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Sen. Matthea Daughtry, Chair
Rep. Mike Sylvester, Chair
Joint Standing Committee on Labor and Housing
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: L.D. 2003 (Implementing Housing Commission Recommendations) Opposed

Dear Sen. Daughtry, Rep. Sylvester, and Members of the Joint Standing Committee Labor and Housing,

I have the honor of serving as a new member of the Town Council for Cape Elizabeth. In providing this testimony on L.D. 2003, I am representing my individual views only and do not express the opinions of the entire Town Council or the town administrators.

Policy and Legal Defects

L.D. 2003 creates policy and legal defects that will undermine or conflict with current local growth statutes. For ease, these are described by Section as follows.

Section 3 (Fair Housing Act amendment)

- *Removal of ability of localities to restrict development based on unique characteristics (for example open spaces, conservation, and farming) conflicts with the growth management statutes (30-A MRSA Chap. 187)*
- *There is no legal requirement for a municipality to provide housing under either the U.S. Constitution or the Maine Constitution.*
- *A decision of the Maine Human Rights Commission to invalidate a municipal charter citizen petition initiative (undertaken to reverse an affordable housing-related zoning ordinance) would conflict with the Home Rule Authority Provisions of the Maine Constitution (Article VIII, Part Second, section 1) and 30-A MRSA §3001.*

Section 6 (mandated growth cap prohibition)

- *Banning growth caps is inconsistent with the Maine State goal of “encouraging orderly growth...while protecting the State’s rural character... and preventing development sprawl” (30-A MRSA §4312 (3)(A)).*
- *A rate of growth program with incentives already exists (30-A MRSA §4360).*

Section 7 (mandated Department of Economic and Community Services oversight of local zoning ordinances and permitting decisions; grant programs)

- *Decision-making over local land use by a central state planning office is inconsistent with the State purpose of encouraging towns to manage future development “with a maximum of local initiative and flexibility” (MRSA tit. 30-A, §4312 (2)(B)).*

- *The Department of Agriculture, Conservation, and Forestry already provides technical assistance on local growth management and ordinances (30-A MRSA §4346.)*
- *It isn't clear the extent to which the rule-making will legally operate as an express limitation on municipal home rule (30-A MRSA §4315).*
- *A grant program already exists (30-A MRSA §4346).*

Section 9 (mandated density and long-term affordability)

- *The increased density requirement is inconsistent with the Maine State goal of "encouraging orderly growth...while protecting the State's rural character... and preventing development sprawl" (30-A MRSA §4312 (3)(A)).*
- *The definition of "affordable housing development" is inconsistent with the definition in 30-A MRSA §4301 (which does not include the 30% of income cap).*
- *It isn't clear the extent to which the rule-making will legally operate as an express limitation on municipal home rule (30-A MRSA §4315).*

Section 10 (mandated elimination of single-family residential zoning)

- *This impairs existing Homeowner Association (HOA) contractual requirements for single-family residential units (in violation of Art. I, Section 11 of the Maine Constitution).*
- *The increased density will require expansion of water/sewage, road, and educational system services.*
- *It isn't clear whether this new section legally operates as an express limitation on municipal home rule (30-A MRSA §4315).*

Section 11 (mandated allowance of accessory dwelling units)

- *This impairs existing Homeowner Association (HOA) contractual prohibitions on accessory dwelling units (in violation of Art. I, Section 11 of the Maine Constitution).*

Section 12 (creation of statewide housing development permit appeal board)

- *Decision-making over permitting by a state appeals board is inconsistent with the State purpose of encouraging towns to manage future development "with a maximum of local initiative and flexibility" (30-A MRSA §4312 (2)(B)).*
- *The creation of a statewide housing appeals board that has authority to invalidate (or override) a municipal charter citizen petition initiative reversing an affordable housing-related zoning ordinance violates the Home Rule Authority Provisions of the Maine Constitution (Article VIII, Part Second, section 1) and 30-A MRSA §3001.*
- *A judicial process for addressing land use appeals already exists (30-A MRSA §4481 et seq.).*

Section 13 (mandated designation of a Priority Development Zone in each community)

- *The growth management statutes (30-A MRSA, Chap. 187) already provide for local community comprehensive master planning and the designation of targeted growth zones.*
- *It isn't clear the extent to which the rule-making will legally operate as an express limitation on municipal home rule (30-A MRSA §4315).*
- *To the extent the PDZ encompasses open space areas subject to conservation or land trust easements, this will constitute an impairment of contracts in violation of Article I, Section 11 of the Maine Constitution).*

Experience throughout the state has shown that the tradition of giving local control over a) growth planning and b) land use planning, has been highly valued by the residents and business community. Compared with an approach of central state planning conducted by the

Department of Economic and Community Services, local communities are in the best position to balance the overall housing needs of its seniors, new families, and cost burdened homeowners while, at the same time, preserving educational systems, business districts, and open spaces.

Questions for Opinion by the Maine Attorney General

In view of the significant legal concerns raised by L.D.2003 and the desirability of ensuring settled real property rights, I urge you to use your authority to request a formal opinion from the Maine Attorney General on the following questions.

1. Will the elimination of single-family zoning, with respect to properties within Homeowners Associations, violate the Contract Clause of the United States Constitution (Article I, Section 10, Clause 1) and the Maine Constitution (Article 1, Section 11)?
2. Will including in a Priority Development Zone properties subject to conservation and land trust easements violate the Contract Clause of the United States Constitution (Article I, Section 10, Clause 1) and the Maine Constitution (Article 1, Section 11)?
3. Will the designation of Priority Development Zones constitute a compensable regulatory 'taking' for affected property owners in violation of Article 1, Section 21 of the Maine Constitution?
4. Will expanded local municipal services (education, water/sewage, and road adjustments for traffic) resulting from the mandates pertaining to density, parking limits, long-term affordability, growth caps, single-family zoning, and Priority Development Zones constitute unfunded mandates in violation of Article IX, Section 21 of the Maine Constitution?
5. Will the creation of a statewide housing appeals board that has authority to invalidate a municipal charter citizen petition initiative (undertaken to reverse an affordable housing-related zoning ordinance) violate the Home Rule Authority Provisions of the Maine Constitution (Article VIII, Part Second, Section 1)?

Please do not hesitate to contact me should you have any questions about this letter of opposition or desire a fuller explanation. Thank you for your consideration.

Very truly yours,

Timothy S. Reiniger