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Testimony of the Maine Municipal Association

In Opposition to

LD 970 – An Act to Prioritize Affordable Housing by Expediting Reviews for Affordable Housing Projects Applying for Funding from the Maine State Housing Authority

March 25, 2025

Sen. Curry, Rep. Gere and distinguished members of the Housing and Economic Development Committee, my name is Rebecca Graham, and I am submitting testimony in opposition to LD 970, at the direction of MMA’s Legislative Policy Committee (LPC). Our LPC is composed of municipal officials from across Maine, elected by their peers to represent communities with vastly different enforcement staff, resources and capacities.

As drafted, the bill seeks to expedite the interdependent permitting processes between state and local government, which is a policy objective that municipal officials share. However, as drafted, the bill requires a municipality to accept the absence of a response from the state permitting authority as tacit approval for a development that may undermine the review protections for federal requirements offered by the Department of Environmental Protection through its delegated authority. This shifts the liability and review burden back to the municipality because absence of appropriate review conducted by the state authority will not provide the municipality with any relief from their obligations to make sure a large site plan complies with federal regulations.

Municipalities with adequate review resources can already assume delegated authority for large site development reviews. Few communities have done so because it requires significant knowledgeable staff to accomplish a review and shifts the liability for compliance onto the municipal review authority. For many communities this is just too great a burden for the same reasons the Department of Environmental Protection is slow in processing such reviews. Both municipal and state government lack organizational capacity and need more resources dedicated to the tasks of protecting urban streams, waters of the state, vital wildlife habitat, address historic site contamination and address climate resiliency.

Project funding partners do not change these environmental needs or risk realities, and affordable housing projects are far more likely to be sited on lands that are able to be cheaply acquired for the same reasons environmental reviews are necessary. Perhaps more importantly, communities without paid staff are heavily reliant on the state level review to make sure large developments are protected at minimal levels. Doing more with less or removing the task entirely does not save tax dollars.

Additionally, in section 1, the “permit authority” is not the authority that determines the completeness of an application in all municipalities. While municipal planning staff may receive application material and determine if an application is complete enough for a planning board review, the official vote of “completeness” comes from a planning board who then may hold a site walk or seek additional comments or input from paid staff following an initial review may request additional

information even then the application can be determined not to be entirely complete until official approval has occurred. At least one Maine Supreme Court case *Philric Associates v. City of South Portland*, 595 A.2d 1061 (Me. 1991), a board found that an application was complete and then circulated it to paid staff for comments while it began its substantive review. The staff identified problems with the application and after a year of repeated attempts to get more information from the applicant, the staff sent a letter saying the application was incomplete, spelling out in detail why and what was needed to make it complete. The developer appealed and the court found that his appeal was premature and that there was nothing wrong per se with the staff's and board's process.

Routinely MMA holds training for municipal planning boards, some with a zoom option that may be beneficial for anyone with a desire to understand how different the processes are in other communities. The next one will be held on May 21, 20205 from 4:00 PM to 8:30 PM, in Presque Isle. The training will cover material from our planning manuals, including how to conduct a board meeting, how to comply with Maine's Freedom of Access Act requirements pertaining to open meetings and public records, and the procedures for making a decision, such as how to evaluate evidence on which to base a decision and how to draft findings of fact and conclusions of law. The training will also cover the appeals process, including appeals to a board of appeals and to Superior Court. You can sign up or check out the programs here: <https://www.memun.org/Training>.

For these reasons, municipal officials ask that the committee consider an alternate path to speed site approvals with adequate support of the positions and staff necessary to process applications in a quicker form in all of the areas of regulatory compliance. Municipalities rely on state partners and approvals for their decision-making process, which is far quicker than removing the review and requiring a local review. Regulatory bodies have long been understaffed and too reliant on municipal processes to fill the gaps. This bill would exacerbate this situation and without exempting municipalities from federal compliance if a site plan review is not possible in 30days, the bill could cost communities significant fines for preventable compliance failures.