



Tom Arter

The *Sheepscoot Valley Conservation Association* purchased two abutting properties that together protect 52 acres and over one mile of frontage on the Marsh River, an important tidal tributary of the Sheepscoot River in Newcastle. This project also protects important scenic views from busy Route 1 from future development. These acquisitions are the first of the River-Link Project, a multi-land trust effort to create a midcoast wildlife corridor and trail network connecting the Sheepscoot and Damariscotta Rivers.

Standards & Practices— What Are They?

You have probably heard people talk about *Standards & Practices*. Their adoption is a requirement of membership in the Maine Land Trust Network. But how many of us really know what they are? How many are truly familiar with the fifteen standards and their many practices? How many trusts review their compliance on a regular basis? And why is it important to do so? This article is the first in a series striving to educate Maine's land trust community about *Standards & Practices* and their importance to our work.

With help from over 60 land conservation professionals, the Land Trust Alliance (the national organization that promotes and provides assistance to land trusts throughout the country) developed the *Standards & Practices* to help guide the effective and sustainable operation of land trusts. In 1993, LTA published *The Standards & Practices Guidebook*, an operating manual for land trusts to help them understand and implement recommended operating procedures.

Standards & Practices covers issues on organizational development including legal requirements, financial management, board accountability, and fundraising. *Standards & Practices* also contains information on how to conduct a sound legal land conservation transaction and sample documents providing important reference materials for all land trust staff, board members, and volunteers.

In short, *Standards & Practices* provides a road map for how a land trust needs to operate on a daily basis in order to meet its long term obligations and responsibilities. Given the explosive growth of both land trusts and the use of conservation easements, and also the increased public attention to land conservation organizations, LTA and land trusts nationwide are concerned about land trust quality and effectiveness. Could the missteps of one land trust affect the ability of others to conserve land? Might the future use of conservation easements be jeopardized by a single enforcement case?

The Maine Land Trust Network believes that operating within the guidelines of LTA's *Standards & Practices* will enhance a trust's ability to do good land conservation over the long haul. We hope this series provides an opportunity to review and strengthen your trust's operating procedures, ensuring a strong and sustainable land trust community throughout Maine.

Many thanks to LTA's Elizabeth Wroblecka and Rob Aldrich for their assistance with this series. For more information on *Standards & Practices* or the Land Trust Alliance go to www.lta.org.

Save the Date!

Maine Land Conservation Conference 2004

April 30th & May 1st
Rockport, Maine



Lynette Miller

*The **Kennebec Land Trust** recently accepted an agricultural easement on 40 acres in Vienna. The easement limits Flying Pond Farm's future use to organic agriculture and ensures that the land will never be subdivided or otherwise developed. The protected parcel includes a historic farmhouse and fields gently rolling down to the edge of Flying Pond.*

Coastal Mountains Land Trust recently launched its Campaign for Bald and Ragged Mountains by acquiring an option to purchase 83 acres of cliffs and forested slopes beside the Snow Bowl ski area in Camden.

Following nearly a year of effort and negotiation, **Kennebunk Land Trust** purchased a valuable 93-acre parcel adjacent to the Kennebunk Wildlife Management Preserve and with nearly 2,400 feet of frontage on the Mousam River. The preservation of this parcel extends the buffer area around the preserve thus helping to ensure the continuation of important management practices.

In keeping with their efforts to give children an opportunity to learn about the environment and experience nature, the **Loon Echo Land Trust** recently granted scholarships to students in Denmark, Maine, who wish to participate in environmental programs such as those offered by Maine Audubon Society and Lakes Environmental Association. Since 1998, hundreds of children in their service area have benefited from this program.

Maine Farmland Trust recently accepted two easements to permanently protect prime farmland. Collyer Brook Farm in Gray and New Gloucester is a 376-acre farm presently operated as an organic dairy, and Thor Nox Farm, also known as Bessey Farm, in Thorndike and Knox, is a 420-acre farm presently raising beef cattle.

The **Saco Valley Land Trust** recently acquired a 70+/- acre parcel on West Street in Biddeford from the Land Stewards Trust. The Land Stewards Trust, formerly located in Arundel, recently disbanded. Two of the Land Stewards' directors have joined the SVLT's Board of Directors.

80 acres of the watershed that supplies drinking water to the town of Vinalhaven was recently gifted to **Vinalhaven Land Trust**. The Trust also purchased 74 acres adjacent to a town park in a major fresh water recharge area and wetland that will enhance the existing park and protect this unique area from development.

Saco Bay Trails recently received a donation of land, including a large wetland, adjacent to their Ferry Landing Trail. The trail will soon be expanded onto this new property and resting benches will be located by the wetland allowing birdwatchers and other visitors to enjoy the abundant wildlife.



Bob Wilson

*The Jones Farm in Lebanon is now protected by a conservation easement administered by the **Three Rivers Land Trust**. The farm, established in 1786, now encompasses 538 acres. The easement will continue the farm and forest land as one undivided ownership for future generations.*

We are considering taking an easement on a property with an existing Right of Way. How does a ROW affect an easement? Do the terms of the easement also pertain to the ROW?

Rights of way, both existing and potential, present complex and important conservation easement planning, drafting and stewardship considerations. The reason is obvious when we consider the nature of rights of way, and how much value and utility they lend to otherwise “landlocked” or insufficiently accessible property.

EXISTING RIGHTS OF WAY: A pre-existing right of way on the easement parcel will not be limited by the restrictions of the easement, unless affirmative steps are taken to achieve that result. This principle is codified in the Maine easement enabling statute at Title 33 M.R.S.A. section 477, subsection 4. “**INTEREST.** An interest in real property in existence at the time a conservation easement is created shall not be impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.”

This makes it very important to identify and understand the scope of any existing rights of way over the prospective easement property. A highly restrictive easement may provide relatively little conservation protection if a neighbor has the right to someday construct a broad avenue through the land to access its new shopping center.

Existing rights of way can be discovered by a careful title search and a physical inspection of the land and its surroundings. Once identified, the next step is to determine the “scope” of the existing right of way. The scope of a right of way is not always evident on the face of the deed that creates it. For instance, in Maine, a right of way established “for all purposes of a way” will allow paving, power and communication, sewer and water lines, and all manner of necessary drainage and erosion control structures to serve any legally permissible use of the “benefited parcel.” If the width is not limited in the deed, the road can be any reasonable width necessary to permit legal access to that neighboring use. And here’s a trap for the unwary: deeded rights of way in Maine are deemed to be “for all purposes of a way,” unless there is a contrary limitation in the deed. In addition, unless the deed says otherwise, the right of way will serve not only the existing lot configuration of the benefited parcel, but

any number of lots into which it is divided in the future. This is not true of rights of way established by use, under the principles of adverse possession or prescription. These are limited in scope to the kind of use that created the right over time.

If the risk of neighboring development is great, and it would severely diminish the conservation value of the easement property, the land trust might want to condition acceptance of the easement on getting the neighbor to agree to restrict the right of way. Even if neighboring land is unlikely to be developed, the parties may want to negotiate with the neighbor for a sensitive relocation or a no-paving requirement for the ROW. A neighbor might be happy to limit the right of way, knowing that the farm next door will always be a farm.

FUTURE RIGHTS OF WAY: The right of a landowner to grant (read “sell”) additional rights of way, or to increase the scope of existing rights of way, can be as valuable a “development right” as the right to build. An easement should be written to curtail this right if roads to serve neighboring development would frustrate its conservation goals. Indeed, if there are existing roads, or the easement allows roads, but is silent on the issue of access to other land, the landowner will have the right to extend the use of those roads to the neighbors without violating the easement. This can be done by deed, by lease, by permission, by acquiescence, and even without any formal action if the owner of the neighboring land and the easement land are one and the same. To address these risks, some easements prohibit additional “through-roads,” as well as new or expanded uses over existing through-roads. If through-roads are contemplated, it may be sufficient to limit their size, location, design, or the specific property or uses they may serve, such as access to serve one single family residence. All of these limitations, however, will be subject to pre-existing rights of others! As with all easements, the conservation goals, the legal and physical condition of the land and its neighborhood, and the owner’s intentions, will determine how best to address these issues. There is no “one size fits all” in easement planning.

Thanks!

Many thanks to the **Natural Resources Council of Maine** for welcoming the Maine Land Trust Network Steering Committee into their office for periodic meetings.

Thanks also to **Adrienne Heflich** who served as intern for the Maine Land Trust Network this summer. Adrienne, a junior at Bowdoin College, was instrumental in planning and preparing for publication the Maine Land Trust Directory, 2004 and a new brochure for professional advisors.

Increased Involvement Leads to New MLTN Initiatives

This year has seen significant growth for the Maine Land Trust Network. The Steering Committee has welcomed eight new representatives from land trusts stretching from Kittery to Rangeley. Committee meetings have been lively and busy, with discussions of issues and program development.

We hope you benefited from the **training** workshops the Network hosted early this fall. Both were funded in part by the Island Foundation and were extremely successful. The first was an advanced session on limited partnerships as a conservation tool taught by Bonnie Van Allen and Tim Barnard—the nation's experts on this topic. A second workshop held in September provided land trust attorneys, project managers, and stewards an opportunity to learn together to the end of better understanding of one another's interpretations of, and hence better crafted, easements.

The Network has also launched two sub-committees to focus on issues of easement defense and GIS usage. The concept of **collective easement defense** is not a new one for the Network, but it has taken on new urgency as the number of easements (and trusts) grows. The committee working on this will look at a range of options for strengthening easements in Maine and creating resources for legally defending easements under certain circumstances. The **GIS Council**—as yet in its infancy—will be charting its course this fall, but is initially envisioning itself as a resource for land

trust GIS users and those in need of GIS information in terms of both technology and policy.

Another initiative, also started by individuals within the Land Trust Network, is an exploration of **liability insurance** options. As you have undoubtedly noticed, liability insurance has become extremely expensive over the past two years. Currently network members and staff are looking into more affordable options that will provide sufficient coverage for land trusts. At our urging, the Land Trust Alliance is also aggressively investigating options for affordable liability insurance.

MLTN is also in the process of developing a **new brochure** designed to educate professional advisors about the opportunities for charitable giving to land trusts. This brochure, designed to be used in conjunction with personal contact, will serve to broaden public awareness by raising the knowledgebase of advisors about land conservation and land trusts. In turn, the advisors can make their clients aware of the opportunities and put them in touch with their local land trust or the Maine Land Trust Network for referral.

As always, new projects and issues continue to arise. These initiatives represent only part of what the Network is doing, but give a clear picture of the positive and energetic direction we are going in. And it's all because of you—your support, enthusiasm, dedication, and energy fuel our progress. As our efforts grow, so too do our successes! Together we, the Maine Land Trust Network, are making Maine a better place to be.

Land Trust Directory to be Published Online

With many thanks to the Network's intern, Adrienne Heflich, each land trust has already received (or will soon) their biennial survey for the Maine Land Trust Directory. This publication provides complete contact information on each land trust in the state as well as other resource information. It also provides an opportunity to compile land trust and conserved land information so that we have a better picture of the land trust community and accurate figures on the amount of land conserved through easement and fee ownership within the

state. This information is used extensively by land trusts as well as state and federal agencies and grant makers.

This year the Directory will be published on-line in an easily downloadable format, making it more accessible to many. As a computer based document it will also be more readily updated, allowing the publication to undergo revision more frequently. We thank everyone in advance for taking the time to promptly fill out their survey so that the new Directory can be finalized this fall.

Land Trust News is published four times a year for the directors, officers, and staff of the 75 subscribing members of the Maine Land Trust Network (MLTN). The MLTN is a program of Maine Coast Heritage Trust that seeks to promote voluntary land conservation by building the quality and effectiveness of land trusts and the Maine conservation community through communication, coordination and education. For more information or if you would like to submit an article or news item for publication in *Land Trust News* please contact Megan Shore at 729-7366 or mshore@mcht.org.

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