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RE: LD 1864 - An Act to Increase Maine's Housing Supply by Prohibiting Certain Zoning Requirements in Areas Where Public Sewer and Water Infrastructure Are Available and in Designated Growth Areas

Esteemed Members of the Joint Select Committee on Housing,

I submit this written testimony in support of LD 1864 because limits on large lot zoning in will help towns address the discriminatory effect of zoning practices and meet their obligations to affirmatively further fair housing under LD 2003. For these reasons and more, the committee should vote “ought to pass” on LD 1864.

Even prior to LD 2003, all Maine municipalities have been subject to the federal fair housing acts requirements. The Federal Fair Housing Act (FHA) protects families against discrimination in housing based upon race, color, religion, sex, national origin, familial status, disability, marital status, and age. These fair housing protections apply to “zoning laws and other housing restrictions that function to unfairly exclude minorities from certain neighborhoods without sufficient justification.”<sup>1</sup> **When an area is on municipal water and sewer, large lot zoning is a tool of exclusion with no reasonable policy justification.**

LD 1864 places limits on a city and town’s ability to require large lots in parts of the city that have access to public sewer and water or are within designated growth areas. It is no secret that Maine has a housing affordability crisis. **Statewide, the number of households who cannot afford the median home price has climbed over the last 5 years from an average of 55% of households to 72% in 2022.**<sup>2</sup> The situation for renters is just as dire.<sup>3</sup> The rates of housing cost burden disproportionately fall on black and brown families.<sup>4</sup> The large lot zoning that LD 1864 would prevent is discriminatory

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<sup>1</sup> Texas Department of Housing and Community Affairs v. Inclusive Communities, 576 U.S. 519, 539 (2015), quoting *Huntington v. Huntington Branch, NAACP*, 488 U.S. 15, 16-18 (1988). In *Inclusive Communities*, the U.S. Supreme Court affirmed a longstanding position of lower courts that the FHA prohibits not only intentional discrimination (E.g. explicit restrictions based on race), but also discriminatory effect of facially neutral law or policy on a protected group. It is this “disparate impact” discrimination that LD 1864 addresses.

<sup>2</sup> “[2022 Homeownership Housing Facts and Affordability in Maine](#),” MaineHousing,

<sup>3</sup> Hannah LeClaire, “[Scenes from the affordable housing crisis](#),” *Portland Press Herald* (Feb. 12, 2023).

<sup>4</sup> In 2019, forty-five percent of African American or Black Families were cost burdened in housing versus 28% of white households. See, Root Policy Research, “City of Portland and Cumberland County, Analysis of Impediments to Fair Housing Choice”, March 20, 2023, sec. 4, p. 22-23.

because it increases the costs to develop housing that is affordable by increasing the amount of land (and land costs) required for each ownership or rental home built. Since housing cost burdens fall disproportionately on groups protected under fair housing laws, towns that require large lots are at risk of claims of discrimination.

However, Large lot zoning does not universally violate fair housing laws. It only violates fair housing laws if there is no “substantial, legitimate nondiscriminatory interest served by the policy or practice.”<sup>5</sup> For example, it could be reasonable for a town to require larger lots where there is not access to public sewer and water. In these cases, space is needed for adequate private waste and water systems. However, where there is sewer and water, or where the town has already made a policy decision themselves that the area should be designated for growth, there is a lack of sufficient policy justification to override the discriminatory effect of large lot zoning. LD 1864 walks this line well. It protects the town’s substantial, legitimate interest in these health and safety matters while prohibiting conduct that is discriminatory and without substantial policy justification.

In addition to these fair housing protections, it is also important to be mindful of the new requirements of LD 2003 that “a municipality shall ensure that ordinances and regulations are designed to affirmatively further federal and state fair housing laws. **Affirmatively furthering fair housing means that towns must “determine who lacks access to opportunity and address any inequity among protected groups.”**<sup>6</sup> LD 1864 gives the legislature a chance to help towns meet this requirement. It takes the practice of discriminatory large lot zoning off the table where there is no health or safety reason for it to be imposed.

**I ask that you vote ought to pass because LD 1864 minimizes the discriminatory effect of large lot zoning, while thoughtfully allowing towns to address legitimate health and safety concerns.** This bill benefits all those who are impacted by (i) substantially reducing the risk to towns of claims of discrimination based on the disparate impact of large lot zoning, (ii) allowing for the development of more housing that will be affordable to more households; and (iii) complementing the other actions that will be taken on housing this legislative session without added costs.

For these reasons, I urge the committee to vote “ought to pass” on LD 1864

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<sup>5</sup> [Final Rule Reinstating HUD’s Discriminatory Effects Standard](#), discussing the Supreme Court’s *Inclusive Communities* ruling.

<sup>6</sup> The Federal Fair Housing Law requirements for recipients of federal funds, provide a good framework for how to think about affirmatively furthering fair housing in the context of LD 2003’s requirements. See [Affirmatively Furthering Fair Housing](#), Department of Housing and Urban Development.