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## Conserving a Vision: Acadia, Katahdin, and the Pathway from Private Lands to Park Lands


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# CONSERVING A VISION: ACADIA, KATAHDIN, AND THE PATHWAY FROM PRIVATE HANDS TO PARK LANDS

*Sean Flaherty & Anthony Moffa*

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## CONSERVING A VISION: ACADIA, KATAHDIN, AND THE PATHWAY FROM PRIVATE HANDS TO PARK LANDS

Sean Flaherty\* & Anthony Moffa\*\*

### ABSTRACT

Although a century separates the official designations, the strategies required to ensure federal protection of Maine’s two National Park Service areas—Acadia National Park and Katahdin Woods and Waters National Monument—closely track one another. In both cases, a handful of enterprising conservationists shared the vision for conservation. Both areas depended on the private acquisition, and donation, of title to the numerous parcels that comprised them before the land could garner federal protection. Politics in the early twentieth and twenty-first centuries had to be overcome. This work tells the stories in parallel, highlighting and analyzing four strands of similarity to not only deepen our understanding of these particular areas in Maine, but also to guide future conservationists aiming to convert privately held land to federally managed and protected land.

### I. INTRODUCTION

What is most striking in the Maine wilderness is the continuousness of the forest, with fewer open intervals or glades than you had imagined . . . . These are not the artificial forests of an English king—a royal preserve merely. Here prevail no forest laws but those of nature.

- Henry David Thoreau<sup>1</sup>

In 2016, the federal government accepted a private donation of more than 87,000 acres of former timberlands in Northern Maine. One day later, President Barack Obama officially proclaimed the donated parcel Katahdin Woods and Waters National Monument.<sup>2</sup> It was not, however, the first national monument designated in the state’s history. In 1916, President Woodrow Wilson designated the Sieur de Monts National Monument on the coast of Maine, more than a decade before

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1. HENRY DAVID THOREAU, *THE MAINE WOODS* 89 (1864).

2. See Proclamation No. 9476, 81 Fed. Reg. 59121 (Aug. 29, 2016).

Congress made it Acadia National Park.<sup>3</sup>

Although a century separates the proclamations, the strategies required to ensure federal protection of the properties closely track one another. In both cases, a small handful of enterprising conservationists shared the vision for federal protection. Both monuments required the private acquisition and donation of title to the numerous parcels that comprised them before the land could garner federal protection. Politics in the two very different eras (the early twentieth and twenty-first centuries) managed to rear its ugly head in opposition to efforts to protect Maine's wilderness. Both generations of conservationists, and their efforts, faced considerable obstacles at the local, state, and national level.

A deeper examination of the strands of similarity in the histories of Acadia and Katahdin Woods and Waters reveals four common features, central to our analysis and useful to future conservationists. These factors provide a roadmap for private-to-public conservation efforts. First and foremost, strong and deep-pocketed private benefactors should establish the vision for the project and must remain actively involved even after the government controls the land. Second, formation of a federally protected area will inevitably require acquisition—often through complex and/or contentious transactions—of a patchwork of privately-owned rights to land. Third, though presenting political challenges at all levels of government, obtaining *federal* protection remains worthwhile and often necessary to ensure true conservation of land and wildlife. Fourth, within the broad category of federal protection, national park status sets the gold standard, and, thus, an established pathway from federal lands to national monument to national park still exists.

Using the comparative case studies of Maine's two most prominent federally protected areas—Acadia National Park and Katahdin Woods and Waters National Monument—this piece will expound on the above-described factors. Since both areas began their federal lives as national monuments (indeed one still has that status) and the subject of the President's power under the Antiquities Act has captured public attention, Part II will provide a brief overview of national monument designation and its limits. Part III will discuss the parallel visions and origins of the areas, illuminating the depth of commitment necessary to achieve, and maintain, effective federal conservation. Part IV will lay out the reasons why federal, rather than local, state, or private, protection proved necessary in both case studies and would likely prove necessary for others who want to follow their model. Part V will describe the significant political maneuvering required to get the federal government to even accept the gifts of land to protect. Part VI will argue that national park status persists as the coveted ideal for conservation and that a viable pathway from federal acquisition to monument designation to park statute still exists.

## II. THE ANTIQUITIES ACT AND NATIONAL MONUMENTS

“[T]here is no doubt that, during the period from 1900 to 1906, both the Department of the Interior, through the General Land Office and the Office of Indian Affairs, and the Department of Agriculture, were well aware of the danger of

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3. See Proclamation No. 1339, 39 Stat. 1785 (July 8, 1916); see also *Acadia Name Day: January 19*, FRIENDS OF ACADIA (2016), <https://friendsofacadia.org/visiting-acadia/articles-and-resources/acadia-name-day-january-19/> [<https://perma.cc/32HY-D3WT>].

deterioration and despoliation of antiquities on the public lands . . . .”<sup>4</sup> During the final decades of the 19<sup>th</sup> century, scientists, educators, and preservationists became increasingly alarmed by the looting of the United States’ archeological sites.<sup>5</sup> A movement began to safeguard sites on public lands threatened by unregulated, and potentially illegal, activity.<sup>6</sup> In 1900, Iowa congressman Jonathan Dolliver introduced a bill “[f]or the preservation of prehistoric monuments, ruins, and objects, and to prevent their counterfeiting.”<sup>7</sup> In 1906, Congress passed a single-page statute called the Antiquities Act, delegating authority to the President to declare small tracts of federal lands “national monuments.”<sup>8</sup> Congress thereby vested the President with the power to protect archaeological and historical sites. Congress ceded this power perhaps primarily intending to preserve prehistoric pottery shards, burial mounds, and cliff dwellings; however, the executive branch—then inhabited by conservationist hero Theodore Roosevelt—had a more expansive view of the authority delegated to it.<sup>9</sup> Immediately following the passage of the Act, President Roosevelt declared over a dozen national monuments, including the Grand Canyon National Monument<sup>10</sup> and the Mount Olympus National Monument.<sup>11</sup> Since then, virtually every President has followed in his footsteps, utilizing the Act to protect millions more acres and provoking controversy for over a century.<sup>12</sup>

Even so, the practice of Presidents using executive authority to withdraw from speculation, and thereby protect, federal lands, predated the passage of the Antiquities Act.<sup>13</sup> Under an 1891 law, Congress had authorized the President to withdraw lands for the creation of forest reserves, resulting in roughly 200 million acres of forestland protected in the two decades following passage of the Forest Reserve Act.<sup>14</sup> The 1906 Congress that passed the Antiquities Act was well aware of the broad use of such powers and, nevertheless, expanded the President’s statutory authority.<sup>15</sup> In addition to Acadia, many famed national parks began as presidentially

4. ROBERT CLAUS, INFORMATION ABOUT THE BACKGROUND OF THE ANTIQUITIES ACT OF 1906 1-2 (May 10, 1945).

5. See David H. Getches, *Managing the Public Lands: The Authority of the Executive to Withdraw Lands*, 22 NAT. RESOURCES J. 279, 301-02 (1982); Mark Squillace, *The Monumental Legacy of the Antiquities Act*, 37 GA. L. REV. 473, 477-78 (2003).

6. *American Antiquities Act of 1906*, NAT’L PARKS SERV., <https://www.nps.gov/subjects/legal/american-antiquities-act-of-1906.htm> [<https://perma.cc/RR3A-8Z4X>].

7. Antiquities Act, H.R. 8066, 56th Cong. (1900); see also CLAUS, *supra* note 4, at 2 (describing Dolliver’s bill). For a comprehensive account of the congressional and public debate surrounding the passage of the Antiquities Act, see Squillace, *supra* note 5, at 476-87.

8. 16 U.S.C. § 431 (2012).

9. See Christine A. Klein, *Preserving Monumental Landscapes Under the Antiquities Act*, 87 CORNELL L. REV. 1333, 1334 (2002).

10. *NPS Archeology Program: For the Public*, NAT’L PARKS SERV., [https://www.nps.gov/archeology/PUBS/lee/lee\\_ch8.htm](https://www.nps.gov/archeology/PUBS/lee/lee_ch8.htm) [<https://perma.cc/HU65-7R2T>].

11. *History & Culture – Olympic National Park*, NAT’L PARKS SERV., <https://www.nps.gov/olymp/learn/historyculture/index.htm> [<https://perma.cc/9WWU-MSBN>].

12. Klein, *supra* note 9, at 1335.

13. See Forest Reserve Act, ch. 561, § 24, 26 Stat. 1095, 1103 (1891), *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 704(a), 90 Stat. 2792.

14. PAUL W. GATES, PUB. LAND LAW REVIEW COMM’N, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 581 (1969).

15. Klein, *supra* note 9, at 1355.

proclaimed national monuments: Grand Canyon,<sup>16</sup> Olympic,<sup>17</sup> Bryce Canyon,<sup>18</sup> Grand Teton,<sup>19</sup> Zion,<sup>20</sup> Arches,<sup>21</sup> and Death Valley.<sup>22</sup> Indeed, more than half of all national parks land can trace its origins to a national monument proclamation.<sup>23</sup>

The Antiquities Act delegates authority directly to the President, rather than to an executive official such as the Secretary of the Interior, rendering the nation's highest leader directly accountable to the public for his or her selection of national monuments.<sup>24</sup> Said one federal district court in upholding President Franklin Roosevelt's designation of Jackson Hole National Monument and denying relief to the State of Wyoming, "[s]uch discussions [about the merits of the designation] are of public interest but are only applicable as an appeal for Congressional action."<sup>25</sup>

Over the century of the Antiquities Act, Congress has inconsistently checked the executive's use of the powers that Congress delegated. Despite occasional harsh criticism, partisan posturing, and the sporadic introduction of bills to amend or repeal the Act altogether, Congress has generally affirmed designations by either converting monuments to national parks or providing funding for their management.<sup>26</sup> Moreover, with few exceptions, Congress has acquiesced to executive proclamations under the Antiquities Act, despite having the undisputed power to do otherwise.<sup>27</sup> Thus, the President's authority under the Antiquities Act remains virtually unaltered since 1906.<sup>28</sup>

For conservationists, the permanency of a national monument designation provides a significant advantage over private conservation. No President has

16. *Administrative History of Grand Canyon National Park*, NAT'L PARKS SERV., <https://www.nps.gov/grca/learn/historyculture/index.htm> [<https://perma.cc/Z6PJ-A2FS>].

17. *Olympic National Park*, NAT'L PARK FOUND., <https://www.nationalparks.org/explore-parks/olympic-national-park> [<https://perma.cc/F4EX-XT8A>].

18. *Bryce Canyon National Park*, NAT'L PARK FOUND., <https://www.nationalparks.org/explore-parks/bryce-canyon-national-park> [<https://perma.cc/BFB5-59WC>].

19. Annette Hein, *The Establishment of Grand Teton National Park*, WYOHISTORY.ORG (Nov. 8, 2014), <https://www.wyohistory.org/encyclopedia/establishment-grand-teton-national-park> [<https://perma.cc/848V-GZ6H>].

20. *Zion National Park Foundation Document Overview*, NAT'L PARKS SERV., [https://www.nps.gov/zion/learn/management/upload/ZION\\_Foundation\\_Overview\\_SP-2.pdf](https://www.nps.gov/zion/learn/management/upload/ZION_Foundation_Overview_SP-2.pdf) [<https://perma.cc/CTK2-ELPW>].

21. *Park Founders – Arches National Park*, NAT'L PARKS SERV., <https://www.nps.gov/arch/learn/historyculture/founders.htm> [<https://perma.cc/797X-LG3M>].

22. *Death Valley National Park*, NAT'L PARK FOUND., <https://www.nationalparks.org/explore-parks/death-valley-national-park> [<https://perma.cc/2JJZ-8WSW>].

23. See Richard West Sellars, *A Very Large Array: Early Federal Historic Preservation - The Antiquities Act, Mesa Verde, and the National Park Service Act*, 47 NAT. RESOURCES J. 267, 282 (2007) ("Not only do lands that were initially set aside as 'national monuments' under the Antiquities Act comprise more than 50 percent of the total acreage in today's national park system, but also, of the 20 areas in the United States having the special prestige of being designated World Heritage sites (places deemed to have outstanding international significance), seven were initially preserved by authority of the Act.")

24. See Klein, *supra* note 9, at 1395.

25. *Wyoming v. Franke*, 58 F. Supp. 890, 897 (D. Wyo. 1945); see also Klein, *supra* note 9, at 1349-51 (discussing the case).

26. See CAROL HARDY VINCENT & PAMELA BALDWIN, CONG. RESEARCH SERV., RL30528, NATIONAL MONUMENTS AND THE ANTIQUITIES ACT: RECENT DESIGNATIONS AND ISSUES 3-4 (2001).

27. See *id.*

28. Klein, *supra* note 9, at 1355.

abolished a national monument.<sup>29</sup> This stems not from a sense of decorum or respect for predecessors, but rather from the confines of the statute itself. The Antiquities Act clearly and explicitly delegates to the President the authority to “declare [a national monument] by public proclamation,” but conspicuously refrains from mentioning any authority to undo a monument designation.<sup>30</sup> Although no court has fully resolved this question of statutory interpretation, the text and structure of the Antiquities Act provide a powerful argument that the President lacks the authority to unilaterally abolish existing national monuments.<sup>31</sup>

In 1938, at the request of President Franklin Roosevelt, Attorney General Homer Stille Cummings prepared a memorandum reasoning that presidential proclamations under the Antiquities Act have the full force of law and can be repealed only through subsequent acts of congressional lawmaking.<sup>32</sup> Finding that the Antiquities Act contains neither express nor implied authority to terminate monuments, the opinion concluded that a President lacks the authority to completely abolish a national monument without Congress:

A duty properly performed by the Executive under statutory authority has the validity and sanctity which belong to the statute itself, and, unless it be within the terms of the power conferred by that statute, the Executive can no more destroy his own authorized work, without some other legislative sanction, than any other person can. To assert such a principle is to claim for the Executive the power to repeal or alter an act of Congress at will.<sup>33</sup>

In 1976, Congress passed the Federal Land Public Management Act (FLPMA) governing most general federal lands.<sup>34</sup> Among other things, the legislation repealed the President's withdrawal power over those federal lands, but specifically left untouched the power delegated by the Antiquities Act to designate national monuments.<sup>35</sup> Subsection 204(j) states that “[t]he Secretary [of Interior] shall not . . . modify or revoke any withdrawal creating national monuments . . . .”<sup>36</sup> Professor Mark Squillace argues that, together, the text of the Antiquities Act and the FLPMA limit the President's authority to proclaiming, but not revoking or downsizing, national monuments on federal lands.<sup>37</sup>

Proponents of implied presidential power to abolish or significantly alter national monuments point to various revisions and revocations of executive orders of presidential predecessors, as well as a line of cases predating FLPMA's

29. See Mark Squillace et al., *Presidents Lack the Authority to Abolish or Diminish National Monuments*, 103 VA. L. REV. 55, 59-60 (2017).

30. Klein, *supra* note 9, at 1388; see also PAMELA BALDWIN, CONG. RESEARCH SERV., RS20647, AUTHORITY OF A PRESIDENT TO MODIFY OR ELIMINATE A NATIONAL MONUMENT 2 (2000).

31. Klein, *supra* note 9, at 1388.

32. *See id.*

33. 39 OP. ATT'Y GEN. 187 (1938).

34. See 43 U.S.C. § 1701 (2012) (notably excluding national parks, national forests, national wildlife refuges, or other specialized units).

35. *See id.*; see also Squillace, *supra* note 29, at 59-60.

36. 43 U.S.C. § 1714(j) (2012).

37. Squillace, *supra* note 29, at 71.

enactment.<sup>38</sup> However, FLPMA expressly superseded the rule of *Midwest Oil* and limited the President's authority over federal lands.<sup>39</sup> Furthermore, the source of authority for an executive order or proclamation matters as to the question of what a successor can do with it.<sup>40</sup> Although succeeding Presidents may reverse executive orders involving executive branch policy initiatives without challenge, the Supreme Court in *INS v. Chadha*<sup>41</sup> endorsed the general proposition that when the executive branch acts pursuant to a lawful delegation of congressional authority, such action can be revoked only by a subsequent act of Congress.<sup>42</sup> In other words, both Congress and the President "must abide by [Congress's] delegation of authority until that delegation is legislatively altered or revoked."<sup>43</sup> The Antiquities Act indisputably delegates a limited subset of congressional authority over public lands to the executive—specifically, the power to designate lands of historical or scientific interest *for* protection. Therefore, an executive proclamation designating a national monument has the full force of law and only an act of Congress can overturn it.<sup>44</sup>

Nevertheless, President Donald J. Trump ordered Interior Secretary Ryan Zinke to conduct an unprecedented review of national monument designations in 2017.<sup>45</sup> Katahdin Woods and Waters, not originally included due to its relatively smaller footprint, was later added to Secretary Zinke's review.<sup>46</sup> The final report did not

38. See U.S. Dep't of the Interior, Office of the Solicitor, Opinion of Jan. 30, 1935, M-27657; see also *United States v. Midwest Oil Co.*, 236 U.S. 459, 479 (1915) (recognizing "the right of the Executive to make temporary withdrawals of public land in the public interest.").

39. FLPMA, § 704(a), 90 Stat. 2792 (1976); see Squillace, *supra* note 29, at 67 n.55 ("While the text of Section 704(a) specifically mentions the power of the President 'to make withdrawals,' given the clear intent of Congress in FLPMA to reduce executive withdrawal power, the section is best understood as also repealing any inherent Presidential power recognized in *Midwest Oil* to modify or revoke withdrawals as well.").

40. Cf. Saikrishna Bangalore Prakash, *The Executive's Duty to Disregard Unconstitutional Laws*, 96 GEO. L.J. 1613, 1634 n.74 (2008) ("Whenever presidential administrations confront legal questions previously addressed by their predecessors, there is the question of whether they ought to defer to the statutory and constitutional judgments of their predecessors.").

41. *INS v. Chadha*, 462 U.S. 919 (1983). Chadha, who had overstayed his student visa, had his deportation suspended on the recommendation of the Attorney General. Pursuant to the Immigration and Nationality Act, either body of the legislature was authorized to invalidate deportation rulings by the Attorney General. The House of Representatives subsequently ordered Chadha's deportation without further Senate or executive action. But the Supreme Court ruled that the unicameral legislative veto of the Act violated explicit constitutional standards regarding bicameralism and Congressional delegation of authority. The Court stated that once Congress has delegated authority to the executive branch, "Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked." *Id.* at 954.

42. *Id.* at 954-55 ("Disagreement with the Attorney General's decision on Chadha's deportation – that is, Congress' decision to deport Chadha – no less than Congress' original choice to delegate to the Attorney General the authority to make that decision, involves determinations of policy that Congress can implement in only one way; bicameral passage followed by presentment to the President."); see also Klein, *supra* note 9, at 1389.

43. *Chadha*, 462 U.S. at 955.

44. Klein, *supra* note 9, at 1389.

45. Review of Designations Under the Antiquities Act, 82 Fed. Reg. 20,429, 20,429 (May 1, 2017).

46. See Nick Sambides, *Interior Secretary Ryan Zinke Recommends Keeping Maine's National Monument*, BANGOR DAILY NEWS (Aug. 26, 2017), <http://bangordailynews.com/2017/08/24/outdoors/interior-secretary-zinke-recommends-keeping-maines-national-monument/> [https://perma.cc/6VY2-MWJV].



recommend any boundary changes to Katahdin Woods and Waters, but did call for changes in some allowable uses.<sup>47</sup> However, two other national monuments—Bears Ears and Grand Staircase-Escalante—were greatly affected by Secretary Zinke’s review.<sup>48</sup> In the case of those two monuments, Secretary Zinke formally recommended that “the boundary should be revised through the use of appropriate authority.”<sup>49</sup> In December 2017, President Trump followed that recommendation, reducing the size of Bears Ears National Monument by 85%<sup>50</sup> and Grand Staircase-Escalante National Monument by half.<sup>51</sup> In both cases, President Trump claimed that the current boundaries were “greater than the smallest area compatible with the protection of the objects for which lands were reserved.”<sup>52</sup> In reaction, a number of conservation organizations and affected Native American tribes filed lawsuits challenging the legality of these actions based in part on the same reasoning set forth above.<sup>53</sup>

Despite the current efforts to cabin its use, the Antiquities Act sits on the books as good law and a powerful tool for conservation. This tool has been the foundation of federal protection for many important areas in the United States, including Acadia and Katahdin Woods and Waters.

### III. MAINE’S ELITE EYE CONSERVATION

Acadia and Katahdin traveled parallel tracks to federal protection. Both share origins as privately held property. While most national monuments and national parks were originally public land, Acadia and Katahdin originated from exclusively private donations. In the early 1900s, George Dorr, Charles Eliot, John D. Rockefeller, Jr., and others sought to protect pieces of Mount Desert Island from the growing development of the tourism industry.<sup>54</sup> Hoping to conserve nature, scenic viewpoints, and wilderness features, this old boys’ club made the first efforts to preserve Acadia at the local level.<sup>55</sup> One hundred years later, a philanthropic female entrepreneur would set out, seemingly single handedly, to preserve thousands of

47. *Id.*

48. See Devin Henry, *Zinke to ask Trump to shrink two more monuments*, THE HILL (Dec. 5, 2017, 3:17 PM), <https://thehill.com/policy/energy-environment/363371-zinke-to-ask-trump-to-shrink-two-more-monuments> [<https://perma.cc/6776-DW2K>].

49. Memorandum from Ryan Zinke, Sec’y of the Interior, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act (2017), [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf) [<https://perma.cc/G6JK-ERQA>].

50. Proclamation No. 9681, 82 Fed. Reg. 58,081, 58,087 (Dec. 8, 2017).

51. Proclamation No. 9682, 82 Fed. Reg. 58,089, 58,091 (Dec. 8, 2017).

52. Proclamation No. 9681, 82 Fed. Reg. 58,081, 58,087 (Dec. 8, 2017); Proclamation No. 9682, 82 Fed. Reg. 58,089, 58,091 (Dec. 8, 2017).

53. See *generally* Complaint for Declaratory & Injunctive Relief, Nat. Res. Def. Council v. Trump, No. 1:17-cv-02606 (D.D.C. Dec. 7, 2017); Complaint for Injunctive & Declaratory Relief, Hopi Tribe v. Trump, No. 1:17-cv-02590 (D.D.C. Dec. 4, 2017).

54. See Greg Hartford, *Acadia National Park History*, ACADIA MAGIC, [https://acdiamagic.com/acadia\\_national\\_park.html](https://acdiamagic.com/acadia_national_park.html) [<https://perma.cc/58HF-Z874>].

55. See GEORGE B. DORR, ACADIA NATIONAL PARK, ITS ORIGIN AND BACKGROUND 3 (1942).

acres of Northern Maine forests around Maine's tallest mountain.<sup>56</sup>

### A. Hancock County Trustees for Public Reservations

Acadia National Park, located in Bar Harbor, Maine, now spans nearly 50,000 acres of rocky, wooded coast.<sup>57</sup> Originally confined to Mount Desert Island, the park has expanded over the decades to reach more than 5,000 acres on Isle au Haut and the Schoodic Peninsula.<sup>58</sup> The vast federally controlled park lands far exceed the original scope and vision of the park's early champions.

George Bucknam Dorr, the "father of Acadia," spent the majority of his adult life dedicated to actively managing the park lands he fought to protect.<sup>59</sup> From the age of 25, he called Mount Desert Island his home.<sup>60</sup> There he cultivated his family's property, gardens, and homestead, all of which he would eventually donate to the park.<sup>61</sup> Dorr, a proud Harvard alumnus, lived beside Charles Eliot, the president of his alma mater.<sup>62</sup> The two worked together in fundraising efforts to acquire land for new university buildings—yeoman's work that honed the duo's skills of planning, negotiation, and administration.<sup>63</sup> Dorr would later draw on these skills when he turned his focus to conserving open space on Mount Desert Island.<sup>64</sup>

By the 1890s, Dorr developed an interest and expertise in landscape gardening.<sup>65</sup> He founded the Mt. Desert Nurseries and dedicated his efforts to other landscaping and conservation projects.<sup>66</sup> Dorr's prescient work could not come soon enough, as the following decade would bring increasing threats to the scenery of Mount Desert Island.<sup>67</sup> "Village Improvement Societies"—organizations apparently unique to the area—emerged across the island during the 1890s, and the societies of Bar Harbor, Seal Harbor, and Northeast Harbor began collaborating to reserve and make accessible lands for perpetual public use.<sup>68</sup> Charles Eliot called together groups of

56. See George Smith, *Roxanne Quimby's Story Worth Telling, Whether You Admire or Revile Her Plans*, MORNING SENTINEL (May 27, 2015), <https://www.centralmaine.com/2015/05/27/roxanne-quimbys-story-worth-telling-whether-you-admire-or-revile-her-plans/> [<https://perma.cc/KTB3-LQDP>].

57. *Learn About the Park*, NAT'L PARKS SERV., <https://www.nps.gov/acad/learn/management/statistics.htm> [<https://perma.cc/RCH8-FXY8>].

58. See generally CATHERINE SCHMITT, *HISTORIC ACADIA NATIONAL PARK 179-196* (2016) (describing the park's growth by addition of lands outside of Mount Desert Island and providing a map of park lands).

59. *George Bucknam Dorr*, NAT'L PARKS SERV., [https://www.nps.gov/articles/featured\\_stories\\_dorr.htm](https://www.nps.gov/articles/featured_stories_dorr.htm) [<https://perma.cc/WL4V-6PEF>].

60. See Letter from B.L. Haldey, Superintendent, Acadia Nat'l Park, to Robert W Shankland, (Mar. 30, 1949) (on file with *History of Park Management Records*, Sawtelle Research Center).

61. See *id.*

62. Steven Pavlos Holmes, *George Bucknam Dorr*, HARVARD MAGAZINE, Sept.-Oct. 2016, <https://harvardmagazine.com/2016/09/george-bucknam-dorr> [<https://perma.cc/ZT4J-KAA8>].

63. See *id.*; see also DORR, *supra* note 55, at 4.

64. Holmes, *supra* note 62.

65. *Id.*

66. See *id.*

67. See *id.*

68. See ANN ROCKEFELLER ROBERTS, *MR. ROCKEFELLER'S ROADS: THE UNTOLD STORY OF ACADIA'S CARRIAGE ROADS* 41 (1990); *Hancock County Trustees of Public Reservations*, NAT'L PARKS SERV., <https://www.nps.gov/acad/learn/historyculture/hctpr.htm> [<https://perma.cc/A8NT-SDWN?type=image>]; see also RONALD H. EPP, *THE HANCOCK COUNTY TRUSTEES OF PUBLIC*

conservation-minded residents of Mount Desert Island to establish the Hancock County Trustees of Public Reservations (hereinafter “Trustees”).<sup>69</sup> The Trustees promptly elected Eliot as president and Dorr as vice president and executive officer.<sup>70</sup>

The Trustees set out to incorporate in order to “receive, hold, and improve for public use lands in Hancock County which by reason of historic interest, scenic beauty, or any other cause, were suitable for such an object.”<sup>71</sup> Maine’s Legislature convened in January of 1903 and issued a charter for the public service corporation “to acquire, by devise, gift or purchase, and to own, arrange, hold, maintain or improve for public use lands in Hancock County, Maine, which by reason of scenic beauty, historical interest, sanitary advantage or other like reasons may become available for such purpose.”<sup>72</sup>

The Trustees acquired the first two parcels—a site atop a bold ocean front cliff and a hill top overlooking Jordan Pond.<sup>73</sup> The next gift did not come until 1908, when the widow of Charles D. Homans of Boston, a member of the earliest group of summer residents of Mount Desert Island, donated the Bowl and Beehive tracts on Newport Mountain.<sup>74</sup> That same fall, through the initiative of Dorr, the Trustees acquired the summit of the Mount Desert Island—the highest point on the east coast.<sup>75</sup> The summits of Dry Mountain, Newport Mountain, Picket Mountain, Pemetic, Jordan, Sargent, and the “Bubbles,” followed.<sup>76</sup>

Dorr, while influential, was not the only driving force protecting Acadia in the early years. John D. Rockefeller, Jr., heir to the Standard Oil Company fortune, had been a promoter of, and benefactor for, a national park on Mount Desert Island since the idea’s inception.<sup>77</sup> A regular visitor to Mount Desert Island with a family “cottage” of his own, Rockefeller helped establish the initial Sieur de Monts National Monument and played a catalytic role in its redesignation as Lafayette National Park.<sup>78</sup> With Dorr’s support, Rockefeller began construction of a carriage road system.<sup>79</sup>

Through 1940, Rockefeller constructed fifty-seven miles of roads and bridges on Mount Desert Island—an expression of his appreciation for the natural beauty of

RESERVATIONS: AN HISTORICAL SKETCH (2d ed. 2016) (discussing the formation of “a board of trustees or a commission to hold reservations at points of interest on the island, for the perpetual use of the public”); *Home*, HANCOCK CTY. TR., <http://www.hctpr.org/> [<https://perma.cc/5ANC-PDRF>]; *History*, SEAL HARBOR VILL. IMPROVEMENT SOC’Y, <https://www.sealharborvis.org/history> [<https://perma.cc/CGU6-2KCZ>]; *History*, BAR HARBOR VILL. IMPROVEMENT ASSOC., <https://barharborvia.org/about-us/history/> [<https://perma.cc/GL5D-PULX>].

69. RONALD H. EPP, *GEORGE DORR’S VISION FOR “GARDEN APPROACHES” TO ACADIA NATIONAL PARK* 59 (2004); *see also* NAT’L PARKS SERV., *supra* note 68.

70. *George B Dorr*, NAT’L PARKS SERV., <https://www.nps.gov/people/george-b-dorr.htm> [<https://perma.cc/XED3-SCPU>].

71. DORR, *supra* note 55, at 5.

72. *Id.* at 5-6.

73. *Id.* at 6.

74. *Id.* at 6.

75. *Id.* at 7.

76. *Id.* at 49-50.

77. *See* ROBERTS, *supra* note 68, at 48.

78. DOUGLAS DEUR, NAT’L PARKS SERV., *THE WATERFRONT OF OTTER CREEK: A COMMUNITY HISTORY* 68 (2012).

79. *See* NAT’L PARKS SERV., *supra* note 59.

the area.<sup>80</sup> He intended not to create beauty but to allow access to it for all.<sup>81</sup> From the outset, much of his work invited controversy.<sup>82</sup>

A national debate raged regarding use of automobiles.<sup>83</sup> In Maine, municipalities were considering bans on automobiles; summer residents feared the loss of wilderness while year-round residents were enticed by the potential for economic development.<sup>84</sup> Rockefeller's carriage roads added to the controversy as they opened inner areas of the park for public use for the first time.<sup>85</sup> Many conservationists at the time argued that wilderness should be maintained as pristine; Rockefeller believed not only in protection, but also access and enhancement.<sup>86</sup> In fact, Rockefeller believed that the extraordinary success of the automobile (which was fueling the growth of Standard Oil Company) was one of the principal reasons for creating carriage roads that would prohibit automobiles.<sup>87</sup> In all, Rockefeller donated more than 10,000 acres of land and constructed roads thereon at a cost of \$3.5 million.<sup>88</sup>

Preservation of the Carriage Roads was not Rockefeller's only contribution to Acadia. In the height of the Great Depression, Rockefeller was able to acquire much of the village of Otter Creek, fully engulfed by the newly created park and tucked between the larger towns of Bar Harbor and Mount Desert.<sup>89</sup> There, a divide existed between the more affluent supporters of the park and the members of the modest working waterfront community.<sup>90</sup> Rockefeller worked to acquire rights to the entire waterfront at little expense.<sup>91</sup> Specifically, he wanted to enclose the inner cove of Otter Creek to create a scenic causeway and saltwater swimming pond for the new national park.<sup>92</sup> In this pursuit, he worked to extinguish the waterfront access through both formal and informal means.<sup>93</sup>

Formally, Rockefeller's Otter Creek Realty Company bought up property in an

80. See LAURIE HOBBS-OLSON, *ACADIA NAT'L PARK, CARRIAGE ROAD EXPLORERS: AN EDUCATOR'S GUIDE TO ACADIA'S CARRIAGE ROADS* (1996).

81. See ROBERTS, *supra* note 68, at 55-56.

82. See *generally id.* at 79-108 (describing in detail conflicts throughout the project); HOBBS-OLSON, *supra* note 80.

83. See HOBBS-OLSON, *supra* note 80.

84. See *Creating Acadia National Park: The Biography of George Bucknam Dorr Book Talk: Dr. Ronald Epp Speaks About His Important Book*, MAINE HISTORICAL SOC'Y (Oct. 26, 2016), [https://www.mainehistory.org/programs\\_podcasts.shtml](https://www.mainehistory.org/programs_podcasts.shtml) [<https://perma.cc/3RAS-XCZ4?type=image>].

85. See ROBERTS, *supra* note 68, at 80.

86. See *id.* at 79-81.

87. *Id.* at 84-86.

88. MICHAEL JOSEPH OSWALD, *YOUR GUIDE TO THE NATIONAL PARKS OF THE EAST 7* (2017) (nearly \$62 million in 2018 dollars).

89. See DEUR, *supra* note 78, at 2; HOBBS-OLSON, *supra* note 80.

90. See DEUR, *supra* note 78, at 2 (supporters were generally summer visitors from out of state, which opponents were mostly local year-round residents).

91. See *id.* (Rockefeller may not have recognized the Otter Creek waterfront as a legitimate asset in light of the paucity of buildings, the ambiguity of certain fishermen's titles to the land, and a variety of other idiosyncrasies).

92. See *id.* at 69.

93. See *id.* at 71-72.

effort to expand the park.<sup>94</sup> Informally, he had to contend with entrenched locals. Fishermen and others had maintained fish houses and access points along the cove for generations.<sup>95</sup> Rockefeller closed off public roads where they intersected his land, but the village had secured a formal right-of-way to access the waterfront for fishing purposes.<sup>96</sup> The tactics employed to extinguish claims to the waterfront were seen by residents as “heavy handed.”<sup>97</sup>

After the rededication of the park as Acadia National Park in 1929, Rockefeller seized on devaluation of land during the Great Depression.<sup>98</sup> Otter Creek Realty Company purchased plots, Otter Point, and a federally owned radio station during the early 1930s.<sup>99</sup> During this period, Rockefeller was also exerting his considerable political influence. In 1936, Rockefeller won a vote by the Town of Mount Desert to extinguish the community title to the town landing, which had been in its secure possession since 1892.<sup>100</sup> Rockefeller was accused of improperly influencing the vote by transporting men on his payroll to and from the town meetings.<sup>101</sup>

Nevertheless, the issue of public access to the waterfront persisted.<sup>102</sup> Legal challenges to the taking of a public right-of-way forced Rockefeller to consult with his own attorneys.<sup>103</sup> They rightly recognized that land-locking the fishing community at Otter Creek through extinguishment of the town landing access and

94. *See id.* Rockefeller quietly secured “the entire Otter Creek waterfront from families cash-strapped by the Great Depression” and worked to extinguish other types of community access through formal means. *Id.*

95. *Id.* at 70.

96. *Id.* (“The right-of-way . . . conflicted with Rockefeller’s plans . . . and became a target of his acquisition strategy: ‘They had a right-of-way and he wanted to get that.’”).

97. *Id.*; *see also id.* at 70-71. Accusations of “strong-armed” tactics were directed at Rockefeller not only in Maine, but in other national parks, where working-class occupants were removed to support a vision of preserving unoccupied and scenic natural spaces. For example, controversy surrounded Rockefeller’s tactics displacing residents near Great Smokey Mountain National Park. Rockefeller had been instrumental in promoting and financing the creation of Great Smoky Mountain National Park, which required the removal of residents from over 1,000 farmsteads. Accounts of strong-arm tactics and low valuation of homes purchased under these agreements were widespread, leading to lawsuits against Rockefeller’s coalition that advanced all the way to the Tennessee Supreme Court. Similarly, a “front” organization founded by Rockefeller was accused of improper dealings at the proposed national park at Grand Teton National Park. Rockefeller’s secret efforts led to howls of protest from the Wyoming state government and congressional delegation, as well as its ranching communities. The Idaho and Wyoming congressional delegations led the charge to develop a U.S. Senate subcommittee, which was formed in 1933 to review claims of illegal activities by Rockefeller’s Snake River Cattle Company and the National Park Service in land purchases. The committee ultimately cleared Rockefeller of all formal charges but suspicions have persisted for generations after the transfers took place. *Id.*

98. *Id.* at 71.

99. *See id.* at 71-72. An example of the lengths Rockefeller was willing to go to secure his vision for an expanded National Park Rockefeller’s includes the Otter Point radio station used in World War I. An Otter Creek resident recalled that, “[w]hen Rockefeller built his road, they made an agreement to move all of that stuff out of there, the radio station and that.” *Id.* at 72.

100. *Id.* at 73.

101. *Id.*

102. *See id.* at 74.

103. *Id.*

construction of the Causeway presented potential legal issues.<sup>104</sup> In order to construct the new road that Rockefeller would personally fund, Rockefeller offered a compromise that would have allowed fishermen to retain the fish houses on the east cove and maintain access to the inner cove.<sup>105</sup> Rockefeller petitioned the fishermen to relinquish their legal claims by traveling along the shoreline and securing “handshake deals” that he would not extinguish their access to the cove and the fish houses.<sup>106</sup> Issues of tideland rights and common law access continued to complicate title, making the National Park Service initially reluctant to accept title.<sup>107</sup>

After Rockefeller was able to successfully transfer title of these acquisitions to expand Acadia National Park, he continued to exert his influence during the construction of park roads, bridges, and other vital infrastructure.<sup>108</sup> A force of around 600 laborers completed most of the work during President Franklin Roosevelt’s “Second New Deal,” from 1935 through 1941;<sup>109</sup> though, Rockefeller personally financed and uniquely designed sixteen of the seventeen stone-faced bridges spanning streams, waterfalls, roads, and cliff sides within the park.<sup>110</sup>

### B. *Elliotsville Plantation, Inc.*

Roxanne Quimby, co-founder of the skin-care company Burt’s Bees, originally conceived of Katahdin Woods and Waters National Monument.<sup>111</sup> With strong roots

104. *See id.* (Rockefeller wrote to the former National Parks Service Director Horace Albright on May 14, 1936: “You will recall that when you and Mr. Cammerer [NPS Director] met in my office some months ago to discuss Acadia Park matters, we felt it was necessary to have a legal opinion as to the rights of fishermen on the Otter Creek Inlet waters, their rights to reach the water over private land and the right of the Government to build the causeway over navigable state waters. I have only recently gotten from Mr. Rodock his opinion on these two matters and am sending you herewith his letters of May 5th and 6th with the opinion which accompanied the latter. His judgment as to the Government’s right to build the causeway is rather upsetting.”).

105. *See id.*

106. *See id.* at 75 (“Rockefeller was a great one for going around and talking with everyone . . . he assured them, ‘hey, it will never be any problem. You’ll always be able to go in there,’ and it was the same with the fish houses . . . Rockefeller granted the fishermen that they never would have a problem down here when he turned everything over to the park. And it was only a handshake, you know?”).

107. *See id.* at 75-76 (some plots on the western side of the cove were transferred to the National Park Service as early as fall of 1937 while others were delayed for years).

108. *See Acadia’s Historic Carriage Roads*, NAT’L PARK SERV. (Dec. 14, 2015), <https://www.nps.gov/acad/learn/historyculture/historiccarriageroads.htm> [<https://perma.cc/UY5K-KXWY>].

109. DEUR, *supra* note 78, at 78.

110. *See* NAT’L PARK SERV., *supra* note 108; DEUR, *supra* note 78, at 78. Rockefeller worked alongside men employed by the Works Progress Administration, Civil Conservation Corps, Bureau of Public Roads, the Resettlement Administration, the Recreation Demonstration Projects and “Federal One” arts programs. Rockefeller ensured that native stone, cut specifically with a rustic look, was used to retain a natural appearance.

111. *See* Eric Zelz, *Burt’s Bees Founder Quimby Wants To Donate Her Land for National Park*, BANGOR DAILY NEWS (Mar. 28, 2011), <http://bangordailynews.com/2011/03/28/news/burts-bees-founder-quimby-wants-to-donate-national-park/> [<https://perma.cc/PW28-BEEX>]; *see also* Justin W. Moyer, *Meet Burt’s Bees Co-Founder – A Passive Aggressive Zen Master Who Missed Out on \$970 Million*, WASH. POST (July 28, 2014), [https://www.washingtonpost.com/news/morning-mix/wp/2014/07/28/meet-burts-bees-co-founder-a-passive-aggressive-zen-master-who-missed-out-on-970-million/?noredirect=on&utm\\_term=.0eab827bb5a5](https://www.washingtonpost.com/news/morning-mix/wp/2014/07/28/meet-burts-bees-co-founder-a-passive-aggressive-zen-master-who-missed-out-on-970-million/?noredirect=on&utm_term=.0eab827bb5a5) [<https://perma.cc/3BFY-NBC7>].

in rural Maine, Quimby used most of Burt's Bees's profits to fund land acquisitions in Maine, even going so far as to equate the eventual sale or public offering of the company with more cash for land purchases.<sup>112</sup> While securing those first parcels, Quimby publicly signaled her intent to keep the lands out of the hands of developers and eventually donate the property to create a national park in Northern Maine.<sup>113</sup>

In 2003, Quimby's premonition came to pass. A group of private investors purchased Burt's Bees, and Quimby promptly used the profits to buy three large tracts of land.<sup>114</sup> RESTORE: The North Woods, a Massachusetts-based nonprofit organization, shared Quimby's aspirations for a national park and claimed her as a member of its Board of Directors.<sup>115</sup> At that time, the National Park Service professedly lacked sufficient resources to acquire a large area and, furthermore, perceived substantial local objection.<sup>116</sup>

"What I'm asking for is respectful use of the property," Quimby said in describing her vision.<sup>117</sup> As proposed, the 3.2 million acre park and preserve would have surrounded Baxter State Park and encompassed well-known landmarks such as Moosehead Lake and the Allagash Wilderness Waterway, covering a swath of privately owned timberland stretching from Millinocket west to the Quebec border and north from Greenville to Clayton Lake.<sup>118</sup> Quimby's RESTORE group originally favored setting aside a portion of land as a park, free of hunting and snowmobiling, leaving the majority of the land as a preserve where those activities could occur.<sup>119</sup>

Over nearly two decades, Quimby acquired more than 100,000 acres of land between Maine's highest peak, Mount Katahdin, and branches of the Penobscot River.<sup>120</sup> Quimby's dream faced skepticism from the start, and her actions stirred only more acrimony. Flying in the face of her initial intent, she closed her land to hunters and snowmobilers, violating a long-held Maine tradition of allowing such uses on private property and angering locals.<sup>121</sup> Criticism spread beyond local sportsmen, however, when Quimby admitted that she had never actually visited the lands she purchased.<sup>122</sup> Quimby did not make any friends as a landlord, either. She

112. Susan Young, *Maine Land Purchased With Eye on U.S. Park*, THE MAINE WOODS (2001), [http://www.forestecologynetwork.org/tmw\\_latefall2001/maine\\_land\\_purchased.html](http://www.forestecologynetwork.org/tmw_latefall2001/maine_land_purchased.html) [<https://perma.cc/P9G3-DEPU>].

113. *Id.*

114. *Endangered Spaces: Katahdin Woods and Waters*, THE DIRTBAG DIARIES (2017), <http://dirtbagdiaries.com/endangered-spaces-katahdin-woods-waters/> [<https://perma.cc/W498-EBA4>].

115. Young, *supra* note 112.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. See Kevin Miller, *Quimby Adds More Than 11,000 Acres to Land Holdings*, BANGOR DAILY NEWS (Sept. 28, 2011), <https://bangordailynews.com/2011/09/28/news/penobscot/quimby-buys-more-than-11k-acres-to-add-to-land-holdings/> [<https://perma.cc/BUN2-NK32>].

121. Billy Baker, *A Feud as Big as the Great Outdoors*, BOS. GLOBE (Nov. 17, 2013), <https://www.bostonglobe.com/magazine/2013/11/17/son-burt-bees-cofounder-leads-fight-for-maine-national-park/iQHv6w2s7fUJc6MBt6ZJSN/story.html> [<https://perma.cc/WT4W-45BK>].

122. Dierdre Fleming, *Roxanne Quimby's Son Offers New Hope for National Park Plan*, PORTLAND PRESS HERALD (Sept. 15, 2013), [https://www.pressherald.com/2013/09/15/roxanne-quimbys-son-offers-new-hope-for-national-park-plan\\_2013-09-15/](https://www.pressherald.com/2013/09/15/roxanne-quimbys-son-offers-new-hope-for-national-park-plan_2013-09-15/) [<https://perma.cc/JE5Q-HJ5T>].

raised rents and evicted people from long-established camps along the East Branch of the Penobscot River.<sup>123</sup>

Thus, despite the potential for local economic growth, many residents expressed resentment and concern over Quimby's—and worse, the looming federal government's—top-down approach to management of forests considered the generational, common inheritance of local Mainers.<sup>124</sup> Maine's forests, though, are a common resource in sentiment and recreational practice only. In fact, private landowners, primarily the forest products industry (i.e., paper companies), have historically controlled 95 percent of the forest lands.<sup>125</sup> These benevolent titans of Northern Maine's most important industry nevertheless never posted their timberland to prevent trespassing.<sup>126</sup> Indeed, the companies long permitted residents to use the privately held lands as a common resource.<sup>127</sup> Local residents (many of them not coincidentally employed by the paper mills that drove the local economies) hunted, fished, recreated, and even constructed cabins on company land.<sup>128</sup>

Unsurprisingly, the smartphone era has not been kind to the paper industry. By the early 2000s, the paper industry's global decline had taken its toll on the communities in the Katahdin region.<sup>129</sup> Jobs disappeared, mills shuttered, and communities struggled to replace the loss of economic opportunities.<sup>130</sup> Logging companies sold millions of acres of timberland with about a quarter of the state's land base changing hands as a result.<sup>131</sup> Consolidated industrial forest holdings gave way to a host of landowners, such as timber investment firms and real estate investment trusts.<sup>132</sup> These shifts in ownership changed the physical and socio-

123. Phyllis Austin, *Roxanne Quimby Purchases High Priority 24,000 Acre Township East of Baxter Park*, ME. ENVTL. NEWS (Nov. 24, 2003), <http://www.meeepi.org/files03/pa112403.htm> [<https://perma.cc/5LGL-S7QR>].

124. See Nick Sambides, Jr., *National Park Service Leader Hears Opposition, Some Support for Monument During Katahdin-Area Forum*, BANGOR DAILY NEWS (May 16, 2016), <http://bangordailynews.com/2016/05/16/news/penobscot/national-park-service-leader-hears-opposition-some-support-for-monument-during-katahdin-area-forum/> [<https://perma.cc/FUC4-T3QG>].

125. See *Forest Facts*, FORESTS FOR MAINE'S FUTURE (Mar. 5, 2018), <http://www.forestsformainefuture.org/forest-facts/> [<https://perma.cc/GG8P-RJUF>] (For example, Great Northern Paper in Millinocket was the largest single paper mill in the world in the 1970s and was the predominate landowner for decades).

126. See James M. Acheson, *Public Access to Privately Owned Land in Maine*, 15 ME. POL'Y REV. 18, 24 (2006).

127. See *id.*; see also Richard Pérez-Peña, *Obama Designates National Monument in Maine, to Dismay of Some*, N.Y. TIMES (Aug. 25, 2016), <https://www.nytimes.com/2016/08/25/us/obama-maine-katahdin-woods-and-waters.html> [<https://perma.cc/XWY9-US89>] (discussing some of the limitations accompanying the monument designation and the local opposition to it).

128. See Acheson, *supra* note 126, at 19.

129. See C.W. Woodall et al., *An Assessment of the Downturn in the Forest Products Sector in the Northern Region of the United States*, 61 FOREST PRODUCTS J. 604, 604-13 (2011).

130. See Darren Fishell, *An 'Economic Crisis' in Maine's Paper Industry, Mapped*, BANGOR DAILY NEWS: WIDGETS & DIGITS (Mar. 15, 2016), <http://widgetsanddigits.bangordailynews.com/2016/03/15/economy/an-economic-crisis-in-maine-paper-industry-mapped/> [<https://perma.cc/X6AY-3PJ8>].

131. Young, *supra* note 112.

132. Robert J. Lilieholm, *Forging a Common Vision for Maine's North Woods*, 16 ME. POL'Y REV. 12, 14 (2007).



cultural landscape of Maine forests.<sup>133</sup> What was once a culture of open land use on large tracts of private land gave way to a fragmented landscape dotted by multiple new owners with different ideas about private property.<sup>134</sup>

*C. Private-to-Public Conservation Comes at a High Cost of Both Money and Time*

Perhaps most notable amongst the parallels between the storylines is the vision, the prominence, and the sheer wealth and power of the areas' respective founders. Katahdin truly echoes Acadia in this respect. One can almost envision Rockefeller Jr. negotiating "handshake" deals with fishermen along the waterfronts of Otter Creek as the forefather to Lucas St. Clair<sup>135</sup> sitting at a folding table at the Patten Transfer Station handing out literature to unemployed millworkers.<sup>136</sup> The need to preserve the landscape was clear. The desire to permit access, use, and enjoyment was important. And the lasting legacy of the properties themselves was foremost in the minds of those involved.

It is difficult to imagine a similar conservation effort in Maine, or elsewhere, that does not have at its core one, or more, dedicated philanthropists with hours of time and piles of money to spare. As the cases of Acadia and Katahdin suggest, land transactions of the magnitude that could lead to a national monument (and eventually a national park), even gratuitous transfers, involve complex arrays of titles, easements, permits, contracts, legal entities, persons, places, and things.

How any conservation effort measures up on these initial two factors—the commitment of its benefactors and the complexity of the land transactions involved—provides a good indicator of its likelihood of success. Even seemingly simple private land trust initiatives fail due to a mismatch between the necessary levels of commitment and the work requiring legal or technical expertise. The increasing percentage of land trusts with paid staff confirms the importance of this calculus and the frequent inability of the donors or conservationists to accomplish the requisite tasks themselves.<sup>137</sup> At the much grander federal scale, the transaction becomes exponentially more complex. Indeed, few private initiatives have ever attempted, let alone attained, the success of Acadia or Katahdin Woods and Waters. As the names involved in those efforts suggest, at any point in history, few individuals have the funds and the resolve necessary to see such an effort through. That may change, however, in the near future.<sup>138</sup>

#### IV. THE FEDERAL LAND PROTECTION PROGRAM

State and local government action, inaction, and thinly veiled threats have historically made conservationists uneasy about the resiliency of private mechanisms

133. *Id.* at 15.

134. James M. Acheson & Julianna Acheson, *Maine Land: Private Property and Hunting Commons*, 4 INT'L J. COMMONS 552, 556 (2009).

135. Son of Roxanne Quimby. *See infra* Part IV.B.

136. *See* Lucas St. Clair, *Katahdin Woods and Waters National Monument*, ME. MAG. (Mar. 2017), <http://themainemag.com/maine-live/lucas-st-clair/> [<https://perma.cc/3EB6-TK45>].

137. *See* RICHARD BREWER, *CONSERVANCY: THE LAND TRUST MOVEMENT IN AMERICA* 13-14 (2003).

138. *See infra* Section VII.

for preservation of wild spaces, compelling them to seek additional protections elsewhere, chiefly the federal government. At least in these two prominent Maine stories, the unease was justified. In the case of Acadia, the Maine Legislature sought to revoke the Hancock Trust's charter.<sup>139</sup> And, according to Dorr, that very maneuver provoked the effort to establish a national park.<sup>140</sup> The Maine Legislature and Governor likewise actively opposed federal protection for the Katahdin properties.<sup>141</sup> And, just as it had 100 years earlier in Bar Harbor, that state-level political opposition to preservation efforts dictated strategy. The two cases feature stark similarities in the lack of state legislative support and the resultant turn towards the federal government.

#### *A. Maine's Legislature Threatens Revocation of Trustee's Public Charter*

For fifteen years, as the Trustees executive officer, Dorr had negotiated the acquisition of more than 6,000 acres of land.<sup>142</sup> However, the undertaking to preserve the beauty of that land proved neither easy nor straightforward. In early 1913, hoping to enjoy a peaceful winter social season in Boston, he received word from friend and legal assistant, Harry Lynam, that "a group of them down here have got together and have introduced a bill in the State Legislature, now just convened at Augusta, to annul the charter of our Trustees of Public Reservations corporation."<sup>143</sup> Dorr immediately set out for Augusta, spending days successfully fighting the measure.<sup>144</sup> He realized in the wake of that experience, however, that the lands he had fought so hard to acquire needed the protection of the federal government, and he began a new drive to secure it.<sup>145</sup>

Dorr sought out Eliot, who was, at first, unconvinced of the necessity of federal protection, pointing to successful efforts at Harvard to fend off opposition from the municipal government without the protection of the federal government.<sup>146</sup> However, Dorr argued that the Trustees would be unable to leverage the sort of influence that Harvard was capable of—an argument that ultimately won over Eliot.<sup>147</sup> Dorr later wrote that, "[i]t is here that the story of our National Park begins,

139. CATHERINE SCHMITT, *HISTORIC ACADIA NATIONAL PARK* 172 (2016).

140. *Id.*

141. Kevin Miller, *Bill Opposing National Monuments in Maine Going to LePage's Desk*, PORTLAND PRESS HERALD, (Apr. 11, 2016), <https://www.pressherald.com/2016/04/11/bill-opposing-national-monuments-in-maine-going-to-lepages-desk/> [<https://perma.cc/X6W5-CTCS>].

142. See Anne Kozak, *Acadia: A Gift to the People, by the People*, MOUNT DESERT ISLANDER, July 14, 2016, <https://www.mdislander.com/acadia-centennial-2/acadia-gift-people-people> [<https://perma.cc/9Z8B-P3MJ>]; see generally Holmes, *supra* note 62.

143. DORR, *supra* note 55, at 19; see also JOHN M. BRYAN, *MAINE COTTAGES: FRED L. SAVAGE AND THE ARCHITECTURE OF MOUNT DESERT* 217 (2005).

144. DORR, *supra* note 55, at 19.

145. *Id.* at 20 ("In bringing about the defeat of this measure, much water had flowed beneath the bridge since I came down; it had been a new experience to me and made me realize on how unstable a basis our Reservations rested. Returning that night to Boston, I thought it over as I lay awake and decided that the only course to follow to make safe what we had secured would be to get the Federal Government to accept our lands for a National Park, deeming them well worth it.")

146. *Id.* ("President Eliot . . . said that we could meet such attacks as they arose, as the University had done when the city of Cambridge undertook to tax its lands and buildings.")

147. *Id.* at 20.

born of the attack upon our Public Reservations' charter."<sup>148</sup>

### B. Local Opposition in Katahdin Fuels Statewide Political Pressure

The falling values of real estate and depressed economy of the entire Katahdin region allowed Quimby to easily and affordably purchase seemingly otherwise undesirable property.<sup>149</sup> However, from the outset, opposition to her broader vision was fierce. As early as 2000, the governing bodies in the two largest communities near the proposed park, Greenville and Millinocket, along with the Penobscot County Commissioners, passed resolutions opposing a North Woods national park.<sup>150</sup>

Meanwhile, Quimby continued her efforts. In 2010, the National Park Foundation appointed her to its board,<sup>151</sup> striking fear in the hearts of park opponents. In response, the Maine Legislature passed a joint resolution opposing Quimby's initiative to donate more than 70,000 wild acres for a proposed Maine Woods National Park.<sup>152</sup>

Opposition took many forms. A Facebook page brazenly dubbed "Ban Roxanne" garnered roughly 2,400 followers.<sup>153</sup> Political activists set up a website entitled "Don't Fence ME In" to better organize opponents.<sup>154</sup> "This is our wood basket," said Mary Adams, a political activist and the website's author, "we are darn lucky to have it and we have it because private landowners have kept it that way all of these years."<sup>155</sup> Shortly thereafter, a more formal organization called the Maine

148. BRYAN, *supra* note 143, at 217.

149. See *Land Sales in Maine Since 1998*, NAT. RES. COUNCIL OF ME., <https://www.nrcm.org/projects/forests-wildlife/north-woods-protection-lupc/major-land-sales-in-maine-since-1998/> [<https://perma.cc/GH8X-PZ4V>].

150. See PHYLLIS AUSTIN, *QUEEN BEE: ROXANNE QUIMBY, BURT'S BEES, AND HER QUEST FOR A NEW NATIONAL PARK* (2015) (describing the resolution signed by the selectmen of Greenville, Maine on October 2, 2002, opposing the creation of a park visitor's center); see also Mary Anne Lagasse, *North Woods Park Plan Blasted in Millinocket*, BANGOR DAILY NEWS (Oct. 4, 2000), <https://archive.bangordailynews.com/2000/10/04/north-woods-park-plan-blasted-in-millinocket/> [<https://perma.cc/VZ2T-TUCZ>] (describing a special town meeting in Millinocket, where of 120 attendees, none voiced support for the proposed national park); Nick Sambides, *Penobscot County Commissioners Oppose Quimby Park Plan*, BANGOR DAILY NEWS (Aug. 21, 2012), <http://bangordailynews.com/2012/08/21/news/penobscot/penobscot-commissioners-oppose-quimby-park-plan/> [<https://perma.cc/27SW-96LC>] (noting that Penobscot County Commissioners voted to oppose the proposed park).

151. *The National Park Foundation Welcomes Three New Directors to Its Board*, NAT'L PARK FOUND. (Oct. 25, 2010), <https://www.nationalparks.org/about/pressroom/press-releases/national-park-foundation-welcomes-three-new-directors-its-board> [<https://perma.cc/VY9R-4LL5>].

152. S.J. Res. 519, 125th Leg. Reg. Sess. (Me. 2011). Her proposal also called for another 40,000 acres north of Dover-Foxcroft to be managed like a state park, allowing hunting and snowmobiling. See Baker, *supra* note 121.

153. *Ban Roxanne*, FACEBOOK, <https://www.facebook.com/groups/2220204654> [<https://perma.cc/2C2C-UEGQ>].

154. Mary Adams, *DON'T FENCE ME IN: KEEP THE MAINE WOODS FROM FEDERAL ZONING*, <http://dontfencemein.us/> [<https://perma.cc/Q4WB-XH2R>].

155. Kevin Miller, *Loved and Loathed, Roxanne Quimby Remains Determined*, BANGOR DAILY NEWS (July 29, 2011), <https://bangordailynews.com/2011/07/29/outdoors/loved-and-loathed-roxanne-quimby-remains-determined/> [<https://perma.cc/H2D6-S52Y>].

Woods Coalition joined the fight.<sup>156</sup>

The opposition showed both resentment toward Quimby for closing her lands and a general distrust of the federal government.<sup>157</sup> Opponents feared that the government would seize local control, prohibit activities like snowmobiling and hunting, and decimate the forest products industry.<sup>158</sup> Mark Maston, then the vice chair of the Maine Woods Coalition and an East Millinocket selectman, argued, “[i]f a park comes in, it would shut the mills.”<sup>159</sup> Nonbinding local referendums held in Katahdin region municipalities consistently rejected plans for a national park by overwhelming majorities.<sup>160</sup> By 2012, Quimby and park supporters seemingly went silent as the proposed project stalled.<sup>161</sup>

### C. Local and State Politics May Threaten Conservation Efforts

Generally, when protecting wilderness, one imagines shielding it from developers or polluters or resource extractive industries. The common experience of those who set out to establish Acadia and Katahdin almost a century apart serves as a reminder that subnational governments may also oppose conservation of lands within their jurisdiction. A unique advantage of federal government protection lies in the supremacy of national laws and regulations over their state and local counterparts.

State and local politicians may oppose conservation within their jurisdictions for a variety of reasons. Economic concerns, particularly for areas dependent on extractive industries, often feature prominently.<sup>162</sup> Regardless of the magnitude of the actual threat posed by the potential park project to the continued viability of lumbering, mining, or drilling (which is of course to some degree real), conservation campaigns provide politicians with a convenient scapegoat. In this scenario, opposition to a protected area equates to support for millworkers and lumbermen whose jobs might have already been disappearing due to economic conditions. Those workers constitute the voting base for town selectmen, county commissioners, state legislators. However, as the jurisdictional reach of a representative widens, the

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156. Katharine Seelye, *National Park Proves a Hard Gift to Give*, N.Y. TIMES (Jan. 9, 2014), <https://www.nytimes.com/2014/01/10/us/a-national-park-for-maine-proves-a-hard-gift-to-give.html> [https://perma.cc/8SE4-94TU].

157. *See id.*

158. *Id.*

159. *Id.*

160. Editorial Board, *Our View: For Maine, National Monument up North Represents Opportunity*, PORTLAND PRESS HERALD (May 16, 2016), <https://www.pressherald.com/2016/05/16/our-view-for-maine-national-monument-up-north-represents-opportunity/> [https://perma.cc/7TL8-P3CT].

161. *See Baker, supra* note 121.

162. *See, e.g.,* Albert C. Lin, *Clinton's National Monuments: A Democrat's Undemocratic Acts*, 29 ECOLOGY L.Q. 707 (2002) (describing opposition to President Clinton's designation of the Grand Staircase-Escalante National Monument in Utah as in part based on economic concerns related to the loss of jobs and revenue from mining and other resource intensive industries). *But see* SMALL BUSINESS MAJORITY, REPORT: ECONOMIC IMPACTS OF OBAMA ADMINISTRATION NATURAL NATIONAL MONUMENTS (2016), <https://www.smallbusinessmajority.org/sites/default/files/research-reports/040616-Economic-Impacts-of-Obama-Administration-Natural-National-Monuments.pdf> [https://perma.cc/6CCR-BDVR] (offering as support for President Obama's monument designations the estimate that “[e]conomic activity generated by national monument visitation contributes \$58 million in labor income per year in the local communities surrounding the national monuments.”).

political dynamics change; hence, paradoxically, support might come easier from the most powerful (i.e., United States Senators).

Self-interest also motivates subnational government opposition to federal protection for land. Taken together, the Property and Supremacy Clauses of the United States Constitution make clear that once land comes under federal government jurisdiction, any conflicting local or state laws or regulations must give way.<sup>163</sup> Thus, the gifts of land to the federal government by Rockefeller and Quimby also amounted to transfers of power over that land. State and local politicians who want to protect their jobs and spread, rather than cede, their influence would naturally oppose jurisdictional grabs by way of land donations, regardless of the good intentions behind them. On the other hand, federal lawmakers have the opportunity to exercise more authority within their home state if more transfers to the federal government like Acadia and Katahdin come to fruition.

Given competing political interests and the tendency of winds to change rapidly in response to seemingly unrelated events, perhaps private conservation would offer an easier and equally effective path. One might reasonably ask why the Hancock County Trustees and Quimby's foundation did not simply hold onto their property and protect it themselves. Property law vests landowners with powerful rights, most importantly the right to exclude others. Indeed, more than half of the conservation land in Maine is privately held.<sup>164</sup> It is difficult to say for certain why neither Dorr nor Quimby embraced a model wherein they remained protectors of the land; however, as Part III describes, the vision for both areas was always one of public access and enjoyment, rather than walling off untouched wilderness. The National Park Service is uniquely situated to facilitate and manage just that type of access.

## V. OBTAINING FEDERAL PROTECTION

Though necessary, garnering support at the federal level proved no simple task in either situation. Similar atmospheres in Washington at both points in history, namely an immovable Congress, led to the deployment of parallel strategies. Dorr, and others, first hoped that they would be able to establish a national park on Mount Desert Island. Almost single handedly, Quimby set out with the same goal in the Maine woods. However, the political realities of the times made moving national park legislation through Congress impossible. Consequently, it became clear to both Dorr and Quimby that the only way to move forward would be to utilize presidential authority derived from the Antiquities Act of 1906.

In both instances, supporters found a favorable administration in the White

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163. The Property Clause reads, "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. ART. IV, § 2. The Supremacy Clause reads, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. CONST. ART. VI, § 2.

164. Garrison Beck, Ginny Keesler & Laramie Maxwell, *State of Large Landscape Conservation in Maine 2012*, COLBY.EDU, <http://web.colby.edu/stateofmaine2012/state-of-large-landscape-conservation-in-maine/> [<https://perma.cc/7QHM-WS72>] ("Private entities hold 55% of all of Maine's conserved land, followed by the state government with 36%.")

House.<sup>165</sup> Nevertheless, success in obtaining a monument designation did not come without required political and legal maneuvering. Dorr called in countless favors, involved influential members of the administration, and navigated a bureaucratic system in its infancy.<sup>166</sup> Quimby, likewise, needed to exert considerable influence in her quest. Her son, Lucas St. Clair, who took over the cause, astutely recognized the importance of a public relations campaign to combat the opposition.<sup>167</sup> Purchasing the land in the Katahdin region may have been easier for Quimby's Elliotsville Plantation, Inc. than it was for the Hancock County Trustees in Acadia, yet the public outcry was clearly far greater.

#### A. Dorr's Work in Washington

Just weeks after quelling the state legislative threats in Maine, Dorr headed to Washington, D.C., where he stayed with his friend, and recently resigned Forest Service Chief, Gifford Pinchot.<sup>168</sup> Dorr's first visit, he wrote, was "of some length, getting in touch with people and learning from one and another what was going on politically beneath the surface."<sup>169</sup>

The following year, Dorr returned to Washington in the spring, with deeds, maps, and abstracts of title in hand. Joining him was Edward Howe Forbush, the Massachusetts State Ornithologist widely known as a leading authority on birds.<sup>170</sup> Dorr wrote that Forbush accompanied him "to urge acceptance of our offer for the much-needed protection it would afford to bird life, sea and land alike, at a most outstanding point on the coast of Maine."<sup>171</sup> At this time, the National Parks Service did not yet exist, so the two submitted the offer to the permanent executive secretary of the Public Lands Commission.<sup>172</sup> Dorr's strategy in lobbying for acceptance of the offer relied on the expertise of one of Dr. Forbush's associates and "a special clause" in the Antiquities Act that had

been added to include gifts from a private source in order to enable President Roosevelt to accept a noble stand, some four hundred odd acres in extent, of the Coastal Redwoods . . . north of the entrance to San Francisco Bay, which John Muir, the famous naturalist and lover of the Sierra forest, had raised a fund to purchase and present to the Government.<sup>173</sup>

This precedent encouraged Dorr to push for a national monument designation, as opposed to national park legislation, a type of bill of which Congress had already grown somewhat leery.<sup>174</sup>

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165. President Woodrow Wilson in 1916 and President Barack Obama in 2016.

166. See DORR, *supra* note 55, at 21-46.

167. St. Clair, *supra* note 136.

168. DORR, *supra* note 55, at 21. At the time, Pinchot supported charges against the Interior Secretary for renting, at a nominal charge, Federally owned coal fields in Alaska. The events caused Pinchot to resign and retain the counsel of Louis D. Brandeis. *Id.*

169. *Id.*

170. *Id.* at 26.

171. *Id.*

172. *Id.*

173. *Id.* at 27-28.

174. *Id.*

The Public Lands Commission initially rejected the offer.<sup>175</sup> In its report, however, the Commission noted two specific areas of lands that Dorr and his compatriots would have to acquire for the government to accept the donation.<sup>176</sup> In the following years, World War I gripped the nation; it would be two years until Dorr secured the funds for the parcels.<sup>177</sup>

His holdings complete, Dorr set out to name the collected area for protection. After researching extensively the history of the deeds, dating back to colonial and revolutionary transfers, Dorr decided to take the name for the property of the French founder of Acadia, Sieur de Monts.<sup>178</sup> When the Public Lands Commission finally accepted the offer in 1916, Dorr wrote to the Secretary of the Interior to push for the actual monument designation.<sup>179</sup>

As noted at the outset, the Antiquities Act vests only Presidents with the authority to designate national monuments. It would take three separate appeals to win over President Wilson. At the first meeting, Dorr, accompanied by Maine's Democratic Senator Fletcher Johnson, complimented President Wilson on his recent nomination of Louis Brandeis to the Supreme Court.<sup>180</sup> Though the flattery seemed welcomed by Wilson, it proved for naught.<sup>181</sup>

Dorr's next move was to call upon another old friend, Charles Hamlin, whom President Wilson had recently appointed to be the Governor of the newly formed Federal Reserve Board.<sup>182</sup> Visiting the White House, Dorr and Hamlin were greeted by the First Lady with the information that "the President says that he does not feel sure he would be legally justified in signing the Proclamation."<sup>183</sup> Dorr's connections within the Interior Department suggested that "the Forest Service ha[d]

175. *Id.* at 28-29.

176. *Id.* at 29.

177. *See id.*

178. *See* WILLIAM OTIS SAWTELLE, ACADIA NATIONAL PARK: RANDOM NOTES ON THE SIGNIFICANCE OF THE NAME (1929),

<https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1087&context=mainehistory> [<https://perma.cc/8GQ5-D39M>].

179. DORR, *supra* note 55, at 32, 36 ("To the Secretary of the Interior, Washington, D. C. Sir: On behalf of the Hancock County Trustees of Public Reservations, State of Maine, I have the honor to offer in free gift to the United States a unique and noble tract of land upon our eastern seacoast, for the establishment of a National Monument. The tract offered is rich in historic association, in scientific interest and in landscape beauty. Approximately five thousand acres in extent, it contains within itself the only heights that immediately front the open sea with mountainous character upon our eastern shore. It contains also, owing to past glacial action and its own variously resistant rocky structure, an extraordinary variety of topographic features which unite with the climate caused by the surrounding sea to fit it beyond any other single locality in the east for the shelter, growth and permanent preservation of a wide range of life, both plant and animal. It forms a striking and instructive geologic record. And it constitutes the dominant and characteristic portion of the first land, Mount Desert Island, to be visited, described and named by Champlain when sailing under de Monts' orders in exploration of the New England coast. The papers I enclose herewith will explain in more detail the thought and purpose of the offered gift, with the reasons which led us to conviction of its exceptional public value and worthiness to be accepted.").

180. *Id.* at 37.

181. *Id.* at 38.

182. *Id.*

183. *Id.*

been knifing [them].”<sup>184</sup> Not to be deterred, Dorr then visited the Director of the Forest Service, who promptly drafted a letter of support.<sup>185</sup> Senator Fletcher arranged another White House meeting, but again nothing came of it.<sup>186</sup>

It would take a chance meeting at the Metropolitan Club to bring the effort across the finish line.<sup>187</sup> From another table, Federal Reserve Governor Hamlin approached Dorr with Treasury Secretary McAdoo, the President’s son-in-law.<sup>188</sup> McAdoo reported to Dorr that the Secretary of Agriculture, David Houston, had submitted a memorandum to the President opposing the monument based on fiscal concerns and objections to the Antiquities Act itself.<sup>189</sup> Dorr offered to take over charge of the monument for the lowest salary paid to anyone in government service—one dollar per month.<sup>190</sup> Charles Eliot wrote a note to Houston, his former student at Harvard, who promptly wrote to President Wilson informing him of his changed view.<sup>191</sup> Just three days later, President Wilson signed the official proclamation on July 8, 1916.<sup>192</sup>

### B. St. Clair’s Campaigns in Northern Maine

In 2012, Quimby stepped away from the project and handed off the effort to her son, Lucas St. Clair, who returned to his native state of Maine to salvage any hope of a national park. St. Clair, a one-time thru-hiker of the 2,180-mile Appalachian Trail (the northern end of the trail terminates at Mount Katahdin) attempted to use his outdoor experience to relate with residents in the area.<sup>193</sup> Quimby gave him a deadline. She would continue to fund the effort through her foundation until August 2016, when the National Park Service would celebrate its centennial anniversary.<sup>194</sup>

From the start, St. Clair took a more conciliatory approach, determined to win hearts and minds in a way his mother never did.<sup>195</sup> He restored public access to tens of thousands of acres on the east side of the Penobscot River and promised to keep them open as a recreation area for hunting, snowmobiling, and fishing.<sup>196</sup> St. Clair also built an 18-mile loop road around the proposed park connecting camping areas and hiking trails, inviting the public to come see and experience the land it for themselves.<sup>197</sup>

Perhaps more importantly, St. Clair spent hundreds of thousands of dollars on a

184. *Id.* at 39.

185. *Id.*

186. *Id.* at 39-40.

187. *See id.* at 41.

188. *Id.* at 41-42.

189. *Id.* at 42-43.

190. *Id.* at 43-44.

191. *Id.* at 44-45.

192. *Id.* at 45; U.S. GEN. LAND OFFICE, *Sieur de Monts National Monument, Mount Desert Island, Maine* (1916), retrieved from the Library of Congress, [www.loc.gov/item/98687174/](http://www.loc.gov/item/98687174/)

[<https://perma.cc/9DST-QPGE>].

193. St. Clair, *supra* note 136.

194. THE DIRTBAG DIARIES, *supra* note 114.

195. St. Clair, *supra* note 136.

196. *See id.*

197. *See* Lucas St. Clair, Winter Talks: Creation of the Katahdin Woods & Waters Monument at the Merryspring Nature Center (Feb. 14, 2017).



public relations and lobbying campaign to “reset” the conversation with residents, Maine’s congressional delegation, and the White House.<sup>198</sup> Economic studies detailed how other communities benefited from proximity to national parks, and a poll found that two-thirds of residents in Maine’s 2nd Congressional District would actually support a park.<sup>199</sup>

St. Clair also personally campaigned, attempting to assure locals that the government would not use eminent domain or impose air quality standards and buffer zones that would hurt the forestry industry.<sup>200</sup> “I’ve had 10,000 cups of coffee with just about everyone,” Lucas famously said.<sup>201</sup> “I’ve stood at the end of the grocery store checkout line and asked people what they thought. I’ve sat in a million town meetings. I went to bean-hole suppers and knocked on doors.”<sup>202</sup> The Katahdin Area Chamber of Commerce endorsed the proposal.<sup>203</sup> The Bangor Daily News also backed it, saying “[the] region needs new life.”<sup>204</sup> St. Clair described his approach to garnering support for a Northern Maine National Park as similar to mounting a campaign for the United States Senate.<sup>205</sup>

Still, opposition remained fierce and outspoken. “Sometimes big ideas are just plain bad ideas,” a group of opponents, including leaders of the Maine Forest Products Council and the Sportsman’s Alliance of Maine, wrote in an open letter.<sup>206</sup> “This is a region with incredible assets and huge potential, but unless you end your quest, the prospect of a national park or some other version of federal control, such as a national monument, will hang over the region like a dark cloud, scaring off the investment the region needs and deserves.”<sup>207</sup>

By 2015, unable to persuade members of Maine’s congressional delegation to introduce national park legislation, St. Clair began a push to convince President Obama to designate the land a national monument.<sup>208</sup> Three members of Maine’s congressional delegation—Senators Susan Collins and Angus King and former Representative Bruce Poliquin—sent a letter to President Obama expressing “serious

198. St. Clair, *supra* note 136.

199. *Id.*

200. St. Clair, *supra* note 197.

201. *Id.*

202. *Id.*

203. Gail Fanjoy, *Maine Voices: National monument Proposal a Historic Opportunity for Katahdin Region*, *Chamber Chief Says*, PORTLAND PRESS HERALD (Apr. 27, 2016), <https://www.pressherald.com/2016/04/27/maine-voices-national-monument-proposal-a-historic-opportunity-for-katahdin-region/> [<https://perma.cc/W57Y-ZPJS>].

204. Editorial Board, *Why a National Park Makes Sense for Maine's North Woods*, BANGOR DAILY NEWS (Nov. 6, 2015), <https://bangordailynews.com/2015/11/06/opinion/editorials/why-a-national-park-makes-sense-for-maines-north-woods/> [<https://perma.cc/5HJX-UEJM>].

205. See THE DIRTBAG DIARIES, *supra* note 114.

206. Nick Sambides Jr., *New Poll Shows 'Strong' Support for National Park*, BANGOR DAILY NEWS (June 2, 2015), <https://bangordailynews.com/2015/06/02/news/penobscot/new-poll-shows-strong-support-for-national-park/> [<https://perma.cc/7PZH-8GXC>].

207. Jim Robbins, *National Park, or Monument, a Misguided Attempt To Provide Legacy for Quimby*, KENNEBEC JOURNAL (Aug. 8, 2015), <https://www.centralmaine.com/2015/08/08/national-park-or-monument-a-misguided-attempt-to-provide-a-legacy-for-quimby/> [<https://perma.cc/8ZG7-VL3K>].

208. Gabrielle Gurley, *A Monumental Cave-In*, THE AM. PROSPECT, May 5, 2017, <http://prospect.org/article/monumental-cave> [<https://perma.cc/8LGP-D66J>].

reservations and significant concerns” about a proposed monument designation.<sup>209</sup> Yet instead of explicitly opposing the proposed designation, the letter laid out nine conditions the administration should impose on a national monument.<sup>210</sup> At the time,

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209. Press Release, Sen. Susan Collins, *Collins, King, Poliquin Receive Response to Letter to President on Possible National Monument Designation in Maine North Woods* (Feb. 11, 2016) (on file at <https://www.collins.senate.gov/newsroom/collins-king-poliquin-receive-response-letter-president-possible-national-monument> [<https://perma.cc/4CTQ-6GUJ>]); see Kevin Miller, *A National Park or a National Monument? North Woods Groups Shift Focus*, PORTLAND PRESS HERALD (Nov. 29, 2015), <https://www.pressherald.com/2015/11/23/collins-king-and-poliquin-have-serious-reservations-about-north-woods-national-monument/> [<https://perma.cc/LW9T-HP5Q>].

210. See Collins, *supra* note 209, laying out the following conditions:

1. Express permission for all traditional recreation uses, including hunting, fishing, hiking, camping, canoeing, kayaking, the use of motorized vehicles, such as snowmobiles and ATVs, and other outdoor recreational activities associated with our North Maine Woods. Maine has a long and cherished history of public access to large tracts of privately owned land. This invaluable relationship must be protected so that citizens are able to continue to recreate freely and responsibly.
2. Protection for the long term well-being of our prized forests, both within the borders of any federal land designation and for the adjacent and surrounding areas. Any federal land must allow for proper forest management, including timber harvesting, to prevent forest fires and invasive species and to allow for proper sustainable tree growth. Moreover, the surrounding lands have robust forestry activities such as logging, trucking, and timber harvesting, and any federal land designation must not impair these industries, their good paying jobs or inhibit future growth in this sector. The forest products industry employs nearly 40,000 hard-working Mainers. One out of every 20 jobs in Maine is associated with the forest products sector.
3. All private or state land that is contiguous, adjacent, or nearby, or any inholdings, must continue to have established easements and rights of way, including for roads, and remain independent of any federal control. This independence must also include freedom from view shed, air quality, or buffer zone regulations or requirements. No federal regulations should be put in place that would discourage future investment or growth in the region.
4. Any monument designation must respect private property rights and ensure that the federal government will never take any private land in the area by eminent domain. All land must be acquired from a willing seller through donation or purchase. Concerns have been raised about the size of the parcel in question, as for some time many believed that EPI owned 150,000 acres of the proposed national park and national recreation area. In fact, more than 40 percent of the proposed area is owned by other private landowners, some of whom have adamantly expressed they have no interest in selling their land for inclusion in any federal land system.
5. Management needs of the area must be carefully examined to determine the appropriate federal land management agency. The U.S. Forest Service, with its history of working closely with communities to preserve traditional uses, should be considered as an agency to oversee any national monument designation.
6. Establishment of a local and state advisory board to ensure that any management decisions reflect local and state priorities, not the priorities of Washington. Local communities know how to make their own decisions and that autonomy should continue.
7. Federal commitment to help improve the economically depressed Katahdin Region and create new jobs must accompany any new federal land designation. This should include efforts related to tourism and outdoor recreation, as well as the forest products industry.
8. When creating the educational and interpretive experience for any public land in question, it is critical to have a special emphasis on the Katahdin Region’s rich history, including the important roles of the timber industry, local communities, and the Penobscot Nation.

the Obama administration already faced strong opposition from some members of Congress, particularly Republicans and Western lawmakers, for the President's use of the Antiquities Act to designate national monuments.<sup>211</sup>

Nevertheless, St. Clair, with the support of dozens of environmental and conservation groups, chambers of commerce, business groups, newspaper editorial boards, and local officials, continued to work towards his family's vision for the land.<sup>212</sup> Just days prior to the centennial anniversary of the National Park Service, the deadline Quimby had imposed for the project, Elliotsville Plantation Inc. transferred 87,563 acres to the federal government.<sup>213</sup> Susan F. Bulay, Penobscot County register of deeds, confirmed the thirteen deeds passed from Quimby's holding company to an entity listed simply as "The United States of America" at 10:10 a.m. on August 23, 2016.<sup>214</sup>

Some important strings came attached with the gift, making the ultimate monument designation politically palpable. Firstly, in addition to the donation of land, Quimby's foundation provided a financial endowment to pay for the development of the monument.<sup>215</sup> Language in the deeds also imposed restrictions on certain portions of the property.<sup>216</sup> Seven of the total thirteen deeded parcels, totaling 33,311 acres, had stipulations generally allowing hunting but prohibiting trapping and hunting with bait or dogs.<sup>217</sup> Nearly 15,000 acres permitted snowmobiling as an allowed activity according to four deeds.<sup>218</sup> Finally, no deed permitted logging, except for tree removal that the Park Service conducts for

9. Preference for Maine businesses and products in creating and servicing any federally designated public lands. For example, Maine timber should be used to construct buildings, and Maine concessioners should be hired to provide services and products inside the boundaries of any national monument. Neighbors to federal lands are more likely to support federal initiatives when Washington employs their direct support.

211. See Gurley, *supra* note 208. Although the legislation stalled in the Democratically controlled Senate, in March 2014, the House of Representatives had voted 222-201 to support a bill that would have required a more public review of some proposed national monuments and prevented presidents from designating more than one monument in each state during a four-year term without congressional approval. See Ensuring Public Involvement in the Creation of National Monuments Act, H.R. 1459, 113th Cong. (2014).

212. See Miller, *supra* note 209.

213. See Nick Sambides, *Quimby Transfers 87,000 Acres Planned for National Monument to US Government*, BANGOR DAILY NEWS (Aug. 25, 2016), <http://bangordailynews.com/2016/08/23/outdoors/quimby-transfers-87000-acres-planned-for-national-monument-to-us-government/> [<https://perma.cc/7HJF-4TVL>].

214. *Id.*

215. Gift Agreement Between Roxanne Quimby Foundation, Inc. and the National Park Foundation Relating to the Proposed Katahdin Woods and Waters National Monument (Aug. 22, 2016) (on file with authors); see also Editorial Board, *Our View: Roxanne Quimby's Historic Gift Marks New Era in Maine*, PORTLAND PRESS HERALD (Aug. 25, 2016), <https://www.pressherald.com/2016/08/24/our-view-roxanne-quimbys-historic-gift-marks-new-era-for-maine/> [<https://perma.cc/RLD5-NGMX>].

216. See Sambides, *supra* note 213.

217. *Id.*

218. *Id.*; see also John Holyoke & Mick McCrea, *What We Know About Access to North Woods National Monument Land*, BANGOR DAILY NEWS (Aug. 24, 2016), <http://bangordailynews.com/2016/08/24/outdoors/what-we-know-about-access-to-north-woods-national-monument-land/> [<https://perma.cc/RLD5-NGMX>].

conservation or safety purposes.<sup>219</sup> In addition to these deed restrictions, the Gift Agreement between Quimby's foundation and the government, as well as an addendum thereto, explicitly stated that the land and the endowment were to be used for a national monument.<sup>220</sup> The addendum even asserted plainly that the donated land was "subject to certain deed restrictions, retained rights and agreements."<sup>221</sup> The enforceability of these covenants and deed restrictions against the United States remains an untested question of law, which could prove crucial to the resiliency of the federal protections sought and initially obtained via presidential proclamation.

The following day, the widely anticipated announcement was made official in a nine-page proclamation from President Obama.<sup>222</sup> In it, Obama described Katahdin Woods and Waters as an "extraordinary natural and cultural landscape," including mountains, woods and waters and "objects of significant scientific and historic interest."<sup>223</sup> He highlighted the scenery and geology and the strong ties to the Penobscot Indian Nation, along with the bygone era of lumberjacks and river drivers who once worked in the area.<sup>224</sup>

When Katahdin Woods and Waters was established, it became the only national monument to allow hunting.<sup>225</sup> The official proclamation also provided that the monument's establishment was subject to valid existing rights and agreements, including those related to hunting.<sup>226</sup> Provisions permitting snowmobiling on existing trails ensured that more than half of the total acreage would be open for such use.<sup>227</sup> It was, in many ways, a unique national monument.

### C. Combining Grassroots Politics at Home and Powerful Connections in D.C.

Establishing a national monument requires tremendous political will, especially in contentious times. Prominent businesspeople had to expend significant political capital over multiple years just to convince the seemingly friendly Presidents Wilson

219. Juliet Eilperin & Brady Dennis, *Obama Creates What Could Be Last Large National Park Site on the East Coast, in Maine*, WASH. POST (Aug. 24, 2016), <https://www.washingtonpost.com/news/energy-environment/wp/2016/08/24/obama-creates-what-could-be-the-last-large-national-park-site-on-the-east-coast-in-maine> [<https://perma.cc/8774-CQEE>].

220. Gift Agreement Between Roxanne Quimby Foundation, Inc. and the National Park Foundation Relating to the Proposed Katahdin Woods and Waters National Monument (Aug. 22, 2016) (on file with authors) ("Elliotville Plantation, Inc. "EPI" intends to donate approximately 87,500 acres of real property located along the East Branch of the Penobscot River and its tributaries in Penobscot County, Maine, hereinafter "the East Branch lands," to the United States of America to establish the Monument to be managed by the National Park Service "NPS"); Addendum to Gift Agreement Between Elliotville Plantation, Inc. and the National Park Foundation (Aug. 22, 2016) (on file with authors).

221. Addendum to Gift Agreement Between Elliotville Plantation, Inc. and the National Park Foundation, *supra* note 220 ("EPI intends to donate the East Branch land gift to the United States in 2016 for the purpose of establishing a National Monument to be managed as unit of the National Park System, subject to certain deed restrictions, retained rights and agreements.").

222. *See* Proclamation No. 9476, *supra* note 2.

223. *Id.*

224. *See id.*

225. Eilperin & Dennis, *supra* note 219.

226. *See* Proclamation No. 9476, *supra* note 2.

227. *Id.* Specifically, it allowed public snowmobile use in certain parcels by referencing the existing "Access Agreement" between Elliotville Plantation, Inc. and the Maine Department of Conservation. *See id.*

and Obama to consider declaring monuments in Maine. Even with all of the capital at their disposal, Dorr and Quimby still had to depend on more than a little luck to accomplish their dreams. It would seem unlikely that any future conservationist would get by without similar shares of friendly political allies, political capital, and happenstance encounters. Furthermore, as St. Clair's and Rockefeller's experiences illustrate, local politics reverberate in Washington, D.C.; a successful conservation effort absolutely requires local grassroots communication and support.

In both cases, the pressures of the time played an integral role in lobbying efforts. Communities of locals, in both cases, felt as if their lands were being fenced off by outsiders. Landowners were split about the prospects of what a national park or monument would mean. Some locals were swayed by the prospects, or perhaps the actual attainment, of increased jobs and opportunity. In both cases, sympathetic politicians acted in support of either side. Concessions were made, compromises were reached, and deals were done, all in support of the eventual goal.

National monument status, bestowed on both areas immediately after the lands came into the possession of the federal government, solidifies the significant first, but not only, step towards meaningful protection. The deed restrictions and covenants accompanying Quimby's donated parcels signal a recognition of the federal government's discretion in managing properties under its jurisdiction; they attempt to provide some security to the donors that the federal government will 1) actually create a monument on the donated land and 2) protect that monument with a management plan consistent with the conservationists' vision. The question of whether these limitations on management and use can be enforced against the federal government depends on the specific language of the agreements and deeds, and on property law more broadly. Some of the language in the addendum to gift agreement for the Katahdin properties, surrounding the provisions stating the purpose of the "land gift" as the establishment of a national monument "subject to deed restrictions, retained rights and agreements,"<sup>228</sup> suggests that the addendum itself lacks legal enforceability. In particular, the addendum specifically states that "Upon relinquishment of control of the East Branch land gift by EPI and the acceptance by the United States of America, the Foundation's rights under this Addendum shall be extinguished."<sup>229</sup> Hence, if President Obama declined to proclaim Katahdin Woods and Waters National Monument, Quimby likely would have had no recourse based on the addendum.<sup>230</sup> That reading of the documents in question obviously never had to be tested; the monument exists as contemplated by the agreement and the addendum. But what of the deed restrictions attempting to dictate how the monument is managed (i.e., what uses the National Park Service can permit on the property)? The management plan for Katahdin Woods and Waters has not been finalized, but if it were to allow for "active timber management"<sup>231</sup> as Secretary Zinke recommends, could Quimby's foundation sue to enforce the deed restrictions

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228. Addendum to Gift Agreement Between Ellitsville Plantation, Inc. and the National Park Foundation, *supra* note 220.

229. *Id.*

230. This is separate and apart from the tricky question of remedy should such a cause of action exist in a future gift of land to the federal government; injunctive relief ordering the creation of a national monument by a president would almost certainly not be available.

231. Zinke, *supra* note 49.

prohibiting “logging”?<sup>232</sup> The uncertainty created by that situation is one reason why the journey to lasting conservation does not always end with a national monument designation.

## VI. THE DIFFERENCE A PARK MAKES

Once established, both Katahdin Woods and Waters and Sieur de Monts required additional funding to manage the newly designated national monuments. Dorr continued his lobbying efforts in Washington to secure appropriations for Sieur de Monts.<sup>233</sup> Yet, it was another prominent American—John D. Rockefeller, Jr.—who would provide both his fortune and expertise to expand boundaries, engineer infrastructure, and make the property accessible to visitors.<sup>234</sup> Katahdin Woods and Waters also faced early hurdles from a new administration in Washington in its first years.<sup>235</sup> Like Rockefeller before her, Quimby also paid for much of the development of the monument.<sup>236</sup> However, aside from the generosity of these early benefactors, the historical parallels between the two monuments begins to diverge after monument designation. The differences in the tales underscores the importance of national park protection, even for existing monuments.

### A. John D. Rockefeller Jr. Expands Acadia’s Reaches

Sieur de Monts National Monument ran on pennies for the first years of its existence.<sup>237</sup> A visit to Mount Desert Island by the Interior Secretary helped secure a \$10,000 appropriation in 1918, but even then, a letter from former President Theodore Roosevelt was necessary to win over the support of the House Appropriations Committee.<sup>238</sup> The aid from Roosevelt and other influential supporters undoubtedly caught the attention of the Committee, who noted that the monument was “of [n]ational [p]ark character and should be made a [n]ational [p]ark.”<sup>239</sup>

At Dorr’s request, Maine’s Senator Hale and Representative Peters submitted legislation to create a national park.<sup>240</sup> Eventually winning support with a name change to Lafayette National Park and Dorr’s active lobbying, the House passed the enabling legislation.<sup>241</sup> The timing coincided with the conclusion of World War I, and Dorr had to act hastily to ensure that the President would sign the bill prior to

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232. This question assumes that the “active timber management” would go beyond the tree removal for conservation or safety purposes that is contemplated and permitted by the deed restrictions.

233. See DORR, *supra* note 55, at 60-61.

234. See NAT’L PARKS SERV., *supra* note 108.

235. David Abel, *Katahdin, Marine Monument May Get Less Protection Under Trump*, THE BOS. GLOBE (Sept. 19, 2017), <https://www.bostonglobe.com/metro/2017/09/18/trump-advised-allow-timber-management-katahdin-and-commercial-fishing-marine-monument-off-cape-cod/GAOkriqF8in87MLXYu6F3H/story.html> [<https://perma.cc/7NED-GHQS>].

236. PORTLAND PRESS HERALD, *supra* note 215.

237. See DORR, *supra* note 55, at 60.

238. See *id.* at 64-70.

239. *Id.* at 70.

240. *Id.* at 70-71 (The Senate bill sped through the process thanks to Senatorial courtesy but became hung up in the House Public Land Committee.).

241. *Id.* at 71-72.

departing for peace talks in Versailles, France.<sup>242</sup> With the help of a friendly secretary in the president of the Senate's office, Dorr personally delivered the legislation to the White House and secured the President's signature, finally fulfilling his goal of creating a national park in Acadia, the first such park east of Mississippi River.<sup>243</sup>

Since that time, tens of millions of Americans have come to appreciate the wonder and beauty of Acadia National Park. The area enjoys widespread acclaim in Maine, throughout the country, and all over the world.<sup>244</sup> Over 2 million people visit Acadia every year.<sup>245</sup> These visitors are restricted by National Park Service regulations—which are enforced by diligent Park Rangers—in how they can interact with the landscape and wildlife.<sup>246</sup> No debate persists about the park's utility or the need to protect the land it encompasses. Congress annually appropriates significant funds to maintain the area without controversy. Acadia's status as a national park undoubtedly contributed to the security of its conservation by way of the means just described and countless others. Conservationists can confidently tell their grandchildren to visit Acadia National Park when they grow up.

### *B. Early Threats to Katahdin Woods and Waters National Monument*

Within months of the monument's designation, a new threat to the conserved lands emerged in the form of an executive order from a new President. Opponents, like Maine Governor Paul LePage, sought to overturn the monument's designation or, at least, substantially alter the federal protections provided for it.<sup>247</sup> Governor LePage wrote to President Trump requesting that the monument be undesignated and transferred back to private or state control.<sup>248</sup> Many have credited his lobbying efforts as critical to Katahdin Woods and Waters' inclusion on a list of monuments targeted by the Trump Administration for rescission.<sup>249</sup> President Trump's Executive Order directed the Interior Department to review all monuments over

242. *See id.* at 75-76.

243. *See id.*

244. *See, e.g.,* Kathy Arnold, *Is This America's Most Underrated National Park?*, THE TELEGRAPH (Aug. 25, 2016), <https://www.telegraph.co.uk/travel/destinations/north-america/united-states/articles/acadia-national-park-travel-guide/> [<https://perma.cc/G774-B4UU>]; Matt Meltzer, *America's 25 Most Popular National Parks, Ranked*, THRILLIST (Feb. 6, 2018), <https://www.thrillist.com/travel/nation/best-national-parks-in-america-grand-canyon-yosemite-and-yellowstone#> [<https://perma.cc/X5HE-U7WF>].

245. NAT'L PARKS SERV., *supra* note 57.

246. *See* 36 C.F.R. §1 *et seq.*

247. *See* Susan Sharon, *LePage, St. Clair Clash in Hearing on Maine's New National Monument*, ME. PUB. RADIO, May 4, 2017. During May 2017 hearings of the House Committee on Natural Resources, LePage testified in strong opposition to the use of the Antiquities Act to designate the Katahdin Woods and Waters National Monument. *See* Devin Henry, *House Republicans Begin Probe of Monuments Law*, THE HILL (May 2, 2017), <https://thehill.com/policy/energy-environment/331559-house-republicans-begin-probe-of-monuments-law> [<https://perma.cc/647U-TBT3>]

248. Sharon, *supra* note 247.

249. *See* Editorial Board, *LePage's Continued Monument Opposition Jeopardizes Katahdin Region's Progress*, BANGOR DAILY NEWS (Apr. 28, 2017), <https://bangordailynews.com/2017/04/28/opinion/editorials/lepages-continued-monument-opposition-jeopardizes-katahdin-regions-progress/> [<https://perma.cc/EK24-RP3A>].

100,000 acres designated since 1996.<sup>250</sup> A late addition, Katahdin Woods and Waters became the only monument included in the review that was under 100,000 acres.<sup>251</sup>

Governor LePage went so far as to direct Maine's Department of Transportation not to post traffic signs directing visitors to the site due to the pending Interior Department review.<sup>252</sup> The review of Katahdin Woods and Waters included an official visit from Interior Secretary Ryan Zinke in June of 2017.<sup>253</sup> At the conclusion of his trip to the monument, he expressed appreciation for its natural beauty and signaled a willingness to give it national park status.<sup>254</sup> Specifically, he called federal ownership of the lands "settled" and noted that the monument was probably too small to shrink.<sup>255</sup> However, Secretary Zinke suggested he would recommend that the President allow timber harvesting and expand the areas available for recreational snowmobiling and hunting.<sup>256</sup> The review additionally opened a sixty-day public comment period from May 11 through July 4, 2017.<sup>257</sup> Nearly 200,000 comments specifically regarding Katahdin were submitted to the Interior Department, most through its online platform—more than 99%, all but 67, supported the national monument designation.<sup>258</sup>

250. See Exec. Order No. 13,792, 82 Fed. Reg. 82 (May 1, 2017). However, the order also called for a review of any monuments "where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders."

251. See Noel Gallagher, *Trump Administration to Review National Monument Designation of Katahdin Woods and Waters*, PORTLAND PRESS HERALD (May 5, 2017), <https://www.pressherald.com/2017/05/05/trump-administration-to-review-designation-of-katahdin-woods-and-waters/> [https://perma.cc/WYK9-WSY4]; see also Exec. Order No. 13,792, *supra* note 251.

252. See Nick Sambides, *LePage Refuses to Put Up Road Signs for North Woods National Monument*, BANGOR DAILY NEWS (Feb. 27, 2018), <https://bangordailynews.com/2017/05/20/outdoors/lepage-refuses-to-put-up-national-monument-road-signs/> [https://perma.cc/U7HY-A32S]; Letter from Dale Doughty, Dir., Me. Bureau of Maint. and Operations, to Tim Hudson, Superintendent, Katahdin Woods and Waters National Monument (May 4, 2017) (on file at <https://drive.google.com/file/d/0BwX4t-nQWwo5ejg0ME8wZm9EYmtjNVdJS1VCS0cyMFRzaW9B/view> [https://perma.cc/6WBD-G667]) ("Governor LePage feels that it would be imprudent and premature to install wayfaring signs on state and state-aided highways at this time.").

253. Renee Cordes, *Public Comment Tally for Zinke's Review? 99.9% Support Katahdin National Monument*, MAINE BIZ (July 7, 2017), <http://www.mainebiz.biz/article/20170707/NEWS01/170709981/public-comment-tally-for-zinke-s-review?-999%89-support-katahdin-national-monument> [https://perma.cc/AEH8-HJES].

254. *Id.*

255. Kevin Miller, *Interior Secretary Wants To Keep Maine's Katahdin Woods and Waters National Monument*, PORTLAND PRESS HERALD (Aug. 25, 2017), <https://www.pressherald.com/2017/08/24/interior-secretary-wants-to-keep-national-monument-in-maine/> [https://perma.cc/33MZ-FP5X].

256. See *id.*

257. Nick Sambides Jr., *Comment Period Open for Maine's National Monument*, BANGOR DAILY NEWS (May 12, 2017), <https://bangordailynews.com/2017/05/12/politics/comment-period-open-for-maines-national-monument/> [https://perma.cc/5PGV-CJJK].

258. See Nick Sambides Jr., *99 Percent of Comments Tell Trump To Keep Maine's Monument*, BANGOR DAILY NEWS, (July 7, 2017), <https://bangordailynews.com/2017/07/08/outdoors/99-percent-of-comments-tell-trump-to-keep-maines-monument/> [https://perma.cc/M9W7-QNZ9].



Interior Secretary Zinke released a final report in December of 2017.<sup>259</sup> As expected, Secretary Zinke recommended that the administration make changes to Katahdin Woods and Waters that “promote a healthy forest through active timber management.”<sup>260</sup> Recommendations also referenced prioritizing public access, infrastructure, traditional and tribal use, as well as hunting and fishing rights in the management plan currently under development for the monument.<sup>261</sup> Because the Management Plan for Katahdin Woods and Waters will take a total of three years to complete, the details of permitted uses are still unclear, particularly in regard to hunting, fishing, and timber management.<sup>262</sup> However, the conclusion of the review signals that the monument will remain in the hands of the federal government without rescission or major reconfiguration of the property.

### C. National Park Status Matters

The United States currently has 59 national parks versus 117 national monuments.<sup>263</sup> Of the 60 national parks, 32 include areas that were once national monuments.<sup>264</sup> As the history of Acadia National Park bears out, the journey from monument to park poses many political, financial, and practical challenges. There must be a good reason why conservationists devote significant resources to the transformation effort. And indeed, there are many. Congress creates national parks by statute, protecting them from the uncertainty created by the Antiquities Act with respect to executive authority. National parks enjoy more publicity than national monuments, which brings more visitors and more money to continue their protection. Americans take pride in our national parks—counting among them some of our most coveted natural wonders, including the deepest lake in the United States (Crater Lake), the highest peak in North America (Denali), and the lowest point in the Western Hemisphere (Death Valley).<sup>265</sup>

In the Maine-specific context, the divergent conversations around, and attitudes towards, Acadia and Katahdin drive home the importance of national park status. There has been no serious political movement to abolish Acadia National Park, or

259. Press Release, U.S. Department of the Interior, *Secretary Zinke Recommends Keeping Federal Lands in Federal Ownership, Adding Three New Monuments*, (Dec. 5, 2017) (available at <https://www.doi.gov/pressreleases> [<https://perma.cc/K84T-FBZT>]); Memorandum from Ryan Zinke, Sec’y of the Interior, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act (2017), [https://www.doi.gov/sites/doi.gov/files/uploads/revise\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revise_final_report.pdf) [<https://perma.cc/7A3Y-JR9D>].

260. Memorandum from Ryan Zinke, *supra* note 259.

261. *See id.*

262. Nick Sambides Jr., *Trump’s Interior Secretary Recommends Against Changes at Maine Monument*, BANGOR DAILY NEWS (Dec. 7, 2017), <https://bangordailynews.com/2017/12/05/news/state/trumps-interior-secretary-recommends-against-changes-at-maine-monument/> [<https://perma.cc/ZHY6-FLT9>].

263. *Units and Related Areas in the National Park System*, NAT’L PARK SERV., <https://www.nps.gov/aboutus/upload/Site-Designations-01-13-17.pdf> [<https://perma.cc/2HCA-SCGE>].

264. Darren Fishell, *Half of Our National Parks Started As Monuments*, BDN BLOG (Aug. 23, 2016), <http://thelevel.bangordailynews.com/2016/08/23/maps/half-of-our-national-parks-started-as-monuments/> [<https://perma.cc/CEV9-SPZ5>].

265. Logan Harper, *The Pride of America: Our National Parks*, UNC.EDU (Apr. 18, 2018), <https://onlinempa.unc.edu/our-national-parks-the-pride-of-america-infographic/> [<https://perma.cc/6EFN-NBXN>].

even reduce its boundaries; in fact, the park has *expanded* over the course of the last century, much to the delight of Mainers, politicians, and world travelers. Katahdin Woods and Waters on the other hand, has been the subject of political threats to abolish it, reduce its size, open it up to destructive and extractive uses. Those threats have come not just from Washington, D.C., but also from Maine's own governor. If Katahdin Woods and Waters ever attains national park status, it is difficult to imagine those threats persisting.

The history of America's national monuments and national parks demonstrates that a pathway has existed from presidential proclamation of monument status to tacit congressional acquiescence to affirmative congressional action protecting an area as a national park. History may include such a pathway, but, quite possibly, the future may foreclose its continued use. So far, at least, recent cases have illuminated a still passable road. During the past fifteen years, the widely panned bitter, partisan congress came together to create four national parks. Two of those national parks—Pinnacles, in Northern California's Central Valley, and Congaree, in South Carolina—began their lives in federal protection as national monuments. These recent successes give St. Clair, Quimby, a host of Mainers, and a waiting gaggle of adventurers hope that a similar fate may someday befall Katahdin Woods and Waters. That hope cannot fairly be classified as ill-founded, even in our contentious times.

## VII. CONCLUSION

Land conservation in United States has both a storied and varied history. By the time formal statutory structures evolved, much of the eastern half of the United States had been developed, or, at least, was privately held. As a result, the private donations of such valuable areas as Acadia and Katahdin to the government for public protection is even more impressive. It was as incumbent then, as it still is today, for creative approaches to land conservation.

It is clear that pursuing national park status sits atop the list of available options for those seeking to preserve landscapes, wilderness, and significant natural objects. National monument designation, then, exists as a helpful precursor and a powerful conservation tool in its own right. The protections afforded to monument property are nearly identical, and monument designations have often resulted in later transformations into national parks.

From the parallel histories of Maine's two National Park Service areas emerge some significant lessons that can easily be adapted to twenty-first-century public land conservation. Of the four common elements that this work tracks, one part of the first—the need for deep-pocketed visionaries—begs reexamination given the current political moment. Any new conservation effort must take account of the prevalence and growing influence of small-dollar individual contributions in United States politics.<sup>266</sup> In the context of private land acquisition and donation to the federal government, this trends suggests a new protected area could come from a number of individual owners of small plots who coordinate and bundle their holdings

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266. See Max Greenwood, *Small-Dollar Donations Explode in the Trump Era*, THE HILL (Oct. 19, 2018), <https://thehill.com/homenews/campaign/412231-small-dollar-donations-explode-in-the-trump-era> [<https://perma.cc/46H3-A3DM>].

rather than from one wealthy benefactor who acquires all of the necessary land him- or herself. The digital age and the interconnectedness of our society via social media provide the tools necessary to coordinate individual donors without going door-to-door to buy them out. The need for a well-connected and savvy operator to encourage, tabulate, and make effective these smaller contributions would persist, but that individual may not have to possess the wealth of a Rockefeller or a Quimby anymore.

Perhaps more importantly, the modern context not only suggests a change in mechanics for future private-to-public protected areas, but also a change in their prevalence. As noted above, Acadia and Katahdin Woods and Waters were historical aberrations, the exceptions that proved the rule that our nation's federally protected areas have been carved out of existing federal holdings. Two realities of the modern age, working in conjunction, provide good reason to believe that the private-to-public pathway should see more travelers in the twenty-first century. First, the United States National Park System is nearing, or may have reached, maturity; many of the government-held lands deserving protection now have it. In other words, the pool of general federal lands from which to carve out new national parks or monuments has shrunk with the designation of new parks and monuments over the last century and has not grown significantly by acquisition or conquest.<sup>267</sup> Second, the continued hyperpolarization of partisan politics<sup>268</sup> will make it less and less likely that Congress would vote to purchase lands in order to protect them as a park or monument.<sup>269</sup> Put these two stark realities together, and a more viable path to a new national park or monument starts with private acquisition of land and ends with a donation of that land to the federal government with an understanding that it will enjoy protection.

Fortunately, the Maine histories described and analyzed herein provide a glimmer of hope and a heap of guidance to the forward-thinking conservationists who concur with the prescription for more private-to-public transactions. Acadia achieved status as a national park only a few short years after it was first donated to the federal government and designated as a monument. Katahdin Woods and Waters has not been met with the immediate embrace of open arms and still awaits a formal management plan. Nevertheless, the primary goals set forth by the visionaries who embarked on conserving these areas for posterity through the unique protections afforded only by the federal government has been similarly realized. The success stories share common elements that provide a framework that could prove increasingly useful in the next age of conservation.

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267. See, e.g., CAROL HARDY VINCENT, LAURA A. HANSON & CARLA N. ARGUETA, CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 16 tbl.3 (2017), <https://fas.org/sgp/crs/misc/R42346.pdf> [<https://perma.cc/3UXA-J7DK>] (showing, from 1990-2015, a decline in federal acreage managed by Bureau of Land Management and an increase in acreage managed by the National Park Service).

268. For a succinct and illustrative description of this hyperpolarization, see Carroll Doherty, 7 *Things To Know About Polarization in America*, PEW RESEARCH CTR. (June 12, 2014), <http://www.pewresearch.org/fact-tank/2014/06/12/7-things-to-know-about-polarization-in-america/> [<https://perma.cc/SH65-JGLJ>].

269. See U.S. CONST. ART. IV, §2 (“The Property Clause” vests Congress with the power over federal land holdings.).