



STATE OF MAINE
GOVERNOR'S OFFICE OF POLICY INNOVATION AND THE FUTURE
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Testimony of Hannah Pingree

Director of the Governor's Office of Policy Innovation and the Future

Before the Joint Standing Committee on Labor and Housing

Regarding LD 2003, An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions

March 7, 2022

Housing affordability has become a serious crisis for far too many Maine people and requires a comprehensive response from all levels of government and the private sector. The Mills Administration has been focused on this issue since its first days after taking office, beginning with the release of \$15 million in senior housing bonds which had been approved by nearly 70% of Maine voters, but held up for over three years by the previous administration. The Governor also supported and signed into law Maine's largest-ever investment in affordable housing through the creation of the Maine Affordable Housing Tax Credit program, authorized the refinance of existing bonds to make available nearly \$40 million in new financing opportunities for affordable housing development, and dedicated \$50 million in funding from the Maine Jobs & Recovery Plan towards the creation of new, affordable homes for Maine people.

However, in order to fully address our housing affordability challenges, we know that we must find new ways to drive private sector solutions as well. For too long, many existing land use and zoning rules have made it more challenging for individual homeowners and housing developers to create the additional homes that Maine people desperately need. We applaud the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions for their work in thoroughly examining the role that zoning and land use rules play in preventing needed increases in housing supply. We also appreciate Speaker Fecteau's hard work in creating and co-chairing the Commission with Senator Hickman.

LD 2003 takes the thoughtful recommendations of the bi-partisan Commission and proposes a strategic set of policy initiatives intended to make a real difference in the housing markets of urban, suburban and rural communities in Maine.

The Administration strongly supports the tradition of home rule and the ability of local communities to make decisions that will improve the lives and livelihoods of their residents. We believe that it is critical for these communities to have the resources they need to not only implement reasonable and needed adjustments to their zoning laws but also to spark further progress based on their local circumstances. That is why the Governor's supplemental budget proposal includes \$3 million in new, ongoing resources to provide technical assistance, guidance and incentive grants to municipalities and regional planning organizations across the state as they engage in this critical effort. We are committed to addressing our housing crisis in partnership with local governments, recognizing that the challenges and opportunities in each municipality across the State are highly varied.

After consultation with several state agencies, some specific concerns have been raised about the details of this legislation by the Land Use Planning Commission (LUPC) and the Bureau of Resource Information and Land Use Planning at the Department of Agriculture Conservation and Forestry (DACF) about the detailed impacts of the legislation as it relates to the LUPC territory and its governing statute LUPC (see the attached letter from LUPC), shoreland zoning and water quality protection, the integration of the new goals into the state's Growth Management Act (and the overlaps with LD 1961), some conflicting guidance in the proposed statute that applies to both DACF and the Department of Economic and Community Development, and the overall the linkages with these provisions and how they relate with other parts of statute that seek to manage density and prevent sprawl.

The Department of Environmental Protection, charged with protecting water quality and managing both the Shoreland Zoning regulations, had some areas in this legislation that may also require adjustment. Strong shoreland zoning has long been integral to the protection of water quality in Maine's rivers, lakes, and ponds. This environmental protection has been achieved through limits on vegetation removal and the size, location, and density of development in shoreland areas. Our understanding is that the bill is not intended to weaken these protections or alter the minimum shoreland zoning requirements set by the Department of Environmental Protection and implemented by municipalities through their shoreland zoning ordinances. As we take steps to address the need for affordable housing in Maine, we want to do so without sacrificing some of our most important natural resources.

In addition, the new "Housing Opportunities Program" as proposed in the supplemental budget shares the purpose and similar mechanisms as envisioned in this legislation, but with some differences that we assume will be aligned in the Committee's process.

Representatives of the Governor's office and state agencies are happy to engage with the Speaker and this committee on these items and possible amendments prior to or during the work session. Thank you for your shared commitment to addressing Maine's housing affordability crisis.



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March 7, 2022

Via E-mail Only

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Representative Mike Sylvester
Committee on Labor and Housing
c/o the Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: LD 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions."

Dear Senator Daughtry and Representative Sylvester:

The Maine Land Use Planning Commission serves as the planning and zoning authority for the State's unorganized and deorganized areas, including townships and plantations. The responsibility of serving the unorganized and deorganized areas of Maine and helping guide land use in these areas represents a unique challenge. These areas cover over half the State, encompassing more than 10.4 million acres, and include the largest contiguous undeveloped area in the northeast. The Commission's service area also includes places of more concentrated development, often on the fringe of our jurisdiction and near organized municipalities, that provide homes to many Mainers. In our capacity, we recognize the urgent need to address the availability of affordable housing in Maine. LD 2003 was drafted to implement the recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions and to address the affordable housing crisis.

The Land Use Planning Commission understands the goals that LD 2003 seeks to address are very important to the people of Maine. However, one provision contained in Section 3 of the bill would conflict with an important part of the agency's mission as established by its enabling statute that seeks to prevent land uses detrimental to the long-term value of Maine's unorganized territories. It would make any attempt by the Land Use Planning Commission to restrict the development of housing accommodations in any area of its jurisdiction, based on natural character or density, an unlawful housing discrimination. More detail is provided below. If possible, The Commission would like to be part of any further discussion and the work sessions on this bill, with an interest in achieving the goals of the bill without undermining the Commission's mission.

The Land Use Planning Commission's enabling statute requires that decisions made by the Commission be consistent with its Comprehensive Land Use Plan (CLUP) adopted pursuant to that statute. 12 MRS § 658-B(4)(E). The CLUP establishes a vision for Maine's unorganized and deorganized territories as follows: "The Commission's jurisdiction will retain its unique principal values and will exemplify a sustainable pattern of land uses...The Commission has identified four principal values that, taken together

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define the distinctive character of the jurisdiction...” One of the four guiding principles in the CLUP is Natural Character:

Natural character, which includes the uniqueness of a vast forested area that is largely undeveloped and remote from population centers. Remoteness and the relative absence of development in large parts of the jurisdiction are perhaps the most distinctive of the jurisdiction's principal values, due mainly to their increasing rarity in the Northeastern United States. These values may be difficult to quantify but they are integral to the jurisdiction's identity and to its overall character. CLUP, page 2.

The principle of natural character is interwoven throughout the goals and policies of the CLUP, with the term appearing 246 times in the current version of the document.

One critical program in the Commission's plan for its service area is the 1990 Lake Management Program. The CLUP, Appendix C- Lake Management Program, states: “Nonetheless, in the mid-1980s, faced with the increasing demand for lakefront property, the Commission acknowledged the danger that, even with minimum standards, lakes in its jurisdiction might, by attrition, lose the very character that makes them so unique.” CLUP, page C-3. One tool that the Commission chose to use in the protection of the unique character of its lakes is the regulation of density and intensity of development by a lake's classification in the Lake Management Program. Removing this tool from the Commission's planning program would likely have a detrimental effect on Maine's remote lakes.

Section 3 of LD 2003 states that,

Sec. 3. 5 MRSA §4581-A, sub-§5 is enacted to read:

5. Housing development. For any municipality or government entity to restrict the construction or development of housing accommodations in any area based upon criteria that refers to the character of a location, the overcrowding of land or the undue concentration of the population...

Depending on the intent for including “any...government entity” in this section, the Commission believes there are at least two options for addressing the conflict between the bill and the Commission's vision for Maine's unorganized and deorganized territories, while still achieving the important goals of the bill. One would be to strike “or government entity” from this section of the bill. Another would be to add “...or government entity, except for the Land Use Planning Commission...” to the text in this section.

I would be happy to discuss my concerns and answer any questions that you have regarding the implications of the bill to the LUPC either before or during the work sessions for this bill. Please let me know if I can be of any assistance.

Sincerely,



Stacie R. Beyer
Acting Executive Director