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TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON
HOUSING AND ECONOMIC DEVELOPMENT
IN SUPPORT OF LD 1864

An Act to Facilitate the Reconstruction of Storm-damaged Commercial Fisheries Facilities and Infrastructure

May 12, 2025

Senator Curry, Representative Gere, and members of the Joint Standing Committee on Housing and Economic Development, my name is Judy East. I am the Director of the Bureau of Resource Information and Land Use Planning (BRILUP) within the Department of Agriculture, Conservation and Forestry (DACF). I am speaking in support of LD 1864, *An Act to Facilitate the Reconstruction of Storm-damaged Commercial Fisheries Facilities and Infrastructure*, with some recommended modifications.

The bill would allow an exemption to the variance requirements of Title 30-A, section 4353, subsection 4, specifically the first standard that says the land cannot yield a reasonable return unless the variance is granted¹ so that businesses and individuals could conduct repairs on a dock, pier, or wharf if damaged during the storms of January 2024. It seeks to ensure that businesses and individuals can secure federal funds available pursuant to the emergency declaration specific to those storms.

The Floodplain Management Program within BRILUP has worked with the Town of Harpswell on the requirements and limitations of the National Flood Insurance Program (NFIP), which are federal regulations that are adopted locally. The Federal Emergency Management Agency (FEMA) NFIP requires that buildings seaward of mean high tide obtain a variance from the building elevation requirement if the building is damaged by 50% or more. In 1997, FEMA granted the State of Maine a conditional use that allows functionally dependent buildings to be built seaward of the mean high tide without a variance as long as they are 200 square feet or less

¹ **4. Variance.** Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- A. The land in question can not yield a reasonable return unless a variance is granted;
- B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- C. The granting of a variance will not alter the essential character of the locality; and
- D. The hardship is not the result of action taken by the applicant or a prior owner.

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in size. FEMA requires a variance from the elevation requirement of these structures when there has been substantial damage (or improvement) of more than 50% of the building value.

As noted in LD 1864, Maine courts have repeatedly held that mere access to coastal waters and the recreational benefits afforded by that access provide property owners with a reasonable return on their land. Therefore, individuals and business owners would be unlikely to demonstrate a lack of a reasonable return on their land and would be unable to benefit from the federal assistance to reconstruct or replace damaged facilities and infrastructure made available by the 2024 disaster declaration. Harpswell officials and the sponsor conclude that the reasonable return variance criterion in [Title 30-A MRS §4353.4](#) is virtually impossible to meet. We agree and support an exemption from the reasonable return standard of the State variance criteria for functionally water-dependent buildings that are entirely over water when damaged or improved by 50% or more. We also appreciate that the sponsor has strictly limited the variance standard exemption to an exemption for functionally water-dependent uses.

However, if this change proceeds, we recommend that it apply to any coastal community and not be limited to a single town. Meteorological science and observable trends suggest that storms of the severity and destructive power of early January 2024 are not one-off phenomena. We recommend that this change be permanent and apply to emergency declarations that cause comparable damage.

Thank you for your time. I would be happy to answer any questions now or at the work session.