

Policies for Maine's Public Lands: A Long-Term View

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In the 1998 session, the Legislature considered a proposal to provide \$10 million in bond funding for acquiring public lands for the State. This proposal was set aside amid intense competition for capital funds. Instead, the Legislature decided to appropriate \$3 million in cash for land acquisition. Yet, in spring 1998, news of a 910,000 acre land sale by Sappi, Ltd., discussions over the sale of Great Northern's 2.1 million acres, and other large land deals created new controversy over these issues. Divisive controversies of the 1990s over salmon protection, the federal role in protecting northern wildlands, and the issue of clearcutting also connected to what role state landownership should play in protecting public values of these lands. In an instant, the resources provided suddenly seemed tragically inadequate to the scale of the challenge. This essay provides a bit of long-term history, context, and some policy ideas.

History of Maine's Public Lands

Maine's public conservation lands now total 1.1 million acres, or 5.3% of the State. How did this come about? For much of its history, Public Lands were a problem for Maine's state government. The problem was how to get Public Lands quickly into private ownership, where all right-thinking people knew they belonged. Privately owned, they would produce livelihoods for farmers, loggers and others. They would provide taxes for local government. They might also be granted to provide incentives for building railroads or other public works, or serve as a substitute for cash to support schools and colleges. After the young nation's early wars, they were used as an in-kind veterans benefit. Retained by the State, these lands would provide nothing but expense and unwanted bureaucracy. At statehood in 1820, about half the state had been granted or sold. Of the balance, Massachusetts retained a portion until 1852. The Erie Canal killed the market for northern Maine farmlands, so the problem of these unwanted lands took a very long time to solve. From 1603, when the first private lands titles were recognized in Maine, to 1878. After 1878,

what remained were Maine's Public Reserved Lands, which almost a century later were to become the core of a new system of conservation lands.¹ In 1873, the State halted the sale of remaining coastal islands.

Around the turn of the century in the northeast, State acquisition of land for conservation purposes was a keystone of policy. A number of purposes were served, ranging from watershed protection, protecting hunting and recreational lands, securing future wood supplies, and cleaning up the finances of local governments that at times were paid back taxes or were able to sell tax delinquent lands to states. Much of the land acquired in such purchases was marginal or abandoned farmland, or cutover and burned timberland.

In Maine, however, for a number of reasons, public acquisition of conservation lands never became a significant policy tool. Maine did not see extensive land abandonment after the lumbering era. Instead, paper companies acquired land and water rights to support their paper mills. The 1930s did not bring a major wave of tax delinquencies as occurred in other states. A general tradition of open, unposted land meant that those interested in hunting and fishing had no need to organize a constituency for land acquisition. From 1910-1930, federal acquisitions occurred, but only occasionally. The core of Acadia Park was donated by a group of families led by the Rockefellers. The White Mountain National Forest of New Hampshire began land acquisitions in the mid-teens, spilling over into Western Maine, it seems, almost by accident. Sustained lobbying by New Hampshire groups created this Forest, but its spread into Maine was greeted with indifference and even occasional hostility. Small federal wildlife reserves were also acquired from time to time.

Maine had no policy for public landownership during the 1930s, a period of active federal and state acquisition elsewhere. Maine's first State Park, Aroostook (just south of Presque Isle), was acquired by donation, an approach that continued into the 1960s. Baxter Park, of course, is the Northeast's prime example of a splendid conservation donation by a single individual. Governor Baxter was not only far-seeing in this donation, but he intended it to serve as a true wilderness, a concept not always well understood today by Maine citizens, or even by members of the Baxter Park Authority.

The first significant conservation land acquisition by Maine state government was the bonding to purchase the Allagash Wilderness Waterway in the early 1960s. This was a pre-emptive strike, aimed at forestalling a federal move by then Secretary of the Interior Stewart Udall. The federal proposal would have acquired a 300,000 acre reserve. The State instead acquired a 23,000 acre protective corridor and the Allagash became the first State-administered component of the National Wild and Scenic River system.

¹ D. C. Smith, *History of Lumbering in Maine 1860-1960*. Orono: University of Maine Press, 1972, Chapter VII gives the history of the land disposal period. Roots of Maine's land policies in the Federal Period are noted in L. C. Irland, "Rufus Putnam's ghost: an essay on Maine's public lands, 1783-1820." *Journal of Forestry History*, April 1986, pp. 60-69.

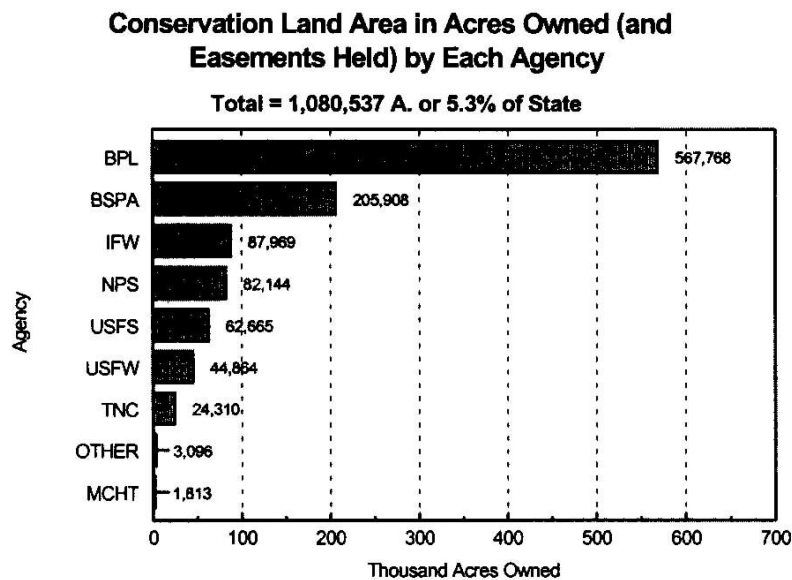
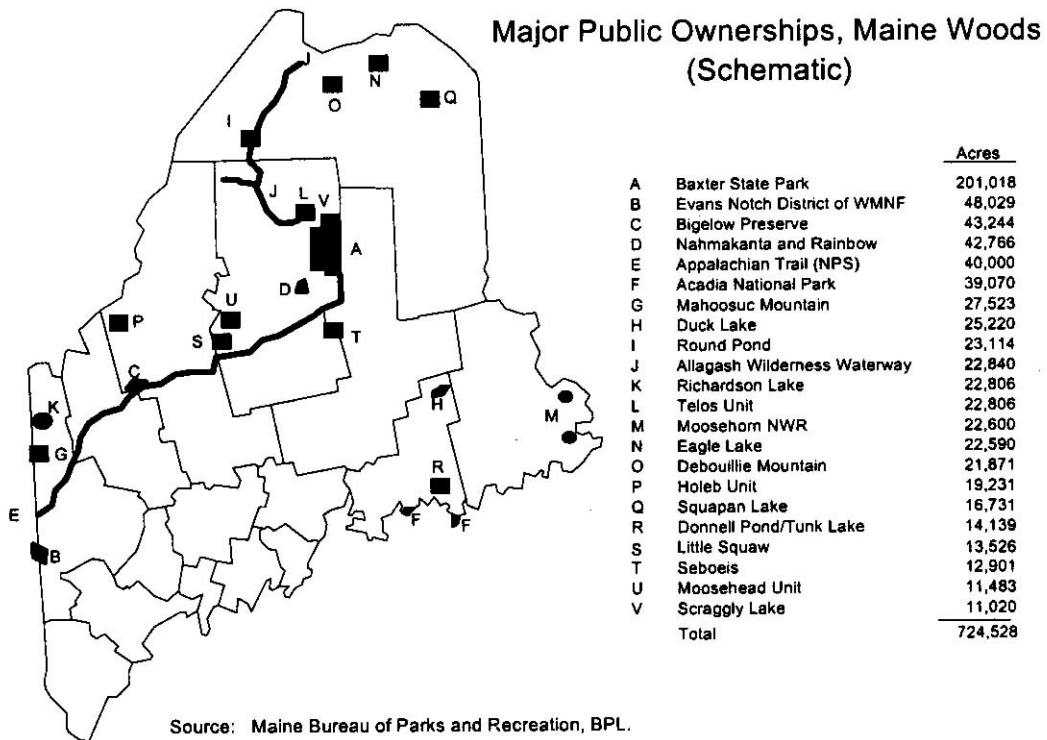
By the 1970s however, the new conservation movement resulted in the development of a series of specialized land funding programs. Maine took advantage of matching federal funds for acquisition and development, totaling more than \$30 million over the years, though the most prominent federal source (the Land and Water Conservation Fund, or LAWCON) has not been funded since 1994. Additional funding has been available to the Department of Inland Fisheries and Wildlife. The agency landscape included two federal agencies, three major state agencies, and a host of substate entities owning land. This fragmentation meant that there was no focal point for viewing Maine's land holdings as a whole system. Acquisition programs developed reflecting the bureaucratic balkanization of resource programs. There were local purchases for aquifer protection, state purchases for parks and game lands, all oriented at single-use needs. Occasional federal purchases for additions to the White Mountain National Forest and the Wildlife Reserves took place. As a result of this history, Maine has a lower percentage of its land in federal ownership today than the Farm Belt State of Illinois.² For other comparisons, see Table 1. The U.S. average percent protected is heavily influenced by vast federal landholdings and wildernesses in the West.

Table 1: Comparisons of Maine Public Land Ownership

	<u>Percent in Federal Ownership</u>	<u>State Park Acreage per 1000 Population</u>	<u>Percent of Land Protected in Wilderness Reserves</u>
Maine	0.85	.07	1
New Hampshire	12.74	.13	3
Massachusetts	1.29	.05	8
New York	0.28	.01	10
U.S. Total	27.43	4.00	10

Sources: Federal lands: GAO/RCED-95-73FS, p. 28; Parks per Thousand: Statistical Abstract of the U.S., 1997; Percent Protected: Population Reference Bureau, 1998.

² U.S. General Accounting Office, *Federal lands: information on land owned and acreage with conservation restrictions*. Washington: GAO/RCED-95-73FS.



Source: State Planning Office, Maine Conservation Lands Inventory, 1997

During the 1970s, a vigorous “third-sector” of state, regional, and local land trusts and similar groups emerged. These groups became major holders of land and easements, protecting well over a hundred thousand acres. Many of them are involved only during the acquisition, and pass the land to a public agency for management later. Many are locally based, protecting small parcels of local interest that would be unworkable for a state agency to locate and manage. At least these groups currently own 40,000 acres of conservation land.³

The Land for Maine’s Future Board

The Governor’s Commission on Outdoor Recreation presented a report in late 1986 at the close of the Brennan Administration. The entire Northeast was experiencing a speculative real estate boom that reached deep into the wildlands. The dramatic breakup of the Diamond International Corporation, engineered by British financier James Goldsmith, galvanized public concern. To some, the privatization of the north woods seemed imminent. Environmentalists demonized the subdividers and financiers. By and large, until the subdividing wave had about hit its peak, public agencies deplored the situation, but basically stood by doing nothing.⁴ The Commission urged the creation of a Land for Maine’s Future Board, with a sizable budget.

It is a measure of the public interest in the issue that this recommendation by an outgoing Democratic administration came into law under a succeeding administration led by a moderate Republican, John McKernan. Senior members of the McKernan cabinet were strong advocates.

The Board designed a totally new approach to land acquisition in Maine,⁵ instead of narrow, functional approaches (e.g., fish, groundwater). There would be no bureaucratic plan, based on columns of statistics, mountains of maps and data, and mind-numbing priority ranking schemes. Instead, the board adopted a broad set of priorities, and announced that it was accepting nominations from landowners, local governments, conservation groups, and state agencies. It became the largest instance in Maine of a conservation land acquisition bond proposal that did not identify the specific property to be acquired!

This process had an unanticipated side effect. It created numerous local groups that came together to propose acquisition of properties important to them. Instead of local groups coming to a meeting to protest an unwanted boat launch, they were coming to Augusta with acquisition

³ R. Kelly, Jr., *Conservation land inventory*. Augusta: State Planning Office Printout, December 1, 1997.

⁴ For general background, see L. C. Irland, *Land, timber and recreation in Maine’s Northwoods*. Orono: Maine Agricultural Experiment Station, Miscellaneous Publication 730, March 1996, 86 pp.

⁵ Land for Maine’s Future Board, *Biennial report*, February 1998. Augusta: State Planning Office, 56 pp. + app.

proposals of their own. This reversal of initiative not only created local ownership in projects, but also developed a statewide constituency for the concept. By including a wide variety of acquisition possibilities in its menu, ranging from farmland preservation easements to traditional wildland forests and lakes, and by opening the doors to local governments and private groups, the Board created a broad constituency where previously there had been only fragmented interest groups.

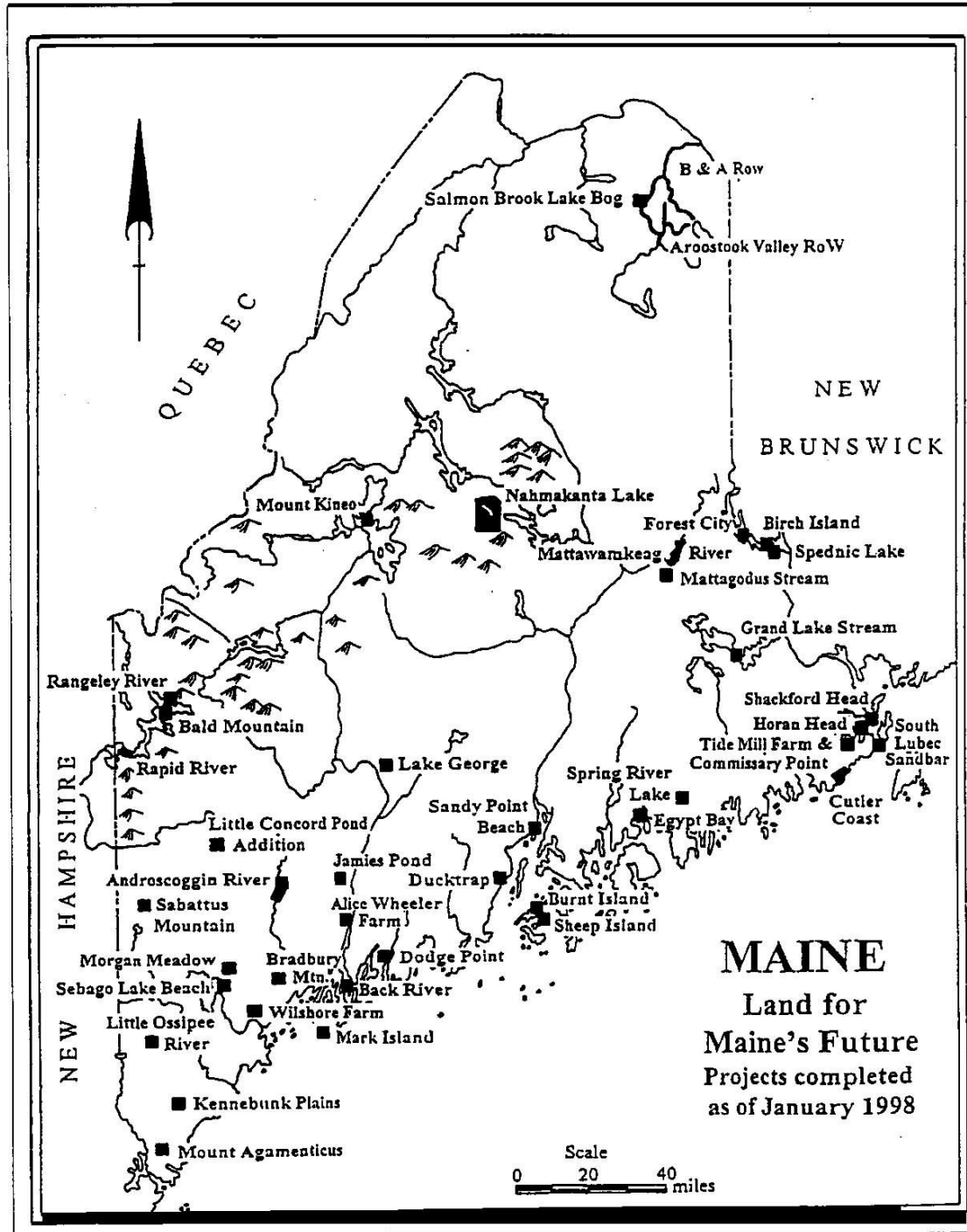
Accomplishments of LMFB were significant.⁶ The funding made available, as leveraged by donations and other funds, allowed the State to acquire 70,000 acres of lands for future public use and management. The lands ranged from easements on farms to large parcels of ecologically and recreationally significant wildlands. The largest parcel, about 27,000 acres at Nahmakanta, protects a key portion of the Appalachian Trail and a splendid complex of lakes and streams. Others were parcels at Mt. Agamenticus, whose peak can be seen from the Piscataqua River Bridge, several coastal islands, and the development rights on a farm in central Maine (Map). By a stroke of luck, the Board was able to carry out much of its acquisition during the early 1990s real estate bust.

The Bley Report

In 1996, Governor King created a Land Acquisition Advisory Committee by Executive Order. The Board was chaired by well-known conservationist Jerry Bley. The group met over a period of months, held public meetings, and produced a report in fall 1997. A previous recommendation by the Maine Economic Growth Council called for increasing public landownership by 10%. This goal was endorsed by the Advisory Council, which offered other more specific recommendations.⁷ The Council proposed a target of 10% public ownership of the state's land by 2020.

⁶ Jeff Clark, "Maine's \$35 million bargain." *Down East Magazine*, May 1996, p. 40.

⁷ Land Acquisition Priorities Advisory Committee, *Final report and recommendations*, Nov. 1997. Augusta: State Planning Office, 22 pp.



Why Does Maine Need More Public Land?

Since an ongoing commitment to public lands as a conservation strategy has not been institutionalized in Maine's political culture, a few remarks may be in order.

Public conservation lands serve a number of public objectives:

- \$ preserve scenic jewels of the State, such as the Bigelow Range, Mt. Katahdin; or
- \$ protect biodiversity and habitat, tasks which cannot be expected of private owners;
- \$ support tourism and recreation by retaining key scenic values;
- \$ retain open space and property values;
- \$ provide demonstration areas for land management; and
- \$ protect water quality, especially in cases such as water supply reservoirs.

It is true that Maine has less public land in relation to its area than any other forested state in the U.S. Yet, this by itself, is not much of an argument for why we should have more. Further, most recreation now occurs on private land and always will. Properly managed, this works. Advocates for public ownership must engage a wider audience, using arguments fit to the needs of the 21st century, instead of just repeating the arguments used in the 19th. Further, innovative methods need to be employed (see below).

There is simply no doubt whatever that maintaining major scenic resources in a natural condition, and retaining access for a variety of recreational opportunities, are critical elements of quality of life. Repeatedly, quality of life factors are cited as important in bringing investment and jobs to Maine. Probably it's hard to claim that protecting biodiversity will bring jobs to Maine, but it remains a basic public responsibility.⁸

Some Issues

Every time a conservation land acquisition is proposed whether by a government or a nonprofit group, concern is raised about the impact on the *property tax base*. This is a legitimate concern that is not currently being handled well by the State. State lands managed by the Department of Conservation pay 25% of their revenues to towns in lieu of taxes. There is growing recognition that many new forms of development actually do not pay their way in tax revenues, but this has not blunted the force of voters concern yet. Perhaps the genius of the LMFB process was that proposals originating at local levels had already gone through the discussion on this topic before being considered.

⁸ On values of open space and natural landscapes generally, see Maine Audubon Society, 1996. *Valuing the nature of Maine*. Falmouth. 69 pp.

Maine has a gap in its *institutional structure* for public land ownership and management. Its towns are too small to meet any but the most local needs. They cannot fund or manage significant facilities or lands. In fact, many towns become obstacles to progress, as they oppose development of state parks and boat access that seem inconvenient to voters or take land off the tax rolls. Yet, every parent who has ever coached baseball knows how hard it is to find a field, especially in a wet spring, and every boat owner wants to use a launch site in some other town. The State, on the other hand, cannot possibly manage the diversity of lands, trails, and facilities that are important in everyday life. State agencies, in fact, regularly turn down offers of small land donations that they cannot manage.

Maine voters' antipathy to County government leaves a serious void at this mid-scale for meeting regional needs. At the moment, there seems little to do about this but bemoan it. This accounts for the fact that county and municipal governments own only 10% of the State's public lands (or less: the estimates are weak). In a state with strong preferences for local control on many issues, it is interesting that ownership and management of conservation lands has been tacitly ceded to state and federal governments.

Political constituencies for conservation lands at the state level are divided in an unhealthy situation. Examples are this year's debates over the pending Allagash Management Plan, and over the *rules for use* of a small addition to Baxter State Park. Debates over access points, all terrain vehicle use, and jet ski limitations are examples. These divisions are showing up in many more local situations, and they compromise broad citizen support for conservation lands in the future.

From time to time, *ambitious preservation proposals* arise. These range from the short-lived Cobscook Bay National Park idea, to the more recent Northwoods National Park. This latest Park proposal, in its various forms, ranges from 2.5 to 5.6 million acres. Very likely there will be others. Debates over these ambitious proposals will often overshadow the important, year-to-year work needed on the locally and regionally significant acquisition priorities in southern Maine.

The challenge of *protecting and sustaining biodiversity* has come into its own in the 1990s. This question has been the subject of detailed study.⁹ Scientific knowledge is evolving rapidly. Applying this knowledge to our acquisition priorities will be technically challenging and politically contentious. One reason is that the areas devoted to this task will usually have to be treated as wilderness reserves. This may require, in local cases, adjustments in wildlife management, fishing, and recreational uses.

⁹ J. McMahon and J. Bernard, 1993, *An ecological reserves system for Maine: benchmarks in a changing landscape*, Augusta, State Planning Office, 94 pp; S. C. Gawler, et al., 1996, *Biological diversity in Maine: an assessment of status and trends in the terrestrial and freshwater landscape*, Augusta: Dept. of Conservation, Natural Areas Program, 2 vols; and J. McMahon, 1998, *Inventory of potential ecological reserves on Maine's public lands and private conservation lands*, Rockland: Maine Forest Biodiversity Project, 121 pp.

Elements of a Policy

A reasonable long-term public acquisition policy would contain the following elements:

Endorse the 10% Goal

The 10% goal advocated by the Bley report should be adopted as a working objective,¹⁰ but it should be achieved by 2005-2010. 2020 is too late. This is a modest but achievable goal; fulfilling it will deliver real benefits. Even in the State of Connecticut, with its sky-high land prices, the State has proposed a 10% public ownership goal.¹¹ New Jersey is tied with the highest states in proportion of its land in parks and wilderness (13%), and has among the highest land prices in the nation. Yet Governor Whitman has proposed a \$1.7 billion, ten-year land acquisition program. New York has appropriated \$72 million.

The 10% goal is not magic. It reflects a dramatic boost from the current 5.3%. No mathematical equation exists that tells us the right number. It is a social choice reflecting Maine's values.

Obtain Only the Rights the Public Needs

Full ownership ("fee simple title") is not always needed to serve public interests. Various forms of "less than fee" interests, like development rights or conservation easements can be used to protect key values. For example, the Conservation easement along the Penobscot River was donated to the State by Great Northern in the early 1980s. Under this 8,000 acre easement, the State obtains the development rights, while Great Northern Paper Co. may manage lightly for timber, roads, and gravel, under rules similar to existing zoning. A specially negotiated LURC rule (P-RP) overlays the Easement. Management responsibilities are defined. The fact that Great Northern's corporate ownership has changed twice since the easement was donated and is likely to change again illustrates the importance of such arrangements.

Conservation easements and similar arrangements have much potential for resource protection, public access, and other needs. Yet, they are not costless. In urban areas, buying development rights can be almost as costly as buying land. Such rights must then be administered, which has a cost. As of December 1997, the Conservation Lands Inventory estimated that the State owns some 46,000 acres as conservation easements of one kind or another. Private conservation groups hold thousands more. Purchasing full ownership is not

¹⁰ The same goal was previously offered in M. Sullivan, and A. Giffen, Sustainable vision for Maine's natural resources. In: MECEP, *Maine Choices*, 1995, pp. 81-98.

¹¹ Governor's Blue Ribbon Task Force on Open Space, 1998, *Open space Connecticut! A legacy for life*. Hartford: Department of Environmental Protection.

always necessary or wise. Obtaining the interests needed, and leaving the rest in private ownership, can often work best for all concerned.

Acquire Multi-Purpose Lands

Bureaucratic balkanization has created many single-purpose land units, especially in Southern Maine; we cannot afford this any more. Land is too scarce and costly. Acquisitions must be planned in ways that protect multiple values. In many areas, we can simultaneously protect aquifers, hunting and fishing access, riparian habitat, snowmobile and cross-country trails, and open space on the same acres.

An important category of multiple purpose lands is working farms. Several were involved in the first round of Land for Maine's Futures Board activity. Buying development rights on farms protects open space and scenic quality in cost-effective ways. If Maine becomes a vast suburb and second home tract that imports all of its food, something important will be lost.¹²

Conservation, Landscape, and Access in Southern Maine

Kayakers and backpackers have been well-served in Maine, with the Appalachian Trail, magnificent canoe routes, and large mountainous tracts of Maine's conservation land system. Snowmobilers have organized for themselves a splendid system of trails, largely using private lands. The city dweller in Lewiston, looking for a day hike, boat launch, or cross-country ski trail, however, has not been so well served. The 98% of the people who do not backpack or paddle kayaks are unrepresented in the political rough and tumble S they do not have interest groups representing them in Augusta.

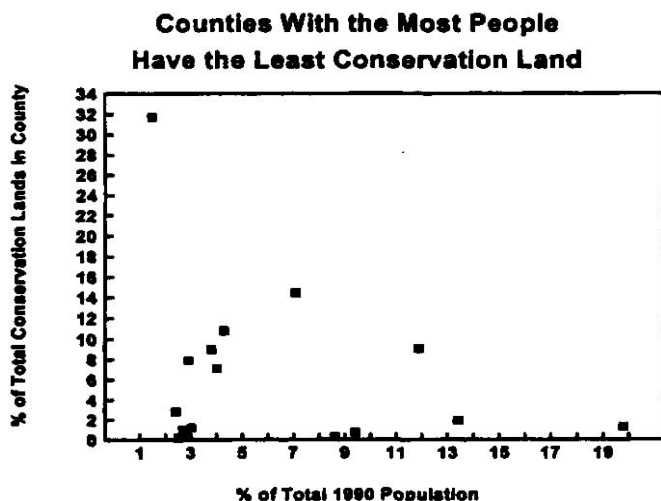
Further, future development trends will modify more and more of the quality landscape that Maine needs for the future. Experience shows us every day that land markets, and Maine's rudimentary planning and zoning, cannot provide more housing and services while preserving the quality setting that helps bring people and jobs here.

Maine's recreation planning process regularly shows limited day use opportunities in Southern Maine relative to accepted standards.¹³ Studies of biodiversity by the Maine Gap

¹² This is my view. Explaining fully would take another essay. For starters, see S. N. Smith and M. C. Marra, 1993, Values and community: the promise of sustainable agriculture and the role of government. In, R. E. Barringer, ed., *Toward a sustainable Maine, the politics, economics, and ethics of sustainability*, Portland: USM, Muskie Institute of Public Affairs, pp. 235-254.

¹³ Bureau of Parks and Recreation, *Maine state comprehensive outdoor recreation plan*. Augusta: Department of Conservation, December 1993, 2 vols.

Analysis Project at the University show the highest levels of biodiversity in the Midcoast. It is plain where the real needs are.



Source: Maine Conservation Land Inventory; and Stat. Abstract of U.S.

Identify the Public Values

Despite the rhetoric about the public values embodied in private forest lands now on the market, there is little firm basis for sorting out exactly where the key public values are and what they are like. Without knowing this, it is difficult to protect those values through well-designed measures. There are difficulties in obtaining detailed resource information on private property, yet quite a good deal is known. This knowledge has never been systematically sifted into useful form for setting priorities.

State Funding for Acquisition, Maintenance and Replacement

The Land for Maine's Future Board emerged from a near-panic over the implications of a wild subdividing boom. It was, in essence, a reaction to market developments. This is not the way to do business. Waiting until there is a crisis and then buying at the top of the market is financially wasteful and amounts to giving up the tactical initiative. Maine needs a stable base of funding so that the acquisition fund never runs dry, and the administrative capacity for acquisition and management is sustained. An approach of dollar-averaging could lead to lower average costs than waiting for periodic crises as we have in the past. Even though land is the ultimate long-lived asset, bonding to buy it is not necessarily sound. I prefer some sort of pay-as-you-go system. I believe that bonding capacity should be conserved for the occasional truly large and extraordinary opportunities. There are many ways this can be done, each with its supporters and detractors. New Jersey has adopted a local option tax to fund acquisition with a state match. Others states use real estate transfer tax revenues. Federal land acquisition programs rely on a mix of taxes.

Borrowing for the Big Ones

Borrowing should be reserved for unusual opportunities, such as those that emerge from occasional large private land sales. The ongoing flow of funding should support routine projects and funding to local governments. The State's empty treasury in the face of opportunities created by the large land sales of 1998 illustrates several key weaknesses in Maine's policy. First, we are not well-informed about the exact location and character of public values on these lands. Second, there is no availability of "bridge" financing to enter the market to make offers for such key tracts at these favorable moments. Somehow, the State needs to create a capability to raise funds on short notice. Bond issues take too long to be useful for many of these transactions.

A key concern in the Board process was to ensure that acquired lands were placed in the hands of organizations with the administrative and financial capacity to take care of them. We have underfunded long-term maintenance in State facilities over the years, so we have to catch up with backlogs at the same time as we provide for future needs. When title passes to the State, the work is just beginning. The Bley Committee recognized this and suggested additional use of user fees to cover these costs.

Continue Board Mechanism

Creating the Land for Maine's Future Board was an unusual act of administrative and political creativity. It was able to cut through bureaucratic balkanization and create both a visible policy focus for acquisition decisions and a flexible mechanism for implementation. I believe it has worked and the approach should be retained.

Continue Partnerships

A variety of partnerships have emerged over the years that have enhanced effectiveness in protecting and managing key conservation lands. A reservoir of skills, local knowledge, and fund raising capacity exists in the Third Sector. The State will surely benefit from these partnerships in the future.

Round Out Existing Units

Most public landholdings have boundaries defined by land surveys made as far back as the 1780s. These boundaries were laid out to simplify land sale and later subdivision into farms and towns. Such boundaries rarely reflect the rivers, marshes, and natural features important to habitat, scenic views, and active management of land. Surveys show that there are many instances of significant natural features that are partly on public land and partly on adjacent private lands. Orderly efforts to protect such areas by suitable expansions of the public units would be sensible.

Federal Support Needed

Maine cannot do this alone. A supportive federal role is critical. The federal government needs to take the following actions:

- \$ Restore funding to the “state side” of the Land and Water Conservation Fund (LAWCON) program. This program was a mainstay for state and local land programs.
- \$ An option should be built into LAWCON to enable states to receive an Advance of up to five years of grants to take advantage of unusual large opportunities.
- \$ Federal tax policies protecting flows of private funds into Third Sector land programs need to be retained.

Closing Remarks

The question of public land ownership has been thrust into the headlines by major private land sales in the wildlands. In the midst of the current controversy, this essay seeks to provide some historical context and long-term policy ideas. Buying land and rights in land for the public does not solve all of Maine’s conservation problems. But it is an essential ingredient. Publicly owned units can then become the core units for cooperative management efforts with adjacent private owners that will maintain important landscape features, share information for mutual benefit, and maintain access corridors for fishing, hiking, biking, horseback riding, and snowmobiling across privately owned landscapes.

From time to time, someone reminds me that years ago I propounded Ireland’s Law of Real Estate Markets, which holds that: *Nice places attract capital until they are no longer nice.* @

Everyone has a favorite list of places that prove this law to be true. More importantly, there are many more special places that will further demonstrate Ireland’s Law during the next speculative boom in Maine land. Taking advantage of the opportunities of the moment is critical. Yet, it is even more important to get out of the crisis-response mode.

Efforts have repeatedly been made to accomplish these goals by sweeping regulatory decrees. Wisely, I think, the Legislature has firmly turned these aside. Acquisition by legislative expropriation is a blunt tool and one not likely to gain widespread public support. Further, accomplishing these goals by broad-brush regulatory methods raises serious legal and fairness questions.

Acquiring public land is not anti-growth. It is pro-growth. Preserving land maintains critical natural resources, and retains the natural features that bring people and businesses here. *Reckless, unplanned subdividing and speculation is not growth. It is merely the squandering of capital for the short-term benefit of a few.* Public land acquisition programs in Maine have not been disdainful of legitimate private property rights, local economic concerns, or the revenue

concerns of local governments. The Bley Committee's report clearly emphasizes that it should stay that way.

All of us who care about Maine's future will want to be sure that for the most special places, we get there before the bulldozer does.