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Testimony in Support of LD 1096, An Act To Improve Shoreland Zoning Rules and Enforcement to Support Municipalities

**Garrison Beck, Director of Water Conservation
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Senator Saviello, Representative Tucker, and distinguished members of the Committee on Environment and Natural Resources,

My name is Garrison Beck and I am the Director of Water Conservation for Midcoast Conservancy. Midcoast Conservancy's mission is to protect and promote healthy lands, waters, and communities through conservation, outdoor adventure, and learning. We work in the lands and waters surrounding the Sheepscot River and Damariscotta Lake, from Wiscasset to Montville. We are supported by 1,600 members who live throughout midcoast and central Maine and beyond.

In 2015, the Environment and Natural Resources Committee of the 127th Legislature requested Maine Municipal Association to convene a Shoreland Zoning Working Group in response to LD 713, *Resolve, To Further Protect Lake Water Quality*. Stakeholders included several Code Enforcement Officers and municipal officials, the Maine Real Estate and Development Association, the Associated General Contractors of Maine, as well as several nonprofit organizations. As a result of four meetings through 2015, the Shoreland Zoning Working Group developed six recommendations in regards to improving the enforcement and compliance with shoreland zoning laws statewide. I participated as a stakeholder in that working group. I have since worked with Representative Blume to develop this bill which incorporates two of the Working Group's recommendations. I have attached a list of the Working Group's membership as well as its recommendations to this testimony, and I have provided the Clerk with an electronic copy of the full 77 page report with appendices dated December 2, 2015.

I will address each aspect of this bill, LD 1096, in the order it appears in the bill's language.

Code Enforcement Officer Training

You will find the first recommendation of the Shoreland Zoning Working Group is: "The Working Group unanimously recommends that the Environment and Natural Resources Committee take whatever steps would be necessary and effective to establish a more robust capacity for shoreland zoning advanced training curricula to be made available to municipal code enforcement officers."

"This recommendation is based on the findings of the Working Group that when the breadth of the training programs formerly made available by the state were scaled back to 'basic training' in the latter part of the previous decade, gaps were created in the scope of curriculum available to CEOs seeking recertification." This refers to the Public Law 2009 Chapter 213, Section M-6 which removed the requirement that the Department of Economic and Community Development (DECD) provide "advanced" training to Code Enforcement Officers, thereby limiting the Department to provide only "basic" training.

Currently, DECD's Chapter 300 Rules govern Certification Standards for Code Enforcement Officers and Third-party Inspectors. For the Committee's information, I have included a paraphrased summary of the current training procedure for Code Enforcement Officers:

- A new CEO must be certified by examination within 12 months of taking a job as a CEO in their specific area of responsibility (Section 3.1)
- This certification is valid for 6 years (Section 4.2)
- A CEO must be recertified in each specific area (shoreland zoning, plumbing, etc.) every 6 years (Section 5)
- Except for building codes, a CEO must receive 12 contact hours in each specific area, for which an examination is not required (Section 5.1)
- Recertification contact hours may be received through either basic training provided by DECD, or in training provided by another organization (Section 5.1.A)

This bill returns an advanced training program to DECD. Advanced training would benefit CEOs in a number of ways, but particularly in regards to shoreland zoning issues. Enforcing shoreland zoning ordinances can be extremely difficult given the variability between land uses and the nature of Maine's Mandatory Shoreland Zoning Act. For example, the "point system" for vegetation clearing whereby points are assigned to vegetation and trees of certain diameters within a 25' x 50' grid can be challenging to teach in a basic, classroom setting.

The Chapter 300 rules provide that CEOs can receive credit hours for training held by other organizations, however, unlike plumbing or building codes, there are no professional organizations in Maine tasked with providing regular advanced training specifically for shoreland zoning. The Working Group recommended further advanced training opportunities for shoreland zoning, and I suggest these should incorporate more opportunities outside of the classroom and in the field.

Increase in Civil Penalties

Civil penalties provide the protection and reassurance that Maine's taxpayers are being reimbursed should a party take action which diminishes the value of our public assets. In the case of shoreland zoning, landowners may take action on their own properties which causes significant harm to water quality, which over time can lead to a loss of revenue from property taxes. We must ensure that penalties are appropriate to the current valuation of properties and of our public assets, and not simply an inconvenience of owning shorefront property.

The current maximum for civil penalties under Title 30-A is \$2,500 per day, or \$5,000 per day if the property is in a Resource Protection zone. The \$2,500 maximum was established in 1989 and has not changed since. Simply adjusting for inflation using the Consumer Price Index, \$2,500 in January, 1989 has the same buying power as \$5,013.19 in January of 2017¹. This alone should be reason enough to adjust these maximum penalties.

¹ United States Department of Labor, Bureau of Labor Statistics. CPI Inflation Calculator. https://www.bls.gov/data/inflation_calculator.htm

It is worth noting that the minimum penalty of \$100 is not adjusted with this bill. Therefore, by increasing the maximum penalty, we are simply giving towns and CEOs more flexibility to impose appropriate fines for those who conduct egregious violations and cause serious harm to water quality. This increase will not affect the average homeowner who accidentally cut one more tree than they should have, this will help reduce the incentive for those who violate and do not care about the consequences.

Photographs Required

This is also a recommendation of the Shoreland Zoning Working Group. “The Working Group unanimously recommends that legislation be advanced or regulation promulgated that will amend the shoreland zoning minimum guidelines to require that any application for development in the shoreland zone that requires a permit include as part of required application submissions both pre-development and post development photographs of the area of the shoreland zone affected by development. The recommendation would create a parallel to the requirement for such photographic submissions under the Permit by Rule process in the Natural Resources Protection Act. This recommendation is based on a finding of the Working Group that one of the single largest obstacles to the enforcement of many of the shoreland zoning standards, especially the tree cutting and vegetation removal standards, is the lack of adequate documentation regarding the pre-development site’s tree and vegetative baseline.”

With the modern ease in collecting digital photographs, this aspect of the bill is simply a wise policy. We cannot reasonably expect Code Enforcement Officers to enforce shoreland zoning ordinances without the data to support their findings. Without photographs, CEOs would have little to no recourse against a landowner who claims that a stump, patio, or shed was in place prior to an alleged violation. If we are to protect our water resources and give CEOs the authority to do so, we must give them all the tools necessary to complete the job.

Thank you for your serious consideration of this bill. LD 1096 would provide wise improvements to Maine’s policies to protect water resources, and I urge you to give this bill your full support. I am glad to answer any questions.

Sincerely,



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