Your Maintenance Plan

Now that you have a maintenance plan and, more importantly, the necessary funding - it's time to get to work. For statutory road associations, the commissioner or board may address road maintenance and repair as authorized at the annual road association meeting.

Be Aware of Regulatory and Permitting Requirements

Your road commissioner or board should be aware of the regulatory and permitting requirements that may apply to your road maintenance work, and make sure the chosen contractor is aware of them and in compliance. For a summary of regulatory considerations, see Online Appendix L.

Choose a Contractor and Begin Work

Your road commissioner or board will need to contact local contractors to update bids or solicit proposals for the work that needs to be done. Using the obtained "not to exceed quote" or updated bid and your detailed maintenance plan, choose a contractor, sign a contract, and work can begin on your road. For some tips on choosing a contractor and requesting estimates, see Online Appendix N. There is also a sample gravel road maintenance agreement in Online Appendix O.



If possible, the road commissioner (or another representative from the road association) should be present during construction to answer any questions that the contractor may have and to make sure the contractor is meeting your road association's expectations. The road commissioner should inspect the work before the contractor takes their equipment to another job. This will save both the contractor and the road association money if more needs to be done (for whatever reason).

Hold Annual Road Association Meetings

For both statutory and nonprofit corporation road associations, you will need to have an annual meeting every year, since your officers, maintenance plan, budget, and assessment fee need to be voted on every year. Nonprofit corporation road associations must call the meeting using the same procedure as described in the Organizational Meeting section. Statutory road associations may use the same method as used to call their first Organizational Meeting, or may have the commissioner or board call the meeting, mailing notice of the meeting to each owner at least 30 days prior to the meeting. During the meeting, both types of road associations must follow the procedures described in the Organizational Meeting section.

You may also need to hold emergency meetings if road issues come up between annual meetings. Special assessments for emergency repairs and maintenance may be made at a duly held meeting called for that purpose.

RESOURCES

Online Appendices

Available at: <http://www.maine.gov/dep/land/watershed/roadassociation.html>

Statutory Road Associations

Maine's Private Way Law: www.mainelegislature.org/legis/statutes/23/title23ch305sec0.html
(see *Private Ways, Subchapter 2*)

- A) Sample Application to Notary
- B) Sample Notice of Meeting Warrant
- C) Sample Meeting Minutes
- D) Sample Statutory Road Association Bylaws
- E) Sample Registry Notice of Non-Payment of Road Association Assessment

Nonprofit Corporation Road Associations

Maine Nonprofit Corporation Act: www.mainelegislature.org/legis/statutes/13-B/title13-Bch0sec0.html

- F) Maine's Requirements for Incorporating a Nonprofit Corporation
(including links to EIN and Articles of Incorporation forms)
- G) Sample Road Maintenance Agreement
- H) Sample Nonprofit Corporation Road Association Bylaws
- I) Sample Quitclaim Deed with Covenant
- J) Sample Drainage Easement



General

- K) Liability Exposure Generally for All Private Roads
- L) Regulatory Considerations
- M) Forming a Budget
- N) Choosing a Contractor and Requesting an Estimate
- O) Sample Gravel Road Maintenance Agreement for Contractors
- P) Guidelines for Running Effective Meetings
- Q) Group Decision Making
- R) Forming a Road Association Worksheet – Start the Process

Resource Directory

MAINE SOIL & WATER CONSERVATION DISTRICT OFFICES

- Education and training on a variety of lake related issues - including camp roads.
- Grant project planning and development.
- Site evaluations to assess erosion and/or drainage concerns.
- Best Management Practice design.

<http://maineconservationdistricts.com>

Androscoggin Valley	241-5377
Central Aroostook County	764-4153
Cumberland County	892-4700
Franklin County	778-4279
Hancock County	667-8663
Kennebec County	622-7847 x 3
Knox-Lincoln County	596-2040
Oxford County	743-5789 x 3
Penobscot County	990-3676 x 3
Piscataquis County	564-2321 x 3
Somerset County	474-8323
Southern Aroostook County	254-4126
St. John Valley	834-3311 x 3
Waldo County	218-5311
Washington County	255-4659
York County	324-0888 x214

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)

www.maine.gov/dep

1-800-452-1942 (in state only)
207-287-7688

Land Bureau – licensing, enforcement, water classification, shoreland zoning, and field services

Bureau of Water Quality – water classification and monitoring

DEP Offices:

Augusta	287-7688 (main office)
Bangor	941-4570
Portland	822-6300
Presque Isle	764-0477

OTHER RESOURCES

Maine Alliance for Road Associations – online resource for statutory road associations
www.maineroads.org

Lake Stewards of Maine
783-7733
<https://www.lakestewardsofmaine.org/>

Maine Lakes Society – lake association contact information, lake protection resources and information
495-2301 <http://mainelakessociety.org/>

Nonprofit Corporation Resources
<https://www.maine.gov/sos/cec/corp/nonprofit.html>

This publication, associated online appendices, and other related materials are available at the **camp roads website:**

<http://www.maine.gov/dep/land/watershed/camp/road/index.html>