

## Appendix H

# Public Vehicular Access Policy & Procedures

### Board Policy

When funding land acquisitions for Conservation & Recreation (C&R) and Water Access (WA) Projects, “the board shall examine public vehicular access rights to the land and, whenever possible and appropriate, acquire guaranteed public vehicular access as part of the acquisition.” 5 M.R.S §6207(3)

If the Board funds the acquisition of land “that does not include guaranteed public vehicular access to the land acquired, the Board must provide justification for that acquisition and a plan for continuing efforts to acquire guaranteed public access to the land.” 5 M.R.S. §6206(1)(E)

Accordingly, as an essential aspect of good title, all C&R and WA project parcels must have (or expect to acquire) guaranteed public vehicular access **to** the project parcel(s). The following examples are scenarios that may be determined by the Board to provide guaranteed public vehicular access:

- a. Access via a public road;
- b. Access via an abandoned public road over which there is a public right of way;
- c. Access via a private road or pedestrian right-of-way where the applicant holds or will acquire deeded rights allowing the public to access the property and, in the case of the pedestrian right-of-way, the pedestrian right-of-way connects to a road or way with guaranteed public vehicular access;
- d. Access (by vehicle, foot, or other means) across adjacent conservation land or via a trail easement that is either owned/controlled by the applicant or permanently protected with guaranteed public vehicular access;
- e. Access by water when the property is on an island, tidal shoreline, or includes navigable river or lake frontage, and, in the judgment of the LMF Board, it is consistent with the purposes of the project for the primary public access to be by water.

**Please note:** an access easement granting the **applicant** the right to travel over the eased land to reach the property will not be sufficient to demonstrate the public's right to do the same, neither will the applicant's ability to authorize invitees adequately establish rights of the general public. To satisfy this condition of funding, the easement or right-of-way must clearly provide for access by the general public. Access rights conveyed for “all purposes of a way” or words to that effect are commonly found in these easements and do not satisfy this standard.

## Procedures

The LMF Board recognizes that many parcels throughout Maine are accessed by private roads or are bisected by utility corridors that do not include public access rights and that there is a long history of public use in many of these areas. When an Applicant learns that guaranteed public vehicular access poses a challenge or that a utility corridor disrupts public access across their lands, they should share that information with the LMF Board. At that time, they should be prepared to describe:

- a. Existing vehicular access to the property or existing public access across the project parcels, including access systems or cooperative land management systems like the Maine North Woods and KI-JO Mary access systems;
- b. What would be needed to secure guaranteed public vehicular access to the property or public access across the property;
- c. The status of efforts to secure the needed access; and
- d. If appropriate, why the statutorily recognized conservation goals of the project are not reliant on guaranteed public vehicular access or why guaranteed public vehicular access would be detrimental to those conservation goals. If this is your project assessment, please make this case to the Board **early**.

The applicant must alert the Board and the sponsoring State agency at the earliest opportunity upon learning that guaranteed public vehicular access to a parcel will not be possible with reasonable efforts. Honoring this obligation provides the Board sufficient time to determine whether and under what conditions it wishes to fund the project. The Board will make all such determinations on a case-by-case basis. In weighing any such request, the Board is likely to appreciate:

- a. Being given ample time to weigh all of the circumstances thoughtfully. The best Board decisions are those that the Board has time to consider.
- b. Learning that the Applicant has been diligent in attempting to remedy the situation, pursuing all reasonable avenues for securing guaranteed public vehicular access. The Board is serious about acquiring guaranteed public vehicular access.

Before making its decision, the Board will consider all project attributes it deems relevant, which may include:

- a. Whether the sponsoring State agency supports the acquisition even if guaranteed public vehicular access to the conserved lands is not secured
- b. Whether the primary purposes and benefits of the project depend on public access (e.g., wildlife habitat or vital ecological function),
- c. Whether the Applicant has used reasonable efforts to acquire guaranteed public vehicular access rights;
- d. Whether the parcel has historically been accessible by the public, and public access is likely to continue in the foreseeable future even if it is not guaranteed;
- e. The applicant's willingness to use reasonable best efforts to secure guaranteed public vehicular access.