

March 10, 2025

Chair Gere
Committee on Housing & Economic Development
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Testimony on LD 128 to Improve DEP Review Process of Multifamily Housing

Chair Gere and distinguished members of the Committee,

Thank you for the opportunity to share my thoughts on the Maine DEP's SLODA review process and its impact on housing production. Unfortunately, I am unable to attend in person as I am currently traveling outside of the state, but I appreciate your attention to this important issue.

I currently serve as the Development Director for Westbrook Development Corporation, one of Maine's leading affordable housing developers. Prior to this role, I spent over a decade working as a land use planner in local government. As an active environmentalist, I prioritize sustainability and environmental responsibility in all the projects I lead. As an example, earlier in my career I was one of the first developers to successfully receive Passive House Certification for multifamily housing in New Hampshire. I am deeply committed to responsible development and believe there are ways to improve the SLODA process that will both protect Maine's environment and accelerate housing production.

I would like to first express my respect for the Maine DEP staff and leadership. The challenges they face are not unique as many organizations are currently struggling to keep up with growing demands due to workforce limitations. In my interactions with DEP staff, I have always found them to be professional, thoughtful, and genuinely committed to their mission. I was fortunate to recently participate in a virtual call with Commissioner Loyzim. It's clear that Commissioner Loyzim understands the gravity of the issue. I have absolute confidence in Commissioner Loyzim's leadership to address the complex issues of land use review while safeguarding Maine's natural resources.

The SLODA review process has delayed four affordable housing projects I've been involved with over the past four years. These projects represent 308 affordable housing units and approximately 900 market-rate units. Between preparation of SLODA submission documents, delays in acceptance, the 180-day review period (assuming no additional questions from staff), and the need to re-align with local planning board approvals, the SLODA process has added roughly one year to the timeline for these projects. As we all know, time is money. That additional year can increase development costs by 5%-10% due to inflation in construction costs and holding costs for capital for an additional year.

What's even more problematic is when a project requires an amendment to a previously approved plan. Currently, there are no statutory deadlines for DEP staff to complete their review of these amendments, creating significant delays. For example, a previously approved office plan may need to be changed to housing, but without a statutory timeline, that project can remain in limbo

indefinitely. Even minor amendments, such as changing the name of the ownership entity, can take weeks or months to process. As a result, many developers avoid land with existing SLODA approvals due to the uncertainty and lengthy timelines involved in making modifications.

SLODA's current structure inadvertently encourages sprawl and further environmental disruption. By discouraging density in favor of less dense greenfield development, it inadvertently leads to the development of pristine, undeveloped land instead of repurposing previously developed sites. A recent example from Westbrook highlights this issue: a 76-unit affordable housing project located on an already partially developed site was delayed by the SLODA review process to the point where federal funding resources were no longer available, and the project is now permanently on hold. This delay has prevented us from upgrading a stormwater system that was over 30 years old, and the community has lost out on much-needed housing. Its even more unfortunate as the development just barely triggered the SLODA threshold and is located on previously developed land with access to bus lines along with public water and sewer. Its exactly where we should want more housing to be located.

With these issues in mind, I would like to propose several policy recommendations that could help streamline the SLODA review process, encourage better development patterns, and reduce environmental impacts.

1. Third-Party Reviews

I understand that DEP leadership is already considering the implementation of third-party reviews to alleviate long lead times. This is an excellent idea, and I hope it will be further developed, as it has the potential to benefit all parties involved by speeding up the process.

2. Start Time for the Review Period

The statutory 180-day review period should begin when the developer submits an application, not when DEP staff formally accepts the application. It is common for there to be delays in the acceptance of applications, which can add weeks or even months to the statutory review timeline. Starting the clock on submission would eliminate this uncertainty and make the process more efficient.

3. Advance DEP Comments

To ensure the review process stays on track, DEP should be required to provide comments at least 30 days before the end of the 180-day review period. This would allow developers time to address any concerns raised by staff and ensure that projects do not linger past the statutory review period.

4. Online Portal for Increased Transparency

With DEP staff stretched thin, it can be difficult to get updates on the status of applications. I am encouraged by Commissioner Loyzim's announcement that an online portal is being developed to help applicants and the public track projects in the SLODA pipeline. This will improve transparency and communication, benefiting all parties involved.

5. Permit By Rule for Transfer Applications

Large projects often require several phases of construction, with different entities needing to be formed for financing or other reasons. However, with the current backlog at DEP, it can take weeks or months to approve a transfer application, even when no changes are made to the approved plans. A Permit By Rule statutory change could streamline this process, allowing transfers to be processed more efficiently as long as the new entity confirms that no changes are being made to the approved plans.

6. Encourage Smart Development Locations with Tiered Thresholds

SLODA regulations currently apply a one-size-fits-all approach that discourages density and development on previously disturbed land. I recommend implementing tiered thresholds that encourage development in smart locations—such as growth zones, areas served by public water and sewer, and locations near public transportation. This would incentivize denser development in areas where it makes the most sense and reduce the pressure to develop pristine lands.

7. Statutory Limitations on Plan Amendments

Amendments to previously approved plans should be subject to the same statutory review timelines as new applications. The current lack of deadlines for amendments results in unnecessary delays that hinder project completion. Establishing clear timelines for amendments would provide developers with the certainty they need to proceed efficiently.

8. Revise Notification Requirements

The current 1,000-foot notification requirement is out of scale with typical development review processes in most communities. For housing developments, a notification requirement of 500 feet would be more appropriate and align better with most local planning board requirements. This would also help reduce the barriers to housing development created by NIMBYism. If there were concerns about this revision, perhaps it could be made only for low impact developments such as housing or office that typically do not pose irregular environmental concerns.

Thank you again for considering my perspective as you work to increase the supply of much-needed housing while also preserving the natural resources that make Maine such a special place to live, work, and play. I look forward to working collaboratively with you to achieve these important goals.

Sincerely,



Tyler Norod
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