

# Maine's Coastal Access Law

---

Presented to  
Coastal Access in Southern Maine Meeting  
2 June 2006

John A. Duff

Environmental, Earth and Ocean Sciences Dep't

UMass/Boston

Boston, MA 02125

# Beach Rights

**Q: Who has rights in the beach?**

**A: *Private* property owners, the general **public**, and/or the local/state/federal governments may all have legal interests in the beach.**

# Beach Rights

**Q: What does that mean in Maine?**

**A:** *Two legal concepts govern beach property law in Maine:*

- 1. Private Property Law**
- 2. Public Trust Doctrine**

# Beach Rights

**Q: What are the private property law elements?**

*A: Those of you who have owned real estate, know what the basic elements of private property law are --*

- *title*
- *right to eject*
- *right to transfer*

# Beach Rights

**Q: What is the Public Trust Doctrine?  
Why is it unique to coastal areas?**

*A: The Public Trust Doctrine is a legal concept that uses the elements of a legal trust to govern coastal areas that have long been considered “common” access areas.*

# Elements of a trust



Trust Property

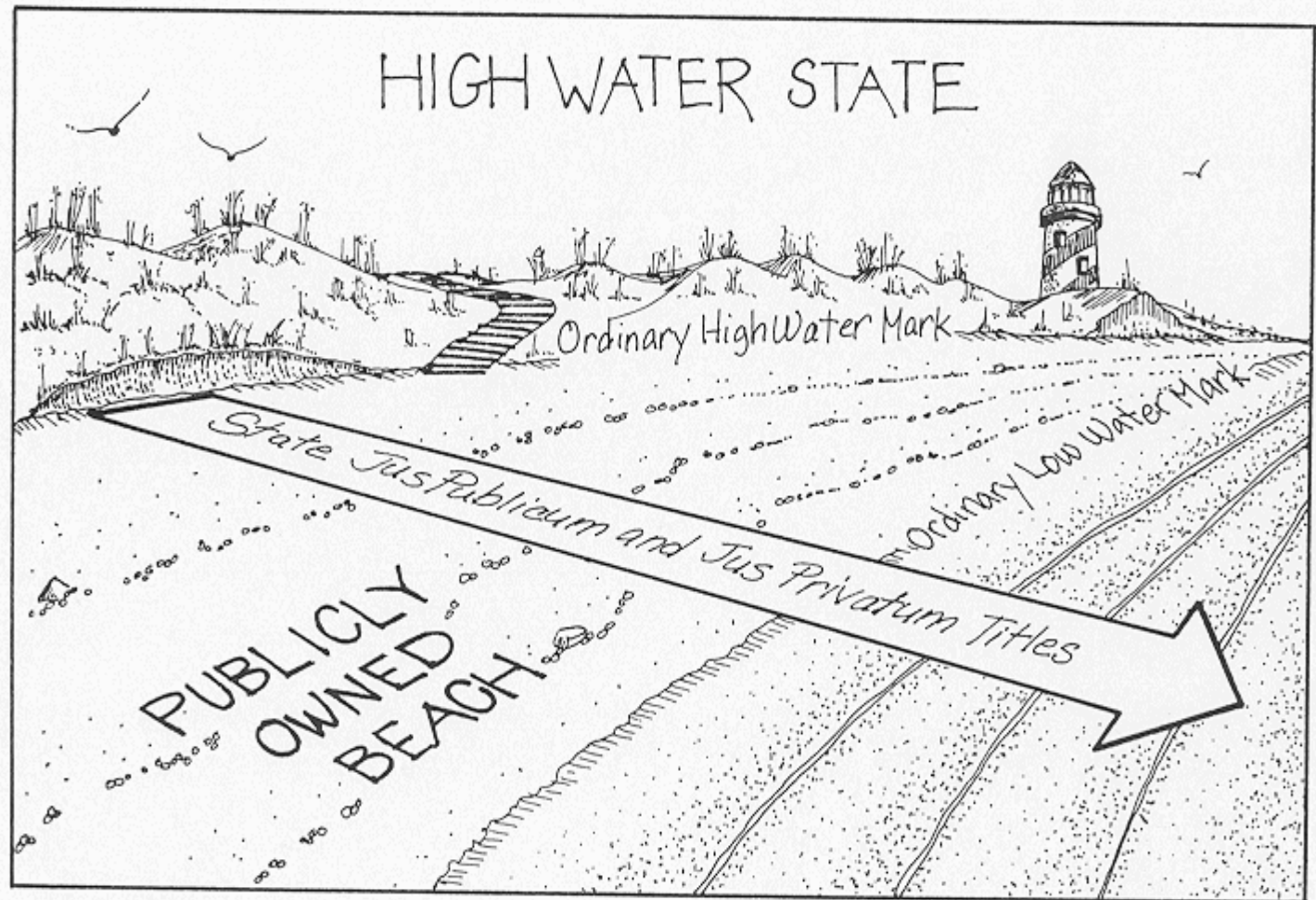
Trustee

Beneficiaries

# Elements of a Public Trust

- Public Property interests
- Public trustee (i.e. the state)
- the public (state residents)

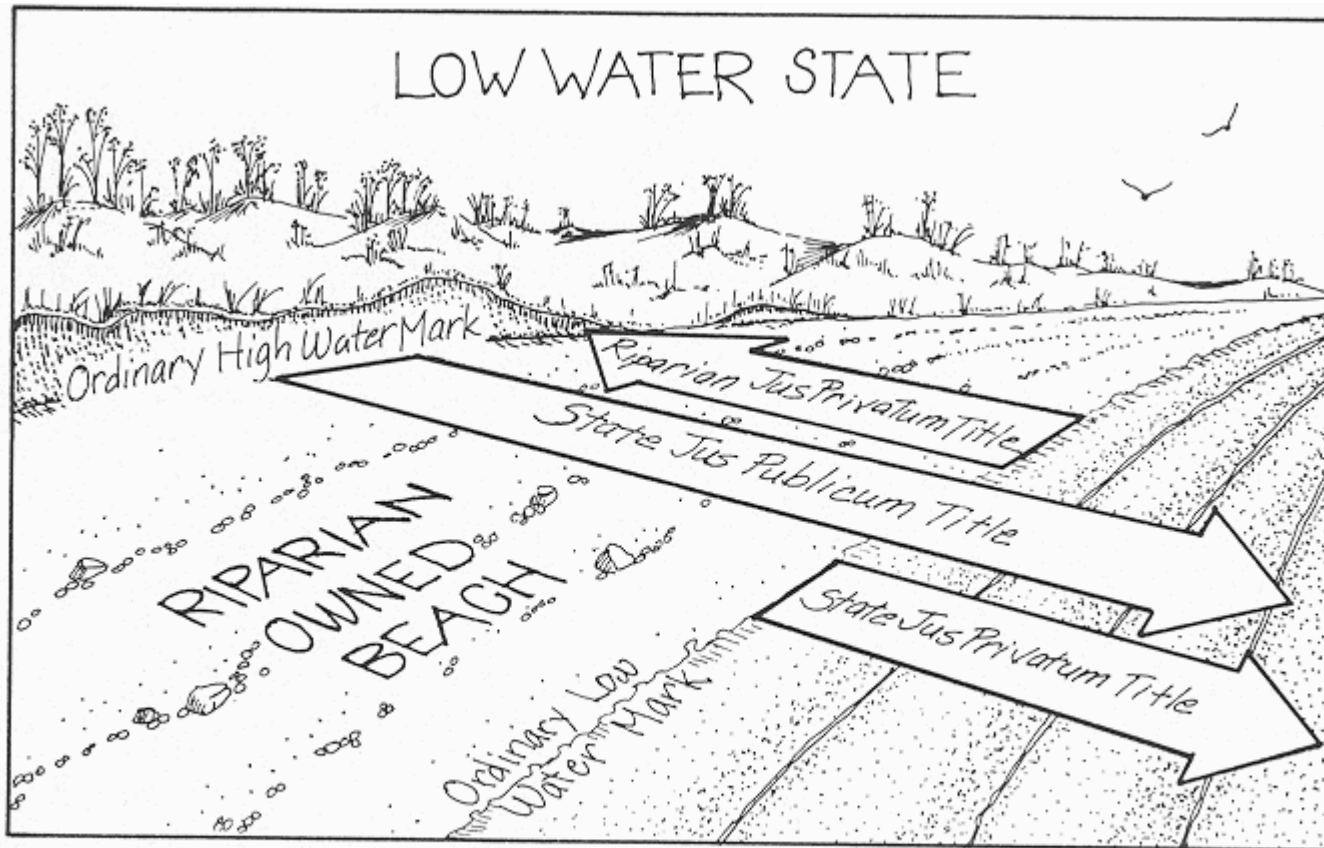
# The Public Trust Doctrine



In "high water" States, the State holds both *jus publicum* (trust) and *jus privatum* (proprietary) titles.



# The Public Trust Doctrine



In "low water" States, the State continues to hold the *jus publicum* (trust) even though the *jus privatum* (proprietary) title is privately held.

# The Moody Beach case

## Bell v. Town of Wells (1989) - Majority opinion

- Maine used to be a District of Massachusetts, and Maine state law evolved from English common law, colonial ordinances, and MA common law;
- Colonial ordinances gave (MA/ME) landowners fee title to intertidal land (i.e. to the low water mark) or at least out to 100 rods (1650 feet);
- Public trust doctrine is limited to give public rights of “fishing, fowling, and navigation in the intertidal zone.”
- State legislature may not expand PTD uses to include recreation;
- Town seeking easement for public use must pay for it.

# Wathen's Dissent in Moody Beach case

- The colonial ordinance did not extend to Maine by its terms, but rather applies by custom, and as such public rights should not be limited to fishing, fowling and navigation ---
  - ◆ *“Although we must avoid placing any additional burden upon the shoreowner, there is no reason to confine, nor have we in the past confined, the rights of the public to the usage prevailing in the 17th century.”*

*Bell v. Town of Wells, 557 A.2d 168, 188 (Wathen, J. dissenting)*

# An opportunity for change

## Eaton v. Wells (2000)

- State and town of Wells sought declaration that public had right to use portion of Wells Beach owned by Eaton family;
- State Supreme Court ruled that town/public had right to use beach via easement by prescription;
- Majority (Wathen, C.J.) refrained from addressing state's contention that PTD ought to be expanded

# Saufley's concurrence in Eaton v. Wells

“I would overrule Bell v. Town of Wells ... a citizen of the state may walk along the beach carrying a fishing rod or a gun, but may not walk along that same beach empty-handed or carrying a surfboard.”

Eaton v. Wells, 760 A.2d 232 248-249 (Me. 2000) (Saufley, J., concurring)

# If no PTD public rights, are you out of luck?

- No !
- How else can the public gain access to the beach?
- Think Local. How have Mainers acquired public beach rights in a state that has the coastline locked up in private ownership?



\$\$\$\$\$\$\$\$

Buy it!

\$\$\$\$\$\$\$\$

# Think Creatively !

## Cliff Walk users sought for trial

● York wants signed affidavits for its court battle.

By TED COHEN  
Staff Writer

YORK — Officials are soliciting affidavits from people who have used the Cliff Walk to prepare for the town's courtroom battle over the public's use of the popular oceanside path.

They want as many people as possible who can help support the town's lawsuit against Jefferson Harkins, who owns land next to the path and is trying to stop the public from using it. Legal experts say the move is unusual, but effective.

"We've already had 80 people come in to sign up," Town Manager Mark Green said Tuesday.

Green knew the milelong path was popular, but he wasn't sure how many walkers would be willing to put their name on the line, especially since it's part of the town's lawsuit.

The suit was prompted by what the town says is a breakdown in negotiations with Harkins, who owns a home next to the path. Tired of people he said were littering and drinking on the path, Harkins two years ago put up a chain blocking it.



The town of York is soliciting signed statements from users of the Cliff Walk as it prepares for a legal battle over the public's right to use the milelong oceanside path.

File photo

The town believes the path has been used so long by the public that Harkins has no right to block it, whether he owns part of it or not. Town officials filed a lawsuit against him in 1998 in York County Superior Court, and both sides have been trying since to negotiate a settlement.

Harkins couldn't be reached Tuesday for comment. His lawyer, Christopher McLaughlin of Portland, said he still has hopes that the dispute can be resolved out of court.

The town's latest action was prompted by a legal notice Harkins published last year in a local newspaper that said townspeople who couldn't prove they have walked the path regularly had no right to be involved in the town's legal effort to make sure the walk stays open.

Now, the town is using a similar method, asking people to come to town hall to sign affidavits saying they have used the Cliff Walk for more than 20 years, without any interference from any property

owners.

Among those who have signed an affidavit is Al Andrews, who said he's been using the Cliff Walk for 60 years.

"I spent most of my time as a kid playing on that walk and the rocks," said Andrews, a 69-year-old retired shipyard worker. "Anybody who's lived in York for a few years, not just natives, but the summer people who come here, are well aware that Cliff Walk was always a right of way."

The town's solicitation is unusual, said Orlando Delogu, a professor at the University of Maine School of Law.

"I haven't heard of such a thing, but I don't fault it," he said. He called it an imaginative way for the town to bolster its case that the Cliff Walk is public. The more people they can get, the more effective their case, he said.

Barring a last-minute settlement, the suit is expected to go to trial later this fall. Also still pending is the town's criminal case against one of its own selectmen, Ronal Nowell, for allegedly vandalizing the chain Harkins drew across the path.

Staff Writer Ted Cohen can be contacted at 282-8225 or at:

tcohen@pressherald.com

rcH 8/9/2010 20



# Other access options

Easements

Viewshed protection

- Public land management

- Private land zoning

Evaluate tax mechanisms

# Maine ballot Initiative 2005

## **Question 7: Constitutional Amendment**

"Do you favor amending the Constitution of Maine to permit the Legislature to authorize waterfront land used for commercial fishing activities to be assessed based on the land's current use in a manner similar to treatment now available for farms, open space and forestland?"

[ Yes 72% ]



# Questions?

[John.Duff@umb.edu](mailto:John.Duff@umb.edu)