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**TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON AGRICULTURE,
CONSERVATION AND FORESTRY**

In Support of LD 1407

*An Act to Provide That a Forestry Operation that Conforms to Accepted Practices May
not be Declared a Nuisance*

Senator Dill, Representative O'Neil, members of the Joint Standing Committee on Agriculture, Conservation and Forestry, I am Donald Mansius, Director of the Forest Policy and Management Division within the Department of Agriculture, Conservation and Forestry's Maine Forest Service. I am testifying in support of LD 1407.

Maine has some of the most comprehensive forest practices laws in the country. The Maine Forest Service administers nearly all of the statewide forestry regulations under what is commonly known as the Forest Practices Act, including timber harvest notification requirements; clearcutting; timber harvesting and related activities in shoreland areas statewide and protection sub-districts in the jurisdiction of the Land Use Planning Commission (LUPC); and liquidation harvesting. The Maine Forest Service also administers permit requirements for stream and wetland crossings and harvesting in protection subdistricts in the LUPC jurisdiction. The regulated community has a good record of compliance with these rules, and the Maine Forest Service has a good record of taking enforcement action when violations occur.

Regarding timber harvesting in shoreland areas, Maine's Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas have been remarkably successful in standardizing the regulation of harvesting in shoreland zones. Over 70 percent of Maine's organized towns have chosen to return the administration and enforcement of shoreland harvesting rules to the Maine Forest Service or to administer and enforce rules consistent with our standards. Many towns have expressed interest in joining this effort. My point with outlining these forestry regulations is that Maine has sufficient statewide regulations to protect the resources.

Since 1986, the National Woodland Owners Association has surveyed its members for the key issues concerning woodland owners. The Right to Practice Forestry and the proliferation of local ordinances regulating forestry operations have consistently ranked among the top ten concerns.

Local forestry ordinances can take many forms, including noise ordinances, reduced weight limits on bridges, time of day work restrictions, permit requirements, and prohibition of specific forestry practices, such as clearcutting. While these ordinances may be well-intended, they have

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the practical effect of increasing the cost of owning and managing woodland and discouraging woodland owners from actively managing their woodlands. Anecdotal evidence suggests that the impetus for a local forestry ordinance often originates with a timber harvesting operation followed closely by a change of use, usually development.

Towns usually lack the expertise to enforce forestry ordinances. As a rule, they do not have licensed foresters on staff, which is a prerequisite for using forestry measurements, particularly in legal matters. And so, local regulations often take the form of permit requirements which add unnecessary time and cost to forest management activities.

Maine has had a law that specifies the process municipalities must follow to enact local forestry ordinances since 1999, and the language of this law is attached to my testimony (12 M.R.S. §8869 (8-9)). The Maine Forest Service has advised several towns on their local ordinances over the years.

Now to the question of how significant this issue is. The answer is, we don't know. We have kept an informal list of towns that have approached us for guidance on developing a local forestry ordinance, but often we do not find out if a town has actually followed through. We occasionally learn that a town has a local forestry ordinance when we review their comprehensive plans. Also, many towns enacted ordinances prior to 1999. We simply do not have the resources to chase down this information and so must rely on local knowledge and the voluntary efforts of municipal officials. As regards nuisance lawsuits, those are civil matters in which the Maine Forest Service does not get involved. We have no authority to be involved in such civil matters, nor do we seek it.

What we do know is this: active forest management provides varied forest products that help support our rural economy while protecting water quality, providing recreational opportunities, and improving habitat for many wildlife species. Since forest management requires the periodic harvest of trees, it is important that the right to harvest trees, using accepted silvicultural practices, and in full accordance with Maine's forest practices rules, not be subject to baseless, nuisance lawsuits, or the enactment of restrictive municipal regulations that may unfairly target forestry operations.

Think of this bill as Maine's forestry equivalent of its long-standing Right to Farm Law (Maine Agriculture Protection Act, 7 M.R.S. Chapter 6). Given the importance of forestry to the state's economy and quality of life, Maine's woodland owners should be afforded protections like those granted to farmers. Maine's statewide forestry laws and rules are working well to protect the state's forest resources. Local regulation of forestry is justified only in the most limited of circumstances.

Thank you for supporting this bill. I would be happy to answer any questions now and will also be available for questions at the work session.

12 M.R.S. §8869. Forest harvest regulations

8. Relationship to municipal rules and regulations. Nothing in this subchapter may be construed to preempt or otherwise limit the existing authority of municipalities to regulate harvesting, except that municipalities regulating timber harvesting shall adopt definitions for forestry terms used in their ordinances that are consistent with definitions in section 8868 and with forestry terms adopted by the commissioner pursuant to this subchapter. Municipal timber harvesting ordinances adopted before September 1, 1990 must meet this standard of compliance with definitions no later than January 1, 2001.

A municipality may not adopt an ordinance that is less stringent than the minimum standards established in this section and in rules adopted by the commissioner to implement this section and section 8867-B. A municipality may not adopt or amend an ordinance that regulates timber harvesting unless the process set out in this subsection is followed in the development and review of the ordinance.

A. A licensed professional forester must participate in the development or amendment of the ordinance. [PL 1999, c. 263, §1 (AMD).]

B. A meeting must take place in the municipality during the development or amendment of the ordinance between representatives of the department and municipal officers and officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality. At this meeting and subsequently, the department shall provide guidance to the municipality on how the municipality may use sound forestry practices to achieve the municipality's forest practices goals. [PL 1999, c. 263, §1 (AMD).]

C. The municipality shall hold a public hearing to review a proposed ordinance or ordinance amendment at least 45 days before a vote is held on the ordinance. The municipality shall post and publish public notice of the public hearing according to the same general requirements of posted and published notice for zoning ordinance public hearings as provided by Title 30-A, section 4352, subsection 9.

In addition, when a municipality proposes to adopt or amend a timber harvesting ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001, the municipality shall mail notice of the hearing by first-class mail at least 14 days before the hearing to all landowners in the municipality at the last known address of the person on whom a property tax on each parcel is assessed. In the case of a timber harvesting ordinance or amendment that applies only to certain zones or land use districts in the municipality, the municipality may meet the requirements of this paragraph by mailing notice only to those landowners whose land is in a zone or land use district or immediately abutting the affected zone or land use district.

Mailed notice to individual landowners is not required under this subsection for any type of amendment to an existing local land use ordinance merely to conform that ordinance to the minimum timber harvesting guidelines required by Title 38, section 439-A, as those guidelines may be subsequently amended, or to conform any timber harvesting ordinance to the requirements of this section for conformity of definitions when the proposed amendments do not substantially change any previously established timber harvesting standards adopted pursuant to home rule authority.

The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those landowners to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. The certificate constitutes prima facie evidence that notice was sent to those landowners named in the certificate.

Any action challenging the validity of the adoption or amendment of a municipal timber harvesting ordinance based on the municipality's alleged failure to comply with the landowner notice requirement must be brought in Superior Court within 90 days after the adoption of the ordinance or amendment. The Superior Court may invalidate an ordinance or amendment only if the landowner demonstrates that the landowner was entitled to receive a notice under this section, that the municipality failed to send the notice as required, that the landowner had no knowledge of the proposed ordinance or amendment and that the landowner was materially harmed by that lack of knowledge. [PL 1999, c. 263, §1 (AMD).]

D. The municipal clerk shall notify the department of the time, place and date of the public hearing and provide the department with a copy of the proposed ordinance that will be reviewed at the hearing at least 30 days before the date of the hearing. [PL 1999, c. 263, §1 (AMD).]

E. At the public hearing, representatives of the department must be provided an opportunity to present and discuss for the municipality's information any reports, articles, treatises or similar materials published by acknowledged experts in the field of sound forestry or silvicultural management to the extent such information is relevant to the proposed ordinance or ordinance amendment.

The proposed ordinance or ordinance amendment may be revised after the public hearing. The ordinance or amendment must be submitted to the legislative body of the municipality in accordance with the procedures the municipality uses for adopting ordinances. [PL 1999, c. 263, §1 (NEW).]

F. Municipal timber harvesting ordinances may not be unreasonable, arbitrary or capricious and must employ means appropriate to the protection of public health, safety and welfare. [PL 1999, c. 263, §1 (NEW).]

G. All direct costs incurred by a municipality associated with landowner notification requirements and other required public notice must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. All direct costs incurred by a municipality in order to comply with this subsection for the amendment of ordinances adopted before September 1, 1990 must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, section 5685, subsection 5. [PL 1999, c. 263, §1 (NEW).]

[PL 2003, c. 335, §3 (AMD).]

9. Centralized listing of municipal ordinances. The bureau shall maintain for informational purposes a statewide centralized listing of municipal ordinances that specifically apply to forest practices.

A. Within 30 days after the legislative body of the municipality votes on a timber harvesting ordinance developed according to the procedures of subsection 8, the clerk

shall notify the bureau of the outcome and shall file a copy of the ordinance with the bureau. [PL 1999, c. 263, §2 (RPR); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

B. [PL 1999, c. 263, §2 (RP).]

[PL 1999, c. 263, §2 (RPR); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

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