Public Access to Privately Owned Land in Maine

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Abstract
In Maine, people have long used private land for recreation. James Acheson points out that this "open land" tradition—unique in the nation—has huge economic implications, especially for the state's tourism industry. In recent years, there has been a substantial increase in land posting, largely in response to abuses by the public. Although a number of different kinds of institutions have arisen to allow continued public access to private land, Acheson suggests that more needs to be done if Maine's "open land" tradition is to be maintained.

First page
18

Last page
30

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businesses, and the State's taxpayers benefit from expanded recreation and tourism. On the other hand, the needs and rights of shoreland owners need to be respected and accommodated. Neither does the public have a general right to pass over privately-owned upland to obtain access to the intertidal area to engage in the permitted uses of "fishing, fowling, or navigation." However, the public has rights to use the upland if it is publicly owned, subject to any governmental regulations. The public also may acquire certain rights to use upland areas through a variety of transactions or claims. At about the same time, the Maine Legislature enacted The Public Trust in Intertidal Land Act. The Act declared that "the intertidal lands of the State are impressed with a public trust," and therefore the public has the "right to use intertidal land for recreation." Maine's public lots have their genesis in colonial times when Maine was part of Massachusetts. By law, undesignated parcels of land about 1,000 acres each were set aside in each township for public uses such as for building schools and local government. In the late 1800s, the state sold the rights to cut trees on those lands, but as time passed, the private companies cutting those trees came to believe they owned the land. The state eventually sued the private companies and won, which returned the "lost" acreage to the state. Those lands and another 200,000 acres that came from negotiations be