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TESTIMONY BEFORE THE JOINT SELECT COMMITTEE ON HOUSING
NEITHER FOR NOR AGAINST LD 1976

An Act to Update the Growth Management Program Laws

November 14, 2023

Senator Pierce, Representative Gere, and members of the Joint Select Committee on Housing, my name is Judy East, and I am the Director of the Bureau of Resource Information and Land Use Planning (BRILUP) in the Department of Agriculture, Conservation and Forestry (DACF). The Department appreciates the sponsor for elevating this important discussion today and for the ongoing collaboration with the administration. Local decisions about managing growth and where to allow and encourage subdivision are intrinsically related issues. LD 1976 - *An Act to Update the Growth Management Program Laws* proposes numerous substantive and procedural changes to Title 30-A, Chapter 187, Planning and Land Use Regulation, commonly called the Growth Management Law (GML). We agree that the growth management program and subdivision laws are overdue for review and modernization, and we are testifying as neither for nor against LD 1976 because we agree with that underlying premise.

However, the Department believes that the most appropriate vehicle for making such updates to the GML – now and in the future – is through the rulemaking process, not by making sweeping statutory changes to this law without robust and inclusive public engagement. Rulemaking would allow for an intentional and full public process that stakeholders are familiar with and can ensure that due process is undertaken to bring the broad scope of stakeholders impacted by the GML into the conversation about how best to update this law.

Specifically, the rulemaking process is most desirable for the following two reasons:

- The range of interested parties necessary to engage in this critical policy overhaul is considerable and includes municipal officials (Select Boards and Councils, Planning Boards, Code Enforcement Officers, and Assessors); planning and GIS mapping professionals at the town, regional, and state levels; large landowners; county land registries; and communities of interest in legal, real estate, land conservation, and natural resources areas. While there has been a process for engagement with this legislation, we are not confident that it has been sufficient and are concerned that vital stakeholders across Maine have not had a chance to engage in the bill in a timely manner. They would, however, have ample opportunity to do so through the public rulemaking process.
- The Department agrees with place-based planning, robust public engagement, and attempts to reduce the burden of Comprehensive Planning on municipalities. However,

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we disagree that extensive statutory change is needed to achieve these ends. Growth management direction for small rural towns with limited resources should not be a statutory requirement. Urban, suburban, and even rural southern Maine differs from northern rural Maine. The statute must be clear and direct enough to apply statewide, and we do not believe this legislation does that. Rulemaking can address regional variation. Guidance can and should offer the kind of innovation proposed in LD 1976. However, we express concern about some proposals in this bill. A few examples: GML goals should be succinct and aspirational, not embellished with location-specific strategies. A "rural crossroads placetype" that could be a designated growth area deserves a robust discussion among stakeholders and farmland protection advocates to ensure we balance growth with farmland protection. Climate resilience planning should not be removed from the GML. Public input should allow for varying technical capacity. Finally, how a Comprehensive Plan is prepared should not have mandates that do not apply to almost half of Maine municipalities.

Rulemaking will address the most significant criticisms leveled at the GML, among them "the one size fits all" problem that prescribes the same requirements in small, rural towns as in urban and fast-developing municipalities; the extensive and repetitive inclusion of information in local plans that could be more efficiently presented and analyzed regionally; and the need to create dynamic plans using real-time, online information that can respond to the pace of change in 2020s as compared to the pre-Internet, late 1980s when the GML was written.

The Department is well-positioned to undertake this rulemaking effort. Since becoming Bureau Director in 2021, the administration and Legislature have supported my requests to reinstate a Municipal Planning Assistance Program (MPAP) Director and add two limited-period staff members to the Program. Based on extensive stakeholder/rightsholder input, summarized in the Department's Growth Management Program Evaluation,¹ we initiated rulemaking in July 2023 as an outcome of that direct feedback to revise Chapter 208, the Comprehensive Plan Review Criteria Rule. Increased staff capacity, just hired in September 2023, will allow us to address two significant problems identified in the Growth Management Program Evaluation: 1) the inability to track development patterns and 2) the municipalities' burden in preparing Comprehensive Plans. New MPAP staff are now working to modernize the development tracking capacity and data delivery systems that support regions and municipalities.

Notably, rulemaking is a component of this legislation; however, as written, this bill does not give the Department a clear directive, and, as we read it, it is narrowly tailored in a way we can not support. The most recent amendment calls for rulemaking associated with the revised statute to be changed from routine technical to major substantive (p12). This could considerably delay moving this important work forward. We are confident that routine technical rulemaking is a transparent, public process. The bill also mandates adherence to the statute when reviewing

¹ In January of 2023, we submitted the Evaluation of the Growth Management Program to the three requisite Legislative Committees on Environment and Natural Resources, Labor and Housing, and Appropriations and Financial Affairs. This evaluation, required every four years by MRS 30-A §4331, was not prepared in over ten years due to the extreme reduction in staffing within the Municipal Planning Assistance Program (MPAP) within the Bureau of Resource Information and Land Use Planning. That evaluation was recently forwarded to the Joint Select Committee on Housing by the Department.

Comprehensive Plans for consistency with the GML (p 31) rather than allowing the flexibility for such consistency reviews afforded by the Chapter 208 rules for reviewing Comprehensive Plans. In the Growth Management Program Evaluation, municipalities expressed a keen interest in better guidance from the Department. The bill's requirements would hamper our ability to provide that guidance and technical assistance. Lastly, the amendment limits the rules to only those necessary to carry out "the duties of the Department under the subchapter in question" rather than the purposes of the statute, thus removing the nexus between the law and the ability of the Department to provide guidance to different sizes of communities, a primary directive received from the Growth Management Program evaluation. To simultaneously limit rulemaking to the duties of the Department while requiring that they follow a major substantive procedure creates a regulatory process that demands significant staff and legislative resources but with no authority or purpose.

I would like to reiterate that we are in full support of undertaking a process to update the GML; we just want to ensure that we are using the best vehicle for the best outcome, which, again, we feel is through rulemaking rather than by passing a bill that enshrines ideas in the statute that deserve more discussion, input, and overall process. Thank you for your time. I would happily answer any questions now or at the work session.