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TESTIMONY BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES

IN SUPPORT OF LD 2034

*An Act to Address Identified Gaps in the Laws Governing Erosion Control and
the Natural Resources Protection Act*

January 10, 2024

Senator Brenner, Representative Gramlich, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Stacie Beyer, and I am the Executive Director of the Maine Land Use Planning Commission (LUPC) within the Department of Agriculture, Conservation and Forestry (DACF). I am speaking in favor of LD 2034, *An Act to Address Identified Gaps in the Laws Governing Erosion Control and the Natural Resources Protection Act*.

The bill would amend Maine's Erosion and Sedimentation Control Law to extend the requirement for preventing unreasonable erosion of soil or sediment state-wide instead of applying only in the organized areas of the state. It would also clarify that the LUPC and Maine Forest Service (MFS) have enforcement authority pursuant to their delegated authority under the Natural Resources Protection Act (NRPA). Currently, only the Maine Departments of Environmental Protection (DEP), Inland Fisheries and Wildlife (DIFW), and Marine Resources (DMR), as well as other specifically listed law enforcement officers, have the authority to enforce all the requirements of NRPA.

The need for this bill is clear. When DEP and DACF's relevant agencies responded jointly to the April 2023 train derailment in Sandwich Academy Grant, particularly the associated sedimentation of the Moose River, Brassua Lake, and associated wetlands and streams from the derailment site access road, gaps in both the Erosion Control Law and the NRPA limited the agencies' ability to act. DEP staff were working on spill control and cleanup. MFS and LUPC initially focused on the sedimentation caused by the heavy equipment traffic on the access road. The lack of erosion control measures along the access road did not violate the Erosion Control Law because the activity occurred in an unorganized area. However, if a similar situation were to occur in a municipality, it would violate that law. Similarly, even though MFS and LUPC staff responded to the water quality impacts associated with the use of and repairs to the land management road accessing the site, neither had the enforcement authority under NRPA that would have been helpful in discussions with the railroad.

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This bill will update the Erosion Control Law, which was enacted in 1995. The law requires that *persons filling, displacing, or exposing soil...take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource* (38 M.R.S. § 420-C). Notably, the law is limited to organized areas of the state (e.g., municipalities) and would need to be updated to extend across the entire state. The second paragraph of the existing Erosion Control Law contains retroactive provisions that currently apply in organized areas; the bill does not intend to apply those retroactive provisions in the unorganized areas of the state and includes language to address that intent.

In 1999, NRPA was amended to delegate *permit-granting* authority to the LUPC for activities located wholly within its jurisdiction (38 M.R.S. § 480-E-1). Subsequently, in 2011, the NRPA was amended to delegate permit-granting authority to the MFS for all timber harvesting activities requiring a permit under that article (38 M.R.S. § 480-E-3). When permit-granting authority was delegated to the LUPC and MFS, NRPA was not concurrently amended to grant authority to *enforce* the permits the agencies issue. Allowing for enforcement authority will allow LUPC and MFS, similar to DEP, to effectively manage situations like the train derailment that demand specific and time-sensitive remedial response activities.

Closing the gaps in the Erosion Control Law and the Natural Resources Protection Act as soon as possible will provide equal protection for Maine's water resources in the unorganized half of the state, ensure the LUPC and MFS have the tools they need to administer their delegated authority under NRPA, and to reduce the burden on DEP for ensuring compliance with NRPA permits issued by the MFS and LUPC.

Thank you for your time. I would be happy to answer any questions now or at the work session.