STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 128

AN ACT TO SUPPORT PERMITTING OF CERTAIN MULTIFAMILY HOUSING DEVELOPMENTS UNDER THE SITE LOCATION OF DEVELOPMENT LAWS

SPONSORED BY SEN. PIERCE

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF PUBLIC HEARING:

MARCH 11, 2025

Senator Curry, Representative Gere, and members of the Committee on Housing and Economic Development, I am Rob Wood, Director of the Bureau of Land Resources at the Department of Environmental Protection, speaking in support of L.D. 128.

The DEP proposes this legislation in recognition that Maine needs to build substantially more units of housing to meet current demand and that permitting requirements at various levels of government, while often essential to ensure appropriate environmental protections, add time and expense to the process of developing new housing. In particular, the DEP understands that developers, when possible, seek to avoid

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triggering the Site Location of Development Law. While the DEP does not seek to reduce environmental protections, we have sought to identify options for amending the Site Law to support housing development without compromising environmental quality. L.D. 128 proposes to achieve this objective in two ways.

First, the bill proposes to remove a bias in the Site Law toward single-family residential housing. Currently, a developer may propose a 14-lot subdivision and stay under the Site Law threshold, as long as each lot is only for a single family. If a developer proposes to allow accessory dwelling units (ADUs) on one or more of these lots, or if the developer proposes to build duplexes or quadplexes instead of single-family houses, the development will require Site Law review. L.D. 128 would allow the 14-lot subdivision developer to build a subdivision containing ADUs, duplexes, and/or quadplexes, without triggering Site Law. Similarly, today, if a developer proposes a subdivision of 20 lots but the total land area is less than 30 acres, Site Law review is not required, as long as each lot is for a single family. L.D. 128 would allow this hypothetical subdivision to also contain ADUs, duplexes, and/or quadplexes on lots without triggering the Site Law.

When a residential subdivision is reviewed under the Site Law, the primary difference between the Site Law review and the municipal subdivision review is that Site Law subdivisions are typically reviewed by DEP hydrogeologists and by other state natural resources agencies such as the Department of Inland Fisheries and Wildlife and the Maine Natural Areas Program. These reviews often result in project design changes to support water quality and avoid impacts to wildlife and fisheries habitats and unusual natural areas. However, when the difference between two proposed residential subdivisions is only whether the lots contain exclusively single-family houses versus duplexes, quadplexes, and/or ADUs, the difference in impact on water quality, wildlife and fisheries, and unusual natural areas is likely to be minor. Furthermore, it is important to note that if a residential subdivision does not trigger Site Law, it is still subject to State review under the Stormwater Management Law (if located in an organized municipality and disturbing more than one acre), the Natural Resources

Protection Act (if located in, on, over, or adjacent to protected natural resources), and the DHHS rules for subsurface wastewater disposal (if septic systems are proposed). The subdivision is also subject to the Mandatory Shoreland Zoning Act, which restricts development density along Maine's shorelines.

The DEP believes the proposed change to the definition of "subdivision" would be consistent with the intent of P.L. 2021, ch. 672 (LD 2003) to allow multifamily housing and accessory dwelling units on all lots within the Sate that are zoned for residential use (except when in conflict with Shoreland Zoning requirements).[1] Additionally, our expectation is that this change may encourage developers to develop slightly higher-density residential subdivisions, which may be preferable for the environment in the long-run by reducing sprawl.

The second change proposed by L.D. 128 is to clarify that if the DEP seeks to establish a permit by rule (PBR) option under the Site Law, this rulemaking would be routine technical. The Department may seek to establish a Site Law PBR option in the future to allow expedited permitting for certain types of low-impact developments, which may include certain low-impact housing developments. Any future PBR could only be for projects that meet the statutory standard of "no significant impact on the environment" in 38 M.R.S. §344(7). The Department believes it is appropriate for such rulemaking to be routine technical, which would allow rulemaking to proceed more expeditiously. At present, the statutes lack clarity regarding whether such a rulemaking would be routine technical or major substantive.

Before concluding, the Department would like to make two additional notes. First, we note that this bill is a recommendation in the report submitted to this Committee by the Governor's Office of Policy Innovation and the Future as required by Resolve 2023, ch. 156 (L.D. 1673).[2]

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[1] An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

[2] Resolve, Establishing a Working Group to Coordinate Collaboration Among State Agencies for the Purpose of Promoting Smart Growth and Development in High-use Corridors

Second, please note that we have identified a small but meaningful error in section 1 of the bill and have submitted suggested amendment language to rectify this error. The Revisor's Office has been replacing the phrase "provided that" with "as long as" in various bills, perhaps due to new drafting standards. In this case, one instance of "provided that" was mistakenly replaced with "unless", which inverts the meaning of the sentence. The amendment language highlighted below would fix this error.

Thank you for the opportunity to testify today. I am happy to answer any questions the Committee may have at this time or during work session.

Sec. 1. 38 MRSA §482, sub-§5, as amended by PL 1997, c. 603, §2, is further amended to read:

5. Subdivision. ~~A "subdivision" is~~ "Subdivision" means the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period, if the aggregate land area includes more than 20 acres; except that when all lots are for ~~single-family,~~ detached, residential housing designed to accommodate up to 4 families, common areas or open space ~~a~~, "subdivision" ~~is~~ means the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. Detached residential housing may include accessory dwelling units in accordance with Title 30-A, section 4364-B. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered. This definition of "subdivision" is subject to the following exceptions:

C. Lots of 40 or more acres but not more than 500 acres may not be counted as lots except where:

(1) The proposed subdivision is located wholly or partly within the shoreland zone;

C-1. Lots of more than 500 acres in size may not be counted as lots;

D. Five years after a subdivider establishes a single-family residence for that subdivider's own use on a parcel and actually uses all or part of the parcel for that purpose during that period, a lot containing that residence may not be counted as a lot;

E. Unless intended to circumvent this article, the following transactions may not be considered lots offered for sale or lease to the general public:

(1) Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer if those lots are not further divided or transferred to a person not so related to the developer within a 5-year period, except as provided in this subsection;

(2) Personal, nonprofit transactions, such as the transfer of lots by gift, if those lots are not further divided or transferred within a 5-year period, or the transfer of lots by devise or inheritance; or

(3) Grant of a bona fide security interest in the whole lot or subsequent transfer of the whole lot by the original holder of the bona fide security interest or that person's successor in interest;

F. In those subdivisions that would otherwise not require site location approval, unless intended to circumvent this article, the following transactions may not, except as provided, be considered lots offered for sale or lease to the general public:

(1) Sale or lease of common lots created with a conservation easement as defined in Title 33, section 476, ~~provided that~~ subsection 1, ~~unless~~ as long as the department is made a party; and

H. The transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision is exempt from review under this article, ~~provided that~~ as long as the land was not owned by the permit holder at the time the department approved the subdivision. Further division of the transferred land must be reviewed under this article.

The exception described in paragraph F does not apply, and the subdivision requires site location approval, whenever the use of a lot described in paragraph F changes or the lot is offered for sale or lease to the general public without the limitations set forth in paragraph F. For the purposes of this subsection only, a "parcel of land ~~is defined as~~" means all contiguous land in the same ownership ~~provided~~ except that lands located on opposite sides of a public or private road are considered each a separate parcel of land unless that road was established by the owner of land on both sides of the road subsequent to January 1, 1970. A lot to be offered for sale or lease to the general public is counted, for purposes of determining jurisdiction, from the time a municipal subdivision plan showing that lot is recorded or the lot is sold or leased, whichever occurs first, until 5 years after that recording, sale or lease.