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**TESTIMONY OF
ROB WOOD, DIRECTOR, BUREAU OF LAND RESOURCES
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

SPEAKING IN OPPOSITION TO L.D. 970

**AN ACT TO PRIORITIZE AFFORDABLE HOUSING BY EXPEDITING REVIEWS FOR
AFFORDABLE HOUSING PROJECTS APPLYING FOR FUNDING FROM THE
MAINE STATE HOUSING AUTHORITY**

PRESENTED BY REP. MALON

**BEFORE THE JOINT STANDING COMMITTEE
ON
HOUSING AND ECONOMIC DEVELOPMENT**

DATE OF HEARING:

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Senator Curry, Representative Gere, and members of the Committee on Housing and Economic Development, my name is Rob Wood and I am the Director of the Bureau of Land Resources at the Department of Environmental Protection. I am speaking in opposition to L.D. 970.

The DEP is concerned with section 2 of the bill. In short, it is unrealistic to ask Department staff to review a Site Location of Development Law (Site Law) application and issue a licensing decision within 30 days after receiving the application. Even if the application is moved to the top of the list and prioritized, as suggested by the bill title, it

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would be extremely difficult to evaluate all site-specific details and write a legally defensible Site Law Order in 30 days. The Site Law governs developments that the Legislature has determined are developments of “state or regional significance that may substantially affect the environment.” This includes all developments that are a subdivision as defined in Site Law, or that create 3 acres or more of impervious area (e.g. buildings, pavement), or occupy an area greater than 20 acres (38 M.R.S. §482).

The law sets forth numerous standards that these developments must meet, and some of these standards have associated Department rule chapters that establish more specific requirements. For example, the Site Law requires a permit application to demonstrate how “The developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.” (38 M.R.S. §484(3)). The Department has a 42-page major substantive rule¹, last revised in 2016, that guides applicants in meeting this extremely broad requirement.

Multiple Department staff, including a Licensing Specialist, a Stormwater Engineer, and a Hydrogeologist must review portions of the application, along with multiple external state agency reviewers, including the Maine Historic Preservation Commission and the Maine Department of Inland Fisheries and Wildlife. Furthermore, it is often the case that applicants submit incomplete applications that need to be supplemented with additional information to demonstrate each of the Site Law standards have been met. That is why Title 38, Section 344 gives the Department 15 working days to review an application for completeness before it is accepted for processing. L.D. 970 would require that the completeness review and the substantive review of the application both occur within 30 calendar days.

¹ Chapter 375: *No Adverse Environmental Effect Standards of the Site Location of Development Act* (06-096 CMR 375)

The only comparable section of statute that sets a similar processing time for a DEP application—with the permit deemed to be granted if the decision is not made by the deadline—is Title 38, Section 480-X, which sets a 45-day and 60-day processing timeline for minor wetland alterations under the Natural Resources Protection Act (NRPA). The difference between a Tier 1 or Tier 2 NRPA application and a Site Law application is that Tier 1 and Tier 2 applications have simpler standards and can be reviewed by a single Licensing Specialist. Additionally, the 45-day and 60-day timelines begin after the 15-working-day period allotted to review the application for completeness.

The most likely outcomes of L.D. 970 are, on the one hand, Site Law permits for affordable housing developments will be granted automatically after 30 days with little or no review, because the Department will not be able to issue a decision within 30 days. On the other hand, it is likely that some permits will be denied because the Department will determine it does not have the information it needs from the applicant to make a decision within that timeframe. This would likely take the form of a denial without prejudice, allowing the applicant to reapply, but such an outcome would be highly inefficient for everyone involved.

Additionally, as Department staff are scrambling to address an application within the 30-day time period, the other applications they are required to review will languish. Although it seems justifiable to prioritize affordable housing applications, it is difficult to explain to every other applicant—for example, public schools, health care and manufacturing facilities, and the myriad Mainers who apply for permits large and small every day—that their application must take a back seat.

Rather than pursue L.D. 970, the Department encourages the Committee to support the Department in making changes that will make permitting more efficient for all applicants. The Department has already taken several important steps in recent months to speed up permitting. For example, we have an open rulemaking to significantly expand NRPA Permit-by-Rule to allow activities that currently require an individual permit to qualify for

an expedited permit-by-rule. We have also developed a list of third-party vendors—namely environmental consulting firms—who are now helping the Department review applications. And, only two weeks ago, we launched a new online permitting system, the Maine Enterprise Licensing System (MELS), that will increase transparency and efficiency in the permitting process. Lastly, the Department has requested two additional Licensing Specialists and two customer service specialists in the biennial budget to augment our staff capacity.

Thank you for the opportunity to testify before you today, and I would be happy to answer any questions from the Committee, both now and at the work session.