

Testimony of Rebecca D. Shiland, Esq.
Before the Judiciary Committee
In opposition to
LD 1132 An Act to Further Protect Low-impact Landscaping
April 4, 2025

Good afternoon, honorable members of the Judiciary Committee. My name is Rebecca Shiland. I am an attorney with Jensen Baird in Portland, and reside in Portland, with a specialty in community association law. I represent homeowner associations, developers, and individual homeowners.

I am also the current Chair of the Maine Legislative Action Committee (“LAC”) of the Community Associations Institute (“CAI”). CAI is a national non-profit organization that serves the interests of condominium associations and condominium owners throughout the country. LAC speaks on behalf of the thousands of community associations and their members throughout the State of Maine.

The Maine Legislative Action Committee of the CAI opposes LD 1132.

While CAI supports communities adopting best practices for sustainable landscaping, LD 1132 would harm community associations and their members by increasing the costs and administrative burdens associated with landscaping of common areas and would also infringe upon the rights of the members to collectively decide how the common areas are maintained. The existing Sec. 1. 33 MRSA §1451 “Protection of Low-Impact Landscaping” already protects individual owner’s rights to plant low-impact landscaping in areas either owned by that owner or that the owner has the exclusive right to use. Additionally, the Maine Human Rights Act, MRS Title 5, Chapter 337, provides a pathway for an owner who has a medical condition that may be exacerbated by use of a pesticide to request a reasonable accommodation to the association’s use of that pesticide around his or her unit.

LD 1132 would: (1) allow any owner to install low impact landscaping on *any* part of the common areas of a community association, even areas that are not exclusive use areas for that owner; and (2) prohibit use of pesticides within 50 feet of any unit (including common areas) without the express permission of the unit owner. Notably, the bill does not define the term “pesticide”. Without a definition, the term encompasses a broad range of products, including organic pesticides such as vinegar, with a similarly broad range of purposes including protection/elimination of bed bugs, carpenter ants, cockroaches, and rodents.

Community association common areas are either owned by all owners (a condominium) or owned by the association for the benefit of all owners (in the case of a non-condominium community association). The common areas are managed by a Board of Directors that is

democratically elected by the members. The Board is responsible for landscaping the common areas in what it reasonably believes to be in the best interest of the community as a whole. All owners pay for this landscaping through their association dues. In this way, the landscaping of common areas in a community association is like a town council managing the landscaping of a public park.

Allowing one owner to install low-impact landscaping, or to prohibit the use of pesticides, on shared community association common areas infringes on the rights of all other owners in the community who also have rights to that area. Most owners may not want the low-impact landscaping chosen by that owner or may be in favor of using certain pesticides. This also begs the question of what happens when two or more unit owners want to install different low-impact landscaping in the same location on the common area. In many communities, such as multi-story condominiums, the area 50 feet from one unit may encompass almost all the common area, meaning one owner would have the power to decide that what pesticides, if any, are used in the community. This could prevent the association from effectively fighting a pest infestation, such as bed bugs or cockroaches.

Allowing one owner to unilaterally dictate the landscaping of a common area also creates an administrative nightmare for the Board of Directors as well as the property managers and landscaping companies serving the community. Boards commonly enter into annual, and often multi-year, contracts with landscaping companies. These contracts are generally based on the area maintained and products used. If any owner can install landscaping on the common areas, this affects the area that the landscaping company maintains. Similarly, if one owner does not give their consent to using pesticides within 50 feet of their unit it affects the amount of product used. Boards would also be responsible for telling the landscaper to avoid landscaping or using products on certain areas, and the landscaping company would be responsible for avoiding those areas. If this bill goes into effect, it is foreseeable that landscaping companies will charge community associations more to account for the additional work and that some may stop servicing community associations altogether rather than take on the additional burden.

Obtaining each owner's express permission to using pesticides on the common areas also presents a significant challenge. The Board will need to determine the area 50 ft from each unit. It will then need to obtain consent from each unit owner. Many communities include absentee owners and other owners who are difficult to reach and who rarely participate or respond in any community vote or initiative. Even for those owners who do respond and give permission, the bill text does not explain what happens if an owner revokes permission or a unit sells. The Association will need to keep records of who has responded and how, continually update them, and keep the landscaping company informed as well.

In short, LD 1132 unjustly favors the rights of individual community association members over the collective rights of the membership as a whole to make decisions concerning the community's common areas. It directly contradicts the fundamental principles of community association governance. The Maine Legislative Action Committee of the CAI believes that individual owner's rights concerning low-impact landscaping are adequately protected under existing law.