



Maine Real Estate &  
Development Association

Supporting Responsible Development

## LD 772, An Act to Establish a Process to Vest Rights for Land Use Permit Applicants

---

### *Permitting Predictability*

---

#### What is the goal of the bill?

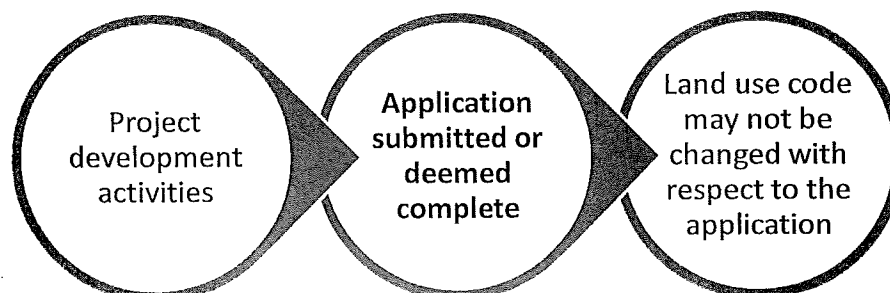
An underlying goal of this legislation is to help **catalyze housing creation** in Maine to meet the state's current and future need. This legislation is intended to establish a **fair, practical, and predictable** policy landscape for housing creators.

#### How does the bill achieve the underlying goal?

This bill would establish a cutoff date, related to the submission of a land use application, after which date the underlying land use ordinance cannot be changed with respect to that application. In other words, this proposal would limit the applicability of retroactive land use ordinances.

#### Why do we need it?

- According to a newly released Maine Housing Production Study, Maine needs to create **84,000** units of **housing by 2030**. Housing Study, pg. 8, available at [https://mainehousing.org/docs/default-source/default-document-library/state-of-maine-housing-production-needs-study\\_full\\_final-v2.pdf](https://mainehousing.org/docs/default-source/default-document-library/state-of-maine-housing-production-needs-study_full_final-v2.pdf).
- By providing certainty to a housing creator, this legislation would reduce risk, **lower housing costs by reducing overall costs**, and encourage local housing creators to engage in the solution.
  - For example, when retroactive ordinances are applied to existing land use applications, it requires the applicant to go back to the drawing board, wasting thousands and sometimes millions of dollars on existing architectural, structural, legal, and land use purchase costs. This added cost can be a project-killer, or if a project is able to meet the new requirements, it will guarantee higher prices to accommodate the higher costs of development.
- Additionally, the current landscape is so **risk-heavy** that it runs the risk of driving out small housing creators when only deep-pocketed ones can afford to engage in such a **high-risk/high-reward scenario**.
  - We believe much of the housing need can be met through small and medium-sized **infill development**, and that these projects are often best tackled by **community housing creators**. Providing predictability to these small-scale housing creators will help drive new and innovative solutions to the housing shortage.





Maine Real Estate &  
Development Association

Supporting Responsible Development

## Testimony in Support of LD 772

### Permitting Predictability

Chairs Pierce and Gere, and the Honorable Members of the Joint Select Committee on Housing;

My name is Elizabeth Frazier and I am pleased to be before you today on behalf of the Maine Real Estate and Development Association (MEREDA) in support of LD 772, An Act to Establish a Process to Vest Rights for Land Use Permit Applicants – or, as we refer to it with its short title, the permitting predictability act.

MEREDA is a statewide, membership-based organization founded in 1985, whose members include real estate owners, for—profit and non—profit developers, bankers, property managers and other related professionals who are committed to supporting responsible development and real estate ownership throughout Maine. Through the work of its Public Policy Committee, MEREDA pursues a more fair, predictable, and practical policy environment.

It is that guiding principle which drives MEREDA's efforts on this bill. Specifically, we have worked with Senator Pouliot to put forward LD 772 because we believe it would have a significant positive impact on the real estate development community by providing the predictability that land use applicants, especially housing creators, need in order to successfully bring a project to fruition.

In brief, LD 772 would provide predictability to a land use applicant by vesting that applicant's rights with respect to the underlying law when a land use application is submitted for review by a legislative body such as a planning board. Or, to use a sports metaphor, LD 772 would lock in the rules of the land use game for anyone who is currently playing on the field.

LD 772 would not prescribe to any town how best to plan for and craft their land use code. That work is done in the comprehensive planning process and through the crafting of law by both the town and the State. LD 772 would simply ensure that the good work done in those processes cannot be undone by retroactive changes to the land use code that would specifically impact a project for which an application has already been submitted.

MEREDA initially proposed language that would lock in place the land use code provisions for a specific project on the date by which that project's application is deemed substantially complete by the town. We encountered a little difficulty with the Revisor's office in drafting that language, but we are happy to work with this committee and the analyst to find the right language to effectuate that original intent. Additionally, we recognize that there may be unintended consequences to our bill as currently written. We understand and appreciate the concerns that some towns may have specific to their ability to plan accordingly. We are open to discussing changes to the bill that would limit those unintended consequences, so long as they don't overly dilute the underlying intent to provide predictability to the majority of Maine land users and housing creators.

MEREDA believes now is the time for the State to act with respect to ensuring predictability and lowering the risk barrier for land use projects such as housing creation. With over 84,000 new units of housing needed, there is a spotlight on our Maine communities, their activities around land use, and the barriers that prevent the creation of new dwelling units. Of those barriers, the lack of predictability is perhaps the highest – every real estate development project in Maine is effectively a roll of the dice. No developer or housing creator has any certainty of law when pursuing projects in Maine.

Under current law, a land use applicant has no rights or guarantees in their ability to move forward with a project until they have either substantially commenced construction or until 45 days have passed from the date of issuance of a land use permit. This means that an underlying land use ordinance can be rewritten in the middle of an application process and even retroactively to apply to projects for which a land use permit has already been granted.

This committee knows the extensive challenges with land use planning. You understand the time and commitment that municipalities must have in order to effectively plan for their community. Land use developers rely upon the law articulated in the land use code to determine the extent of his or her property rights and the types of projects that can be brought to life on the property within the boundaries of the code. However, when the law can be re-written in the middle of the process, it essentially means that nothing in a land use code can be relied upon at any point – unless it is in state law, such as LD 2003.

To return to our sports metaphor - LD 772 would be a game-changer in terms of implementing a fair and level playing field. By ensuring that a land use applicant can rely upon the underlying law in place in the land use code, LD 772 will reduce risk associated with, chief amongst other things, housing. Housing projects large and small face an unfair and unreasonable level of risk in Maine. We know that housing projects are desperately needed, but we also know that the actions of a few can unwind or put at risk the creation of housing units.

MEREDA believes that the proposal in LD 772 is fair, and that it establishes a practical and predictable legal framework for land use in all Maine communities. We further believe that LD 772 will enhance the planning work of those communities – much of which is ongoing now with the adoption of LD 2003, by protecting the hard work of developing the land use code from the outsized leverage often imposed by NIMBY's.

MEREDA thanks the Housing Committee for its time and dedication to important land use matters in Maine – they are at the heart of the housing crunch, and we welcome the opportunity to discuss them with you further. We hope that you will support LD 772 and we look forward to working with you on this and other important matters.

Sincerely,

Elizabeth Frazier, on behalf of MEREDA