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HCPC NEWSLETTER

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HCPC Executive Board Fiscal Year 2016-2017

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PLANNING NEWS

by Tom Martin

Laws on Abandoned and Discontinued Town Ways Amended

Why is There Concern Over the Status of Town Ways?

Many Maine towns have faced controversy over the status of town ways. In the 18th and 19th century farmsteads that are long vanished dotted what are now rarely used roads going through the woods. Although some are no longer maintained, they may still be thought of as town ways. This can pose problems for landowners who expect privacy and find that the public can still use a path through their property (*see article on a recent court case on right-of-ways to the shore on page 2*). In other cases, someone may build a house on a long-unmaintained town way and expect the town to maintain it.

There is a story, perhaps just a small town legend, of an Aroostook County town in the late 1970's that found itself responsible for maintaining a road serving just one house. The municipal annual plowing bill for this house was about \$2,000 and the house yielded \$600 in property tax revenue. During the dispute that

followed the landowner allegedly accused the road commissioner of burning his house down.

What Laws Pertain to Abandoned Ways?

Over the years, the legislature has revised the state laws regarding abandoned and discontinued town ways. A road that has not been maintained at public expense for over 30 consecutive years is presumed to be abandoned. A town is not liable for defects in a road if it is abandoned. Towns also have the option to discontinue a road. A vote by the legislative body is required.

What Changes Were Made? (This section is adapted from the Southern Maine Planning and Development District Newsletter)

The first change requires municipal officers to hold a public meeting to discuss any proposed discontinuance. If the officers decide to proceed, they must file an order with the municipal clerk that includes specific information such as location of the way, names of abutters, and the amount of damages. Once the order of discontinuance is filed, the municipal officers must hold a public hearing at least ten (10) days before the municipal governing body vote. If the file of discontinuance is approved, the municipal clerk must record an attested certificate of discontinuance in the registry of deeds and provide a photocopy to the MaineDOT.

The second change requires the municipal officers to file a record of determination in the registry of deeds if they determine that any town way has been discontinued by abandonment (by at least 30 consecutive years of no maintenance at public expense). Further, the municipal clerk must provide a copy to the MaineDOT.

The third change authorizes municipalities (but are not legally required) to develop or update

public inventories of all known roads, including those that have been abandoned or discontinued. These public inventories must be shared with the MaineDOT.

The final change pertains to abutters to a discontinued or abandoned town way. Any abutter may sue anyone who damages a public easement in a manner that impedes reasonable access to the abutter's property by motor vehicle. Relief from a suit may include monetary damages, attorney fees, court costs, and an injunction. However, law enforcement officers and emergency responders are exempt. For more information on the abandonment and discontinuance of town ways, see the Maine Municipal Association's (MMA) Municipal Roads Manual. This publication is available for free to MMA members at www.memun.org.

SUPREME COURT CASE ON PUBLIC ACCESS TO THE SHORE

CEDAR BEACH SUPPORTERS, INC. V GABLES REAL ESTATE (2016 ME 114)

Cedar Beach/Cedar Island Supporters, Inc. (the claimants), sought a judgment that the public had acquired a prescriptive easement over a privately-owned right-of-way known as Cedar Beach Road. The court's discussion of this property covered testimony presented about the actions of various individuals since the early twentieth century. The owner of the road between 1926 to 1957 allowed the public to walk on Cedar Beach Road to access the beaches. To keep vehicular traffic off of the road, he installed a chain, which remained in place for many years.

In 1959, the property was inherited by family members. Starting in the 1960s, the use of the road by the public became a source of

complaints by the owners of the road and some of the families who had deeded rights-of-way over the road because members of the public frequently littered on Cedar Beach Road and used the road to attend parties on the beaches.

Cedar Beach Road was acquired by Richard and Phyllis Perry in 1982. In December 1987 the Perry's and the owners of an adjacent parcel posted a notice to the public on their property for six successive days giving notice of their intent to prevent acquisition of a right-of-way. Charles and Sally Abrahamson acquired the property in 1998. The Abrahamsons posted notice of their intent to prevent the acquisition of a right-of-way on the road in 1999. For many years, Charles Abrahamson permitted the public to use Cedar Beach Road to access the beaches.

Harold and Norma Haley, owned property on Bailey Island and held a deeded appurtenant easement over Cedar Beach Road. The statute provides that [i]f a person apprehends that a right -of-way or other easement in or over his land may be acquired by. . . the public, he may give public notice of his intention to prevent the acquisition of such easement by posting a copy of the notice upon the premises for 6 successive days . . . and such posting or recording shall prevent the acquiring of such easement ..for any length of time thereafter (14 M.R.S. § 812) .

However, on Labor Day 2011, Abrahamson blocked the road, precipitating this court action. After the underlying trial but prior to the court's entry of judgment, Gables acquired Cedar Beach Road from the Abrahamsons. After a three-day bench trial, the court entered a judgment declaring that the public had acquired a prescriptive easement over Cedar Beach Road, concluding that the claimants had satisfied all the elements of a public prescriptive easement, and specifically that they "ha[d]proved adversity."

The court concluded that continuous use of the road by the public had been established between 1959 and 1987. The court concluded that evidence of loud parties on the beach, littering, and taking down the chain-link fence erected by the Haley family was "sufficient to establish adversity," and held that this conduct exceeded traditional recreational uses and was clearly undertaken without permission. The court also concluded that Gables failed to show nonacquiescence, ruling that the Haleys' erection of the chain-link fence did not constitute a nonacquiescent act because the Haley family was not the fee owner of Cedar Beach Road.

The court also determined that the actual permission McCarty gave to the public ended with his death in 1957. Despite this, the court held that the chain McCarty placed across the entrance of Cedar Beach Road continued to serve McCarty's original purpose of prohibiting motor vehicle travel along the road.

The court reviewed a public prescriptive easement claim de novo. To establish the existence of a public prescriptive easement, the party seeking the easement must prove "(1) continuous use; (2) by people who are not separable from the public generally; (3)for at least twenty years; (4) under a claim of right adverse to the owner"; and either "(5) with the owner's knowledge and acquiescence; or (6) a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed." *Lyons v. Baptist Sch. of Christian Training*, 2002 ME 137, ¶ 15, 804 A.2d 364.6

Central to the case are the concepts of adversity and nonacquiescence in the context of the acquisition of a public prescriptive easement. "Acquiescence differs from adversity in that adversity regards the actions of the claimant, whereas acquiescence looks to the actions of the owner." *Almeder*, 2014 ME 139, ¶ 21, 106

A.3d 1099. Adversity is proven through evidence that the claimant has used the property “(1) in the absence of the owner’s express or implied permission, and (2) as the owner would use it, disregarding the owner’s claims entirely, using it as though the claimant owns the property himself (3) such that the use provided the owner with adequate notice that the owner’s property rights are in jeopardy.”

In the case of a private prescriptive easement, adversity is presumed if the claimant shows that he has used the property continuously for twenty years and the owner has acquiesced. However, when a party is claiming the existence of a public prescriptive easement, the party must prove adversity because the public recreational use of private uncultivated lands is presumed to be permissive.

The presumption of permission promotes the long tradition in Maine of public recreational use of private property by assuring that such use “is consistent with, and in no way diminishes, the rights of the owner in his land.” 7 Lyons , 2002 ME 137, ¶ 19, 804 A.2d 364 The use of a way by members of the public to access properties where they conduct recreational activities does not rebut the presumption of permission concerning that way.

The presumption serves an important societal purpose in that it allows for greater access to Maine’s renowned natural features by permitting landowners to rely on the presumption of permission to protect their ownership interests, rather than encouraging them to take steps to restrict recreational use of their lands. See Almeder, 2014 ME 139, ¶ 30, 106 A.3d 1099.

CDBG NEWS

by Tom Martin

CDBG NEWS: A LOOK AT THE 2017 PROGRAM

The Community Development Block Grant (CDBG) program has been an important source of funding for the Hancock County region. Projects include improvements to sewer and water systems, revitalized downtowns, upgrades to substandard housing, employee training, and job creation or retention. For a complete look at the 2017 Program Statement, see:

<http://www.maine.gov/decd/meocd/cdbg/statement.shtml> . Feel free to contact Tom Martin if you have any questions on a particular grant application.

Please note that there are some changes from previous years. One significant change is there is presently no money budgeted for new Public Infrastructure grants (such as water and sewer projects). This is due to a backlog of projects with serious problems that were unable to be funded last year. These projects will be funded with 2017 grant funds.

Also, no funds are presently allocated to Public Facilities (such as fire stations). Public Facility projects may be funded if unanticipated funds become available later in the fiscal year. To qualify for this program, at least 51 percent of the households in town must be low to moderate income. Only eight towns in Hancock County meet this income requirement.

How Can HCPC Help Towns With CDBG Applications:

We can help with all phases of CDBG. This includes determining if your proposed project is eligible and how to meet the income guidelines. We are experienced in designing household income surveys that meet program

requirements. Other areas of expertise include assuring that your public hearing is posted correctly, suggesting effective citizen participation strategies, and identifying matching sources of funds. Our staff has been writing successful CDBG applications since 1980. Contact Tom Martin for more information.

JOINT PURCHASING NEWS

The Road Salt Joint Purchase was put out to bid this year. We were very pleased with the competitive bid results. The Road Salt bid was awarded to New England Salt which was the low bidder for all but three towns. New England Salt also won the bids for Penobscot, Washington, and Aroostook Counties as well as Hancock County.

This year our low bid joint purchase price ranged from \$54.10 to \$60.09 per ton depending on trucking distance and quantity ordered. We were able to acquire prices from \$1.75 to \$5.43 per ton lower than last year. This means significant savings for Hancock County towns. For example, Bar Harbor will save \$2.85 per ton for their order of 1400 tons which is nearly \$4000 in savings this year. Mariaville will save \$5.43 per ton for their order of 250 tons which is nearly \$1400 in savings over last year.

Please do not hesitate to let the HCPC know if you run into any problems with delivery quantity, quality or price so we can record them in our files.

For more information, please contact Sheri Walsh at swalsh@hcpcme.org or 667-7131.

BROWNFIELDS NEWS

by Tom Martin

BROWNFIELDS: Bringing Old Sites Back to Life

HCPC is just starting its third round of EPA Brownfields assessment grant funding. We use these funds to hire a qualified environmental professional to conduct Phase I site assessments on abandoned or under-utilized properties to determine the extent of contamination. In some cases, the assessment may reveal relatively minor problems. In others a Phase II clean-up plan may be needed.

Through our previous grants, we have worked on sites from Gouldsboro to Bucksport and Stonington. Once a site has been through the brownfield's assessment process, its environmental problems if any, are known and can be addressed and managed. This allows a site to be reused or expanded. Our success stories include small business expansions in Ellsworth and Surry, a waterfront park in Stonington, an expanded marina in Winter Harbor, and a potential major project that it would be premature to mention.

Is There a Potential Brownfields Site in Your Town?

We would be happy to discuss the criteria used to select sites for investigation. These include the historical uses of the site, the type of suspected contamination, and its potential for reuse. The property owners must be willing to grant access to the property and allow the investigations to proceed. For more information, contact Tom Martin at the HCPC.

WATER NEWS

by Tom Martin

DRINKING WATER: HOW WELL ARE YOUR TOWN'S WELLS?

While public water systems are subject to regular testing, there is no systematic testing of private wells. The Maine Centers for Disease Control and Prevention recommends yearly testing of wells for bacterial contamination and three to five years for trace metals such as arsenic, fluoride, radon, uranium, and manganese. Parts of Hancock County are within one of Maine's "arsenic belts", where some wells have arsenic levels that greatly exceed the EPA safe limit of 10 micrograms per liter (mg/l). For example, 23 percent of the 120 wells sampled in Surry between 2005 and 2009 had arsenic levels exceeding 100 mg/l. *This sample was not based a scientifically chosen random sample. It may not represent the actual extent of contamination.*

What Are the Dangers of Arsenic?

Arsenic in excess of safe levels leads to an increased risk of certain types of cancer, low birth weight, stomach and intestinal irritation, nervous system disorders, blood vessel damage, and abnormal heart rhythm. The Maine Bureau of Health Recommends that you stop drinking or preparing food with well water with unsafe arsenic levels. Arsenic is quickly removed from the body. Some of the health effects go away or diminish several days after use of water with high levels of arsenic ends. *Do not boil your water since it only increases arsenic levels.*

However, arsenic in small amounts may be an essential element for normal human development. Arsenic contamination of water may be the result of dissolved minerals from

local bedrock or sediment. It may also be caused by leachate from solid waste landfills or from the use of pesticides.

What About Other Trace Metals?

There are safe level standards for all elements normally found in well water. In some cases, the source of contamination may be in the system that delivers the water from the well to the house. Copper and lead are two examples. This means it is important to check your plumbing system well as your well.

Where Can Well Water Be Tested?

Since the safe drinking water standards change periodically, HCPC recommends that you consult with a certified water testing laboratory to learn how and what to test. For a list of labs, see

<http://www.maine.gov/dhhs/mecdc/environmental-health/dwp/imt/documents/CommercialListMaineLabs.pdf>.

There are also other resources available on the Maine Drinking Water Program's website. See: <http://www.maine.gov/dhhs/mecdc/environmental-health/eohp/wells/index.htm> These include videos on how to test well water quality and how to interpret the results of your test. There are also educational brochures on topics such as well water safety and the various contaminants that are found in Maine.

GRANT NEWS

Stream Crossing Grants Available

The Maine Department of Environmental Protection is seeking proposals for a final round of stream crossing grants, in an effort to minimize impacts on water quality and aquatic habitat. Eligible projects include public

infrastructure improvements at stream crossings, including improvements, repairs, or upgrades to existing culverts. Grant funds may not be used for any permanent land acquisitions or conservation easements.

In the last round of funding, awards were made to the Towns of Bar Harbor, Dedham, and Orland, and to an organization in Ellsworth.

Eligible recipients for these awards include individuals, businesses, municipalities, unorganized townships, counties, soil and water conservation districts, watershed districts, and tax-exempt incorporated non-profit organizations. A portion of the money may be used to fund design and engineering services related to infrastructure improvements. The maximum grant award has been set at \$95,000. For more information about Stream Crossing Public Infrastructure Improvement grants, or to download the RFP, visit the Maine DEP's website at http://www.maine.gov/dep/land/water_bond_rfp.html.

If you would like assistance determining if your project is eligible, or preparing or reviewing your proposal, please contact HCPC at 667-7131. All proposals are due by January 17, 2017.

Project Canopy, the Maine Department of Agriculture, Conservation and Forestry's community forestry program, will award \$125,000 in grants to local governments and municipalities, educational institutions and non-profit organizations that support community efforts to develop and maintain long-term community forestry programs. Funded by the U.S. Forest Service, the Project Canopy grants are available in two categories: planning and education grants and tree planting and maintenance grants. The average grants range from \$6,000 to \$8,000 and require a 50-percent cost-share with cash or in-kind services. Since

2010, Project Canopy has awarded nearly \$1 million in funding for community forestry projects.

Project Canopy is a program of the Maine Department of Agriculture, Conservation, and Forestry's Division of Forestry. It encourages communities to develop project proposals that support sustainable community forestry management, increase awareness of the benefits of trees and forests, and increase the health and livability of communities through sound tree planting and maintenance.

Project Canopy Director Jan Ames Santerre provided recent examples of community projects that can benefit from Project Canopy grants. Projects of note in 2016 include 3 projects in Bangor (\$10,000), Bath (\$7,900), Bethel (\$3,100), and Norway (\$8,000) for shade tree inventory and management planning for street trees; and three projects in Belfast (\$8,000), Easton (\$8,000), and Scarborough (\$7,850) that allowed those towns to plant trees in town parks and downtown streets. "In addition to helping communities with general maintenance planning, these grants allow towns to respond to threats from invasive pests such as the emerald ash borer. They can also support community beautification through street tree planting," said Santerre.

The planning and education grants have a maximum award of \$10,000, while the planting and maintenance grants have a maximum award of \$8,000. To be eligible to apply for a 2017 assistance grant, all applicants must attend a grant workshop before submitting an application. Grant workshops will be scheduled in December (date TBD) via the web. The workshops will cover such topics as grant writing, project development, sustainable community forestry management and grant administration.

Grant applications are due by 5:00 p.m., Wednesday, January 18. To learn more about the Project Canopy Assistance program and to sign up for a grant workshop, contact Project Canopy Director Jan Ames Santerre at (207) 287-4987. More information is available on the web at <http://www.projectcanopy.me>.

SOLID WASTE NEWS

HCPC held its 2016 Greater Ellsworth Area Household Hazardous Waste Collection on Saturday, August 20th at Ellsworth High School. 10 towns signed up to participate but we had residents from 18 towns participate. We were able to collect 300 gallons of paint through the PaintCare program at no charge to municipalities. We collected 226 units of household hazardous waste from 138 households. This equates to 1,130 gallons of various chemical items. We also collected 95 TV's and monitors, along with 62 computers/electronic devices, 798 fluorescent light bulbs and 75 items containing Mercury.

HCPC would like to thank the volunteers that work the collection, without them we could not make this happen.

RECYCLING BINS

HCPC is now offering curbside recycling bins for sale. They are \$9 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.

Capacity is 18 gallons and it is made from recycled materials.



Compost Bins

HCPC is now offering compost bins for sale. They are \$48 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.



TRANSPORTATION NEWS

by Jennifer Boothroyd

On October 7th, the Schoodic National Scenic Byway Committee hosted a van tour of the byway for local and regional partners and agencies. The tour gave the committee an opportunity to highlight successes and projects accomplished over the 16 years since the byway was established, and discuss plans and hopes for the future. It was a gorgeous day on the beautiful byway, establishing connections and relationships that will hopefully have a lasting impact.

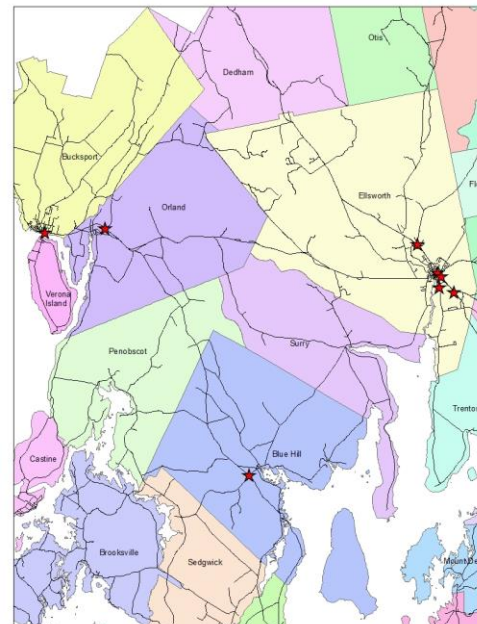




The Schoodic Byway Committee is also in the final production stages of our new Schoodic Outdoors brochure, highlighting opportunities for outdoor adventures on and around the Schoodic Byway. Funding for the Schoodic Outdoors project has been provided by The Betterment Fund and MaineDOT. The Committee also received grants from the Schoodic Community Fund and the Rivers, Trails, & Conservation Assistance program of the National Park Service to cover printing costs. We are printing lots of these great new brochures, and are eager to get them out into the community! If you are interested in obtaining brochures for your business, organization, or yourself, please contact Jen Boothroyd at jboothroyd@hpcme.org, or any other member of the Schoodic National Scenic Byway Committee. We anticipate that the brochures will be available in December.



Hancock County Planning Commission is partnering with MaineDOT to provide detailed review of high crash locations in Hancock County. The goal of the project is development of low-cost and short-term solutions to increase safety at the sites, and identify project candidates for inclusion in the MaineDOT Work Plan. The map below shows the high crash location intersections in Hancock County shown as red stars. If you have insight or suggestions that you believe could make any of these locations safer, please contact Jen at 667-7131 or jboothroyd@hpcme.org.



Sunrise Trail Extension Ribbon Cutting Ceremony

The extension of the Downeast Sunrise Trail from Washington Junction into Ellsworth is now complete! After a December 2nd ribbon-cutting ceremony, the newly-paved section of trail will be open to pedestrians, bicyclists, ATVs, snowmobilers, and skiers, as weather permits. The new trailhead is just off High Street, which will hopefully encourage trail users to visit Ellsworth's local restaurants, lodging facilities, fuel stations, and other services.

This extension is the newest addition to the 87-mile recreational trail system, which stretches across Downeast Maine from Ellsworth to Ayer's Junction in Pembroke. The Downeast Sunrise Trail (aka Calais Branch Corridor Rehabilitation Project) was an interagency effort between MaineDOT and Maine Department of Agriculture, Conservation and Forestry's (DACF) Bureau of Parks and Lands (BPL). MaineDOT owns the rail corridor and the BPL managed the construction, and will oversee continued maintenance of the multi-use recreation trail. The project has received support from several community partners and recreational groups.

"This is an example of Maine state government working with community partners to complete a project that will generate substantial economic activity and support Maine as a year-round destination," said Governor Paul R. LePage. "The ATV and snowmobile industries alone bring in over \$500 million dollars to the State each year. Add to that the revenues that flow from its multi-use design and you have a significant resource for Maine people, visitors and the businesses that cater to them."

For more Downeast Sunrise Trail information go to: www.maine.gov/downeastsunrisetrail or www.sunrisetrail.org. For trail status and updates, like Down East Sunrise Trail on Facebook.

Dates to Remember:

Sunrise Trail Coalition Annual Meeting

The Annual Members' Meeting of the Sunrise Trail Coalition, Inc., a Maine non-profit corporation, will be held on December 8, 2016 at 12:00 noon at Pat's Pizza, 396 High Street in Ellsworth, for the election of Directors to the Board of Directors to serve a three-year term (2017-2019).

For more information, or to view the meeting's agenda, visit the Down East Sunrise Trail's website, <http://sunrisetrail.org>.

Down East Sunrise Trail Ribbon Cutting Ceremony

A ribbon-cutting ceremony for the newest section of the Down East Sunrise Trail will be held at 11:00 A.M. on December 2, 2016 at the Ellsworth trail head. Parking is available at the Comfort Inn.

Hancock County Planning Commission is a partner with local and county government to: protect our heritage and resources, plan for the future and promote a sound economy for the people of Hancock County.

Fall/Winter 2016 Newsletter



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