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**STATE OF MAINE
121ST LEGISLATURE
FIRST REGULAR SESSION**

**First Annual Report
of the
COMMUNITY PRESERVATION
ADVISORY COMMITTEE**

February 2003

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Sen. Peter Mills (Chair)
Rep. Ted Koffman (Chair)
Sen. Lynn Bromley
Rep. Sue Hawes, Standish
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant
and former Realtor

Peter Judkins, Maine State Housing Authority
(Board)
Jeff Sosnaud, Maine Audubon (Board)
Jim Brown, Director of Economic and
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Executive Summary

The Community Preservation Advisory Committee (CPAC) was established by the 120th Legislature and charged with advising the Governor, the Legislature, state agencies, and entities on matters relating to community preservation. During its first year, the Committee was co-chaired by Senator Peter Mills and Representative Ted Koffman. The Senate President and Speaker of the House appointed eleven members to the Committee, including six legislators, and five representatives of key interests. The Director of the State Planning Office and the Commissioner of the Maine Historic Preservation Commission, designated as members in statute, directed agency staff to serve in their places.

Unlike three previous legislative task forces convened to address issues related to sprawl, growth management, and land use, the Community Preservation Advisory Committee has been authorized for a five-year lifecycle, through June 2008. The duration of this committee stems from the first recommendation of the Joint Study Committee to Study Growth Management (2001), to establish an ongoing committee that can, on a more consistent basis, confront issues dealing with planning for growth and preserving the character of Maine communities.

The Committee held its first meeting in October 2002. The members were presented with information from several state agencies on current activities and initiatives impacting community livability and preservation, as well as proposals for future committee consideration. At the second meeting, the Committee identified six priority areas affecting community preservation and growth: 1) tax policy; 2) livable, affordable housing; 3) growth caps, "NIMBYism" (an acronym standing for "Not In My Back Yard"), and infill development; 4) how transportation policies and investments affect communities; 5) building rehabilitation codes; and 6) rural preservation surrounding growing communities.

By the end of the third meeting in December, the Committee agreed to forward eight legislative proposals to the 121st Legislature (First Session) and four recommendations to state agencies. The legislative proposals included bills to address:

1. Encouraging local development of affordable housing;
 - a. Establish a fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on review of a statewide Board to assure the projects meet certain minimum standards that assure their livability (or just delete from "that assure" on). Both the developer(s) and the town(s) would submit applications to the Board. Grants would be used to compensate municipalities for expenses related to the project's impacts on transportation (roads, sidewalks, streetscapes), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be related to the number of units.
2. Providing tax increment financing as a tool to support the development of affordable housing;
 - a. Create a bill to establish a municipal affordable housing development district program at the Maine State Housing Authority (MSHA).
3. Clarifying state expectations for rate of growth ordinances ("growth caps");
 - a. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps)
4. Addressing referenda that retroactively reverse local decisions.
 - a. Submit original language of LD 796 from the 120th Legislature, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.
5. Integrating transportation and land use planning;

- a. Create a bill to direct the Maine Department of Transportation (MDOT) to promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
 - b. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized.
6. Providing increased options for encouraging transit or public transportation systems;
 - a. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
7. Encouraging the adoption of local building rehabilitation codes;
 - a. Create a bill to offer incentives to communities for adopting both a building code that includes a rehabilitation component based on *either* of the two national codes (International Code Council or the National Fire Protection Association), for example preferences for Department of Economic and Community Development (DECD)-administered economic development grants

During the 121st Legislative Session, the legislative members of the Committee will divide sponsorship and co-sponsorship of the bills. It is expected that the Committee and interested parties will reconvene during session to discuss strategy for advancing the bills. In addition to the seven areas where legislation is being moved forward, the Committee identified the following mid- and long-term goals and strategies:

1. Bills critical to the mandate of the Committee should not be held until the 122nd Legislature, but should be forwarded when timely (e.g., even in the Legislature's Second Session) because of the finite tenure of the Committee;
2. The complex issues that impact the development of affordable communities will not be shaped by legislation alone; Maine State Housing Authority, the State Planning Office, and other supporters of affordable housing opportunities must continue to reach out and educate decision makers and communities;
3. A regional approach is critical to realizing the efficiencies of coordinated land use, transportation, and fiscal planning, and the Committee will continue to increase its understanding of the issues surrounding regionalism and advocate for regional approaches;
4. The Committee will continue to investigate and support opportunities to encourage rural preservation and development in growth areas;
5. The Committee will also continue to investigate and support other CPAC priorities in the 121st Legislature; and
6. To advance the dialogue and build on the committee's shared experiences, the Committee encourages Legislative leadership to reappoint standing Legislative members to the Committee whenever possible.

Introduction

The Community Preservation Advisory Committee (CPAC) was established by the 120th Legislature in PL 2001, Chapter 648 (Title 30-A, Section 4350). The Committee is charged with advising the Governor, the Legislature, state agencies, and other entities on matters relating to community preservation. Specifically, the Committee is directed to:

- Provide assessment, advice and recommendations on emerging policy concerns or on adjustments to existing programs related to growth management;
- Review and make recommendations on the State's fiscal, transportation, education funding, school-siting and land use policies that affect service center communities, rural lands and development sprawl;
- Review tax policy as it affects land use decisions;
- Provide assessment, advice and recommendations on the role of state office buildings in the continued viability of downtown service centers within the State and the impact of growth-related capital investments and location decisions by the State;
- Provide assessment, advice and recommendations on the coordination of state and local urban transportation planning and streamlining of local and state land use rules and regulations to permit and encourage efficient neighborhood and economic development in growth areas; and
- Review and make recommendations regarding options for establishing a state transferable development rights bank.

The Committee was co-chaired by Senator Peter Mills and Representative Ted Koffman. The Senate President and Speaker of the House appointed eleven members to the Committee, including six legislators and five representatives of key interests. The Senate President appointed two senators and representatives of rural municipal interests, service center interests, and the Maine State Housing Authority. The Speaker of the House appointed four Representatives and representatives from the environmental community and real estate and development community. The Directors of the Maine State Planning Office and Maine Historic Preservation Commission, or their designees, are also members. A complete list of committee members is included as Appendix B.

The Committee met four times in the fall / winter 2002: October 21; November 25; December 9; and January 14. In addition, a subgroup of Committee members and interested parties met once in December to address issues surrounding the affordable housing agenda, and members interested in further discussing the legislative agenda met in February. Committee meeting summaries are included as Appendix C.

In addition to the 13 members of the Community Preservation Advisory Committee, 99 individuals are currently included in an email distribution list of "interested parties," receiving regular updates on meetings and Committee activities. Several state agencies and public groups have been closely involved in the CPAC's activities, and regular participation in Committee dialogue by the Department of Transportation, Department of Economic and Community Development, Department of Education, Maine State Housing Authority, Bureau of General Services, Maine Revenue Services, and State Planning Office has encouraged collaboration across agencies and with the Committee. The participation of the Maine Chamber of Commerce, Maine Municipal Association, Maine Real Estate and Development Association, Maine Association of Realtors, and Maine Audubon Society has brought additional perspective to the Committee.

To facilitate communication, a website developed for the Committee is hosted on the State Planning Office's website, <http://www.maine.gov/spo/landuse/tfandcomm/cpac>. The website includes meeting agendas, meeting summaries, electronic copies of many of the handouts, as well as additional background information on priority topics.

The Community Preservation Advisory Committee is charged with submitting an annual report of the Committee's activities to the Legislature and the joint standing committee of the Legislature having jurisdiction over natural resources matters by December 1st of each year. However, the Committee requested and received authorization from the Legislative Council to extend the reporting date to February 28, 2003.

Based on its first four meetings, the Committee has submitted legislative proposals for the 121st Legislature in seven areas. Due to the ongoing nature of the Committee's charge, both Legislative and public Committee members are planning to be heavily engaged in the 121st Legislative Session for the eight bills that have been proposed by the Committee. In addition, the Committee will monitor over 100 bills in the state legislature that overlap with the Committee's priority areas of interest. Committee members expect to continue their legislative agenda in the 2nd Session of the 121st Legislature, as appropriate.

Background Information

Recognizing that community preservation and growth management are not new issues to the Legislature or state agencies, the Committee first sought to recognize what has already been accomplished, in order to determine where they should place their short-term and long-term priorities. Based on legislative summaries compiled by the Office of Policy and Legal Analysis, the State Planning Office drafted a summary of the efforts of three state task forces (the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development in 1999; Task Force to Study Growth Management in 2000; and Joint Study Committee to Study Growth Management in 2001), the Governor's Sub-Cabinet Committee on Smart Growth, and the 119th and 120th Legislatures in areas related to sprawl, growth management, and community preservation. For each of the last three years, a separate legislative task force or study committee was convened in the fall to explore smart growth issues and prepare a package of recommendations for legislative consideration and action the following spring. In addition to legislative efforts, the Governor convened a Sub-Cabinet Committee, the "Smart Growth Coordinating Committee," which prepared and adopted a three-year strategic plan called Smart Growth: The Competitive Advantage. The complete summary of activity is included in Appendix D.

Overview of Topics Addressed in 2002

The charge given to the Committee requires members to focus on interconnected issues of community health, land use, economic development, tax policy, rural preservation, and natural resource conservation. Although four of the thirteen members of the Committee had participated on one of the three previous state task forces focusing on growth management issues, and several of the Committee members were well-versed in some of the issues brought before the Committee, the Committee invited experts from several state agencies and interested organizations to come forward to present their concerns and observations to the Committee during their first two meetings. This served as a springboard for the third and fourth meetings.

Department of Economic and Community Development (DECD): Peggy Schaffer provided the Committee with background information on DECD and its current priorities. DECD includes three divisions, covering the areas of Business Development, Tourism, and Community Development (administering the Community Development Block Grant (CDBG) program). Ms. Schaffer noted that the CDBG program is one of the State's largest sources of funds for municipal grants; the funding is passed through from the federal government. CDBG funds approximately \$17 million in grants, although the use of those funds is limited to those specified by federal guidelines and priorities. For example, at least 51% of the benefit has to go to "low and moderate income" people, or to "relieve slum and blight." Even with those restrictions, however, DECD has found ways to encourage good planning in conjunction with the funding program. For example, DECD only funds capital projects within a locally designated growth area (or similar areas described in the rules), in towns with a local comprehensive plan (or towns that have not received a grant for a comprehensive planning effort).

While there has been some encouragement of regionalism, it is a difficult fit for the CDBG program because of its focus on paying for *local* infrastructure, such as sewer and water. The program was primarily designed for large urban areas, so DECD has worked to find a good fit for Maine towns. Approximately \$1.4 million of the CDBG funds are used for downtown grants.

DECD also administers the Municipal Investment Trust Fund (MITF), which Ms. Schaffer characterized as similar to the CDBG grants, but without the federal strings. The MITF was authorized in 1993, although no funding was available for it until the summer of 2001. Currently, the Fund has \$4.3 million available from a \$300,00 appropriation from a state budget surplus and a bond package. DECD is currently developing rules for administration of the Fund. Working closely with the Maine Bond Bank, DECD foresees that it will be able to double the amount of funds available to municipalities by offering low-interest loans instead of concentrating on grant funding.

In addition, DECD is working closely with the Department of Human Services (Drinking Water Program), the Department of Environmental Protection, and the federal Rural Development program when new projects are proposed to maximize the funding matching opportunities and ensure the "biggest bang" for the local buck.

State Board of Education: Jim Rier provided the Committee with a summary of Recent Accomplishments that Support Effective Growth Planning. The State's Renovation Fund of \$100 million has impacted over 100 school units, involving nearly 150 school buildings. The Department of Education (DOE) received applications from 375 – 400 projects, although not every application represented a single school. Renovation projects have, until this point, focused on health and safety issues, although Mr. Rier expressed the hope that upgrades and focusing on quality "learning space" will soon play a larger role in the funding. In two rounds of funding, the Renovation Fund has funded 35 schools; the capital value of the projects is approximately \$375 million, including local match and Department funding.

Particular concerns of the Department include the rapidly changing school-age population. School enrollment projections released the day before the CPAC meeting showed that in 500 municipalities, 412 expect declining enrollments, some with declines as much as 20 – 40 percent. There is a lively discussion of whether or not building (or renovating) high schools for a small number of students (e.g., less than 300) is a good use of funding. The Department also recognizes, however, the difference between elementary, middle, and high schools in this discussion.

Mr. Rier was asked if there have been any changes to the rules regarding campus size of schools, which can make siting a school in already developed areas very difficult. He responded that the rules had not changed to reduce the minimum campus size, although the Department will allow exemptions for noncontiguous sites to count toward the required minimum campus size (e.g., off-site playing fields).

Mr. Rier was asked about the opportunity for changing the scoring of projects to reflect the proximity of schools with excess capacity in close proximity to the proposed project. He responded that the scoring is based on the needs of the students and that the solutions proposed do not play a role in the prioritization of projects.

In response to a question about greater integration of school siting and planning with broader community development activities, Mr. Rier noted that districts and communities have frequently begun their project planning prematurely, before the Department has had an opportunity to lay the groundwork for the process. There has been some success in increasing community involvement and getting the State Planning Office involved early in the process, however communities generally begin to move ahead as soon as their names appear on the funding list.

Mr. Rier noted that incentives for regionalism would work toward addressing issues of the large number of school boards and superintendents in the current system.

Department of Transportation (MDOT): Kathy Fuller highlighted the Department's Access Management Program. The program, although on the books since the 1950s, really started in 1999. New rules were released in 2002, which include greater focus on planning, corridors, and a regional approach to planning. The Department is currently collecting information in an inventory to examine the impacts of the new rules.

One aspect of corridor planning the Department is investigating is the opportunity for conservation of significant resources adjacent to corridors. For example, MDOT could purchase the access rights, while another agency or group could purchase the development rights.

Two emerging programs at MDOT were described. The Department is looking at integrating transportation planning with Urban, Service Center, and Village policy and investments. The current Biennial Transportation Improvement Program (BTIP) plan for Fiscal Years 2002-2003 will identify these investments, while the next Six Year Plan will begin to integrate these areas. On a related topic, MDOT is also investigating the implementation of last year's legislative changes allowing Local Road funds to be channeled into transit incentives. The Department is also interested in introducing rules or guidance for the transportation elements of a comprehensive plan. The Planning and Land Use Regulation Act does not specify recent changes to state law, including the Sensible Transportation Policy Act of 1991.

When asked about linking density and land use planning to transportation investments, Ms. Fuller responded that the Department is starting to do this in some areas. For

example, MDOT has a new sidewalk policy where they will pay for sidewalks in dense neighborhoods with appropriate setbacks, proximity to schools, and other features.

Maine State Housing Authority: Working through a series of handouts, Peter Merrill noted the forces of supply and demand of affordable housing units are not balanced at the local level. It is generally in a town's best interest to limit the supply of additional housing units because of the additional costs involved, and some towns are actively discouraging residential development through growth caps, zoning, and cumbersome local approval processes. This is impacting growth because homebuyers are being pushed out into rural areas because they cannot afford to purchase a property in town, and pulled out of developed areas because property taxes are so much lower outside of the cities. The tax policy discussion is a good opportunity to get at school funding and tax policy's impacts on affordable housing issues.

Bureau of General Services: Jerry Nault shared information developed for the recent Downtown Conference, including a list of selected leased spaces in service center downtowns and growth areas. The Bureau provides a monthly report to the Governor that includes new leases. Rep. Koffman asked if it included variables such as where the space was located (in a service center, growth area, downtown), and if it is taxable.

State Planning Office: Reviewing an open letter to the Committee, Beth Della Valle highlighted significant accomplishments by the past growth management task forces, and encouraged the Committee to consider the linkages between patterns of development and tax policies, smart growth and affordable housing, and options for inducing growth and redevelopment in service centers and downtowns in the short-term.

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CPAC Priorities Established for the 121st Legislature

The Community Preservation Advisory Committee has chosen, in the short-term, to pursue both a legislative and programmatic strategy for implementing its charge. Where a legislative approach has been chosen, the six legislative members of the Committee have agreed to sponsor legislation and shepherd the proposals through the State Legislature. The Committee members identified several short-term priorities to pursue during the 121st Legislature; members approved the following bills proposed to the legislature and sponsored by CPAC members:

1. Encourage Integration of Transportation and Land Use Policies

The CPAC recognizes the close connection between transportation investments and patterns of development. Historically, where transportation infrastructure has been built or significantly improved, a dispersed pattern of development has followed if the municipality has not put in place coordinated planning goals and ordinances.

In order to improve the coordination between land use and transportation planning, the legislative members of the Committee are sponsoring legislation that would direct MDOT to promulgate a major substantive rule in cooperation with the State Planning Office that establishes linkage between the planning processes outlined in the Sensible Transportation Policy Act (23 MRSA §73) and those promoted by the Planning and Land Use Regulation Act (30-A MRSA Chapter 187).

2. Encourage Enhancement of Local Public Transportation Options

Addressing areas related to community preservation requires an integration of many policy and programmatic areas, including transportation, land use, and housing issues. The Committee focused on availability of public transportation options as an important component for communities to address economic development, affordable housing, livability, and transportation infrastructure concerns.

The legislative members of the CPAC are sponsoring legislation this session that would direct MDOT to incorporate regionalism into the Transit Bonus Payment Program rules. The Transit Bonus Payment Program builds on the URIP (Urban-Rural Initiative Program, formerly known as the Local Road Assistance Program), and allows a bonus to municipalities' annual disbursements. The bonus, which must be used for highway purposes, is awarded if the municipality increases their transit spending on operational expenses and capital above a base year's amount (Fiscal Year 2000). The last section of this law (Chapter 681; LD507) requires MDOT to create rules for the program; those are nearly complete. MDOT is planning on taking applications to this program in 2003. The bill submitted would direct MDOT to modify the Program rules to incorporate priorities or preferences to towns that operate a transit service that has a regional component.

3. Support mechanisms to encourage local adoption of a building rehabilitation code

Local community and economic redevelopment efforts in existing village centers or downtowns are frequently hampered because of the real or perceived financial differences between rehabilitation and new development. Home and business owners who wish to rehabilitate and upgrade existing buildings may encounter building code requirements that make rehabilitation financially impossible, effectively pushing development toward undeveloped areas. Similarly, communities faced with burgeoning costs of rehabilitating neighborhood schools to bring them up to modern code may choose to abandon the existing site for a new site outside of the village center. The Committee recognizes that the lack of a statewide rehabilitation code

adds a degree of uncertainty and confusion to local projects and developers, hampering opportunities to build, and maintain, community vitality.

In February 2002, the Maine State Planning Office and Building Rehabilitation Code Advisory Council reported its findings that a single statewide building code is a necessary precursor to development of an overlapping rehabilitation code. It also found that many different codes are in use throughout Maine communities, most based on models from one of two national code organizations (International Code Council or the National Fire Protection Association). Last year, both of those organizations created rehabilitation codes to integrate with their model codes. Few Maine municipalities have adopted them. The Building Rehabilitation Council recommended that the Legislature reexamine the desirability of developing a model statewide building code for Maine and create incentives for municipalities to adopt it. The Committee recognizes the value of a statewide code while acknowledging that it can still encourage communities to adopt rehabilitation codes until the State sees fit to adopt one. To that end, the legislative members of the Committee are sponsoring a bill that provides incentives for municipalities to adopt the rehabilitation component of one of the two national building codes. The bill envisions a preference for DECD-administered economic development grants if a municipality adopts the rehab component of a code.

Because of its potential creation of statewide building and rehabilitation licensing guidelines, the Committee will track Representative Cowger's proposed bill to license building contractors.

4. Encourage rural preservation and direct growth toward locally designated growth areas; encourage regionalism to increase local efficiency and strengthen Service Center communities

The Committee has engaged the Department of Education, Department of Transportation, Bureau of General Services, State Planning Office, and Maine State Housing Authority in seeking to understand the complex interplay of strengthening service center communities, managing growth in Maine's sprawling communities, and preserving working rural landscapes and critical natural resources. The Committee will watch legislation in the 121st Legislature, lending its support to those bills which members feel support these goals. Conversely, members will speak out against bills that provide incentives, hidden or otherwise, that encourage sprawl or undermine Maine's service center communities.

Although not a part of its legislative agenda, the Committee is supporting the State Planning Office's plans to revisit its guidelines for comprehensive planning, to encourage regionalism, strengthen service center communities, and encourage strategies that result in preservation of critical natural resources and working rural areas.

In addition, the Committee will look to the results of State Planning Office research regarding "transfer of development rights" and "density transfer fee" approaches that use fiscal incentives to direct growth toward desired areas and away from areas desired to be protected. These programs, if applicable to Maine communities, can provide an additional tool for municipalities and regions to plan for and control their patterns of development.

5. Ensure that tax reform and changes to tax policies do not undermine the health of Maine's Service Center communities nor subsidize sprawl

There are over forty tax-related bills being proposed in the 121st Legislature which the CPAC believes impact the vitality of Maine's communities and influence public and private investment decisions. One of these bills (see #6, below) will direct the Maine State Housing Authority to develop a tax increment financing (TIF)-like program that will permit municipalities to recapture a portion of the taxes from affordable housing developments to pay for certain capital improvements and other development costs.

As in other topic areas, The Committee will watch legislation in the 121st Legislature, lending its support to those bills which members feel support these goals. Conversely, members will speak out against tax bills that provide incentives, hidden or otherwise, that encourage sprawl or undermine Maine's Service Center communities. For example, the Committee will consider criteria by which all tax reform measures should be examined in terms of impact on community preservation issues, e.g.:

- Relieve service centers from the burden of nontaxable governmental, non-profit, and institutional facilities that provide regional benefits;
- Encourages investment in service centers;
- Protects year-round and/or long-term property from escalating values;
- Encourages investment in growth areas;
- Provides incentives for regional tax base sharing and land use management (planning, adoption of ordinances, investment and other strategies; and
- Authorizes differential application of local tax assessment based on consideration appropriate uses for growth and rural designations.

6. Increase opportunities for housing affordable to all of Maine's residents

Throughout southern and coastal Maine, including nine housing market regions that encompass about a third of the state's towns and 44% of its families, the problem of housing that is within reach of families of average means has become intractable. Many of our communities' valued occupations - including teaching and policing - do not pay enough to afford the median priced home. In fact, many dual-working households do not earn enough. The Maine State Housing Authority has documented the problem, but even without official studies, the anecdotal evidence - from classified ads to conversations with first-time homebuyers - is overwhelming. The effects present themselves in three ways:

- First, many young families must now either forego home ownership or move farther away to rural edges, 20 or more miles from job centers, in search of land and housing they can afford. In the trade of distance for housing, these families now spend 20% of their incomes on transportation, more than they pay for food;
- Second, the cost of housing has become a deterrent to the location and expansion of business in need of employees with average wages; and
- And, third, among the lowest income, working households, there is growing homelessness. As of July 2001, nearly a third of persons in homeless shelters had jobs.

The problem has reached a point that not even recession or low mortgage rates have corrected the market.

To address this disconnect, the CPAC has proposed two bills. The first, mentioned in #5, above, would direct the Maine State Housing Authority to create a TIF-like program that will permit municipalities to recapture a portion of the taxes from affordable housing developments to pay for certain development costs associated with the impacts of that development.

The second bill being proposed by CPAC legislative members to the 121st Legislature builds on the broadly supported LD 2099 from the 120th Legislature. The bill proposed to the 121st Legislature builds on the framework of LD 2099 in its definition of affordable, livable neighborhood development, the establishment of a review board, and use of guidelines in the review. However, it makes review by the board voluntary. Towns and developers interested in certifying a development would present a joint application to the review board. Certification by the board would qualify the municipality for compensation for increased capital costs such as school expansion, transportation/road/sidewalk infrastructure, sewer and water provision, and open space acquisition. The Maine State Housing Authority would develop the rules for the review board and oversee implementation of the program.

7. Address local uncertainty created by the ability of local referenda to change local policies retroactively

Real estate developers that have proposed projects with compact development patterns or an affordable housing component have, anecdotally, met with significant resistance from local interests. Investment, funding, and development decisions are based on local decisions, and when those decisions can be rescinded retroactively by local citizen referenda, a great deal of uncertainty is introduced — for the developer, the finance community, and the municipality. To address this uncertainty, the Committee is supporting a bill that would prohibit municipal ordinances or bylaws enacted by citizen initiative or referendum from containing retroactivity provisions that have the effect of invalidating, repealing, revoking or modifying building permits, land use approvals, or other action having the effect of permitting development if that permit or approval was issued or that action was taken prior to enactment of the ordinance or bylaw.

8. Provide guidance to municipalities regarding implementation of growth ordinances

Many Maine communities, especially in southern and coastal Maine but rapidly extending beyond its fringes in all directions where signs of sprawls are becoming evident, are adopting rate or growth ordinances, or growth caps, in an attempt to stem the rapid pace of development they are experiencing. Unfortunately, many of these towns have are not planning for those growth caps or the patterns of development they are encouraging, and the effect is encouraging a dispersed, leap-frogged and expensive pattern of sprawling development across the State. The Committee has submitted a bill that would outline the parameters within which a municipality may adopt a rate of growth ordinance. The proposed bill includes options for a community faced with unexpected growth pressures, which feels it must limit growth in order to step back and preserve and plan for that growth. It also recognizes caps as a tool; towns can use to direct growth to designated growth areas and away from important rural areas. In addition, the Committee encourages the State Planning Office to create a new rule (Rate of Growth Ordinance Review Criteria Rule) that would evaluate local growth caps against comprehensive plans that have been found consistent with the Planning and Land Use Regulation Act.

Mid-Term and Long-Term Committee Recommendations

In addition to supporting the legislative agenda outlined in the Section above, the Community Preservation Advisory Committee recommends the following:

- 1. Bills critical to the mandate of the Committee should not be held until the 122nd Legislature.**

Although the legislative members of the Committee introduced eight bills on behalf of the Committee in the 121st Legislature, 1st Session, the Committee will continue to meet and develop strategies to meet its legislative charge throughout 2003 and 2004. To that end, the Committee predicts that it will have additional legislative proposals to present before the close of the 121st Legislature. The Committee will likely request a waiver from the Legislative Council to permit introduction of legislation in the 2nd Session in 2004.

- 2. The complex issues that impact the development of affordable communities will not be shaped by legislation alone; Maine State Housing Authority, the State Planning Office, and other supporters of affordable housing opportunities must continue to reach out and educate decision makers and communities.**

The Committee will support work on outreach and communication on its affordable housing agenda (TIF approaches supporting affordable housing development and the board certification/compensation program providing incentives for livable, affordable neighborhood development), especially in those Labor Market Areas with demonstrated gaps in affordability. Examples of this outreach include holding forums sponsored by the Maine State Housing Authority, re-convening the group of public and private supporters of the Livable, Affordable Neighborhoods bill, and supporting legislation that forwards the affordable housing agenda. Building rehabilitation should be recognized as a viable approach to increasing local stocks of affordable housing units, available for both rental and ownership.

- 3. The integration of transportation and land use planning at the local, regional, and state level is critical in realizing shared visions of Maine's future.**

It has been well documented that transportation infrastructure investment is one the most significant drivers of local development (along with educational investment). Recognizing this close connection, MDOT and SPO have been working to encourage local and regional planning that integrates transportation and land use. The Community Preservation Advisory Committee supports this integration as well as other programs under development, including MDOT's consideration of strategies to address the sprawling patterns of development along Maine's arterials roads such as developing adjacent service roads.

Transportation planning includes not only roads and intersections, but also providing alternative modes and means of transportation to the single-occupancy-vehicle trip. The Committee supports increased education and outreach around areas of transportation and land use impacts, including advocating for increased transit opportunities that provide an attractive alternative to single occupancy vehicle commuting trips. The Committee will continue to consider proposals to amend Article IX, section 19 of the Maine Constitution to permit funding public transportation from motor vehicle and motor vehicle fuel revenues.

4. A regional approach is critical to realizing the efficiencies of coordinated land use, transportation, education, and fiscal planning.

In addition to supporting the State Planning Office and Department of Transportation in addressing regionalism in their rules and programs, the Committee recognizes that regional approaches to planning go beyond the short-term financial gain to be had by sharing resources. Just as labor markets, housing markets, and ecosystems do not recognize municipal boundaries, our leaders and planners should recognize that local decisions and planning have an impact far beyond the town line. The Committee will support legislation and non-legislative programs that strengthen regional approaches in Maine; the Committee will continue to focus on this issue in 2003 and 2004.

In supporting a regional approach, the Committee will consider means for creating incentives for programs that cross municipal boundaries, as well as incentives for thinking and acting regionally, in areas such as infrastructure, economic development, school siting, housing, transportation planning, and natural resource management.

5. Investigate and support opportunities to encourage rural preservation and development in growth areas.

In 2003, the Committee plans to identify specific legislative changes, if required, that would enable the creation of density transfer fees or similar programs that would permit towns to protect their priority natural resources or working rural lands, and direct growth toward their locally designated growth areas.

The Committee supports the Land for Maine's Future program, and recognizes its role as a critical tool in shaping growth by acquiring public lands for conservation, water access, outdoor recreation, wildlife and fish habitat and farmland conservation. With its goals of preserving Maine's unique natural resources and farmland, the LMF program is very closely tied with smart growth efforts across Maine. The LMF Board has taken care to ensure that resources accepted into the program are not being unduly pulled out of the development stream, and that the conservation efforts are compatible with local land use planning and development.

6. Continue to investigate and support other CPAC priorities in the 121st Legislature.

Several critical areas central to the Committee's charge will likely be addressed in the upcoming Legislative Session. The Committee will continue to meet and discuss these issues, as well as support bills that coincide with the CPAC mandate. Issues of special consideration include: *School Construction Rules*, related to community preservation and walkable neighborhoods; *Storm Water Rules*, related to unintended consequences and discouraging density; *Contractor Certification*, related to building and rehabilitation code; and *Access Management*, if MDOT's new rules are challenged.

7. To advance the dialogue and build on the committee's shared experiences, Legislative members of the Committee should be reappointed to the Committee, whenever possible.

Although the non-legislative members of the Committee are appointed for three-year terms, legislators' terms end at the end of each Legislature. Continuity and trust are critical for a group addressing the complex issues of growth management, fiscal, transportation, education funding, school siting, and land

use policies. Whenever possible, the Committee recommends that legislative members, who are re-elected, be reappointed to the Committee at the beginning of each Legislature.

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Appendix A: CPAC Authorizing Legislation

§4350. Community Preservation Advisory Committee

1. Establishment; purpose. The Community Preservation Advisory Committee, established by Title 5, section 12004-I, subsection 24-F and referred to in this article as the "committee," shall advise the Governor, the Legislature, the office and other pertinent state agencies and entities on matters relating to community preservation.
2. Membership; appointment. The committee consists of the following 13 members:
 - A. The Director of the State Planning Office or the director's designee;
 - B. Two members from the Senate appointed by the President of the Senate, at least one belonging to the political party holding the largest number of seats in the Senate and at least one belonging to the political party holding the 2nd largest number of seats in the Senate. When making the appointments, the President of the Senate shall give preference to members from the joint standing committees of the Legislature having jurisdiction over natural resources matters, state and local government matters, education matters, transportation matters, taxation matters and business and economic development matters. When making the appointments, the President of the Senate also shall consider appointing members who represent a rural community, a fast-growing community or a service center community;
 - C. Four members from the House of Representatives appointed by the Speaker of the House, at least one belonging to the political party holding the largest number of seats in the House of Representatives and at least one belonging to the political party holding the 2nd largest number of seats in the House of Representatives. When making the appointments, the Speaker of the House shall give preference to members from the joint standing committees of the Legislature having jurisdiction over natural resources matters, state and local government matters, education matters, transportation matters, taxation matters and business and economic development matters. When making the appointments, the Speaker of the House also shall consider appointing a member who represents a rural community, a member who represents a fast-growing community and a member who represents a service center community;
 - D. One member representing a statewide housing authority, appointed by the President of the Senate;
 - E. One member representing an environmental organization, appointed by the Speaker of the House;
 - F. Two members representing municipal interests, one who represents rural municipal interests and one who represents service center municipal interests, appointed by the President of the Senate;
 - G. One member representing the real estate or development industry, appointed by the Speaker of the House; and
 - H. The Director of the Maine Historic Preservation Commission or the director's designee.
3. Terms. Except for Legislators, who serve terms coincident with their legislative terms, all members are appointed for 3-year terms. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2 terms. Members may continue to serve until their replacements are designated.
4. Compensation. Legislative members are entitled to receive the legislative per diem, as defined in Title 3, section 2, and to reimbursement for expenses according to Title 5, section 12004-I, subsection 24-F. Public members not otherwise compensated by their employers or other entities that they represent are entitled to reimbursement of necessary expenses incurred for their attendance at authorized meetings of the committee.

5. Quorum; actions. A quorum is a majority of the members of the committee. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.
6. Chairs. The first appointed Senate member is the Senate chair of the committee and the first appointed House of Representatives member is the House chair of the committee.
7. Meetings. The committee may not meet more than 4 times per year.
8. Drafting assistance. The office shall provide the committee with staff assistance. Upon the approval of the Legislative Council, the Office of Policy and Legal Analysis may provide drafting assistance with the preparation of recommended legislation as requested by the chairs of the committee. The drafting assistance provided by the Office of Policy and Legal Analysis may be provided only when the Legislature is not in session.
9. Duties. The committee shall:
 - A. Submit an annual report of the committee's activities to the Legislature and the joint standing committee of the Legislature having jurisdiction over natural resources matters by December 1st of each year;
 - B. Provide assessment, advice and recommendations on emerging policy concerns or on adjustments to existing programs related to growth management;
 - C. Review and make recommendations on the State's fiscal, transportation, education funding, school-siting and land use policies that affect service center communities, rural lands and development sprawl;
 - D. Review tax policy as it affects land use decisions;
 - E. Provide assessment, advice and recommendations on the role of state office buildings in the continued viability of downtown service centers within the State and the impact of growth-related capital investments and location decisions by the State;
 - F. Provide assessment, advice and recommendations on the coordination of state and local urban transportation planning and streamlining of local and state land use rules and regulations to permit and encourage efficient neighborhood and economic development in growth areas; and
 - G. Review and make recommendations regarding options for establishing a state transferable development rights bank.

§4350-A. Repeal date

This article is repealed June 1, 2008.

Appendix B: CPAC Members

Eleven members were appointed to the Committee by the President of the Senate and Speaker of the House. The Directors of the Maine State Planning Office and Maine Historic Preservation Commission, or their designees, are also members:

- Sen. Peter Mills, Senate Chair
- Rep. Ted Koffman, House Chair
- Sen. Lynn Bromley
- Rep. Susan Hawes
- Rep. Janet McLaughlin
- Rep. David Tobin
- Mr. Jim Brown, representing rural municipal interests (Presque Isle) (Senate appointment)
- Mr. David Holt, representing service center interests (Norway) (Senate appointment)
- Mr. Peter Judkins, representing the Maine State Housing Authority (Senate appointment)
- Mr. Jeffrey Sosnaud, representing environmental interests (House appointment)
- Mr. Ed Suslovic, representing the real estate and development community (House appointment)
- Ms. Beth Della Valle, Maine State Planning Office, on behalf of Acting Director David Keeley
- Mr. Mike Johnson, Maine Historic Preservation Commission, on behalf of Commissioner Earle Shettleworth

The CPAC is staffed by Liz Rettenmaier at the State Planning Office, with legislation drafting assistance from Susan Johannesman at the Office of Policy and Legal Analysis.

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Appendix C: Meeting Notes

1. October 21, 2002
2. November 25, 2002
3. December 9, 2002
4. December 15, 2002 (Affordable Housing Working Group)
5. January 14, 2003
6. February 3, 2003 (Legislative Agenda Working Group)

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Community Preservation Advisory Committee
October 21, 2002
9:30 – 12:30, State House Room 437
Meeting Summary

Attending:

Sen. Peter Mills (Chair), Skowhegan,
Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. Sue Hawes, Standish
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development
consultant and former Realtor
Peter Judkins, Maine State Housing
Authority (Board) and Franklin Savings
Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque
Isle
Beth Della Valle, State Planning Office
Kirk Mohny, Maine Historic Preservation
Commission

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and
Legal Analysis (committee staff)
Rep. Scott Cowger
Mike Johnson, MHPC
Jim Rier, Maine State Board of Education
Kathy Fuller, Maine Department of
Transportation
Peggy Schaffer, Department of Economic
and Community Development
Peter Merrill, Maine State Housing Authority
Jerry Nault, Bureau of General Services
Kirsten Hebert, Maine Municipal Association
Deb Burns, Maine Audubon
Linda Gifford, Maine Association of Realtors
Bill Ferdinand, Eaton Peabody
Fred Landa, SPO

Absent Committee Members:

Sen. Lynn Bromley
David Holt, Town of Norway

Welcome & Introductions

- Sen. Mills welcomed committee members and additional participants to the meeting and reviewed the reasons why the Committee was mandated and the spirit under which he hopes it will function.
- Members of the Committee introduced themselves, provided some information on their background and biases related to the Committee's mandated topic areas.
- Liz Rettenmaier and Susan Johannesman introduced themselves and briefly described their roles in staffing the committee. Liz is available as the primary committee staffer; she will provide organization and meeting planning assistance, coordinate reimbursements, and liaise with other agencies and members. Susan is available to draft legislative proposals based on the recommendations of the Committee. Committee information and handouts (when available) will be maintained on SPO's website:
<http://www.state.me.us/spo/cpip/cpac/cpac.htm>

Brief History of "Smart Growth" in Maine & Past Task Forces

- Beth Della Valle: Provided a brief overview of Summary of Legislative Activities draft *<handout>* provided at meeting, emphasizing that the Summary does not include some significant activities in the area by the EcoEco Group and other non-governmental efforts, nor the work of the Smart Growth Coordinating Committee and the Smart Growth Competitive Advantage/Three-Year Action Plan.
- Rep. Scott Cowger: Expressed support from the House Chair of the Natural Resources Committee. Reviewed several accomplishments to date by past legislative task forces, which included "baby steps" in several important areas. Rep. Cowger encouraged the Committee to engage State Economist Laurie LaChance in the discussion of tax policies

and impact on growth and land use. Rep. Koffman added that the Natural Resources Committee has an important role in watching and guiding revisions and changes suggested by CPAC, as they are likely to be the implementing Committee.

The Current Context

- Peggy Schaffer, Department of Economic and Community Development: DECD includes three divisions, covering the areas of Business Development, Tourism, and Community Development (administering the Community Development Block Grant (CDBG) program). Ms. Schaffer noted that the CDBG program is one of the State's largest sources of funds for municipal grants; the funding is passed through from the federal government. CDBG funds approximately \$17 million in grants, although the use of those funds is limited by federal guidelines and priorities. For example, at least 51% of the benefit has to go to "low and moderate income" people, or to "relieve slum and blight." Even with those restrictions, however, DECD has found ways to encourage good planning in conjunction with the funding program. For example, DECD only funds projects within a locally designated growth area (or similar areas described in the rules), in towns with a local comprehensive plan (or towns that have not received a grant for a comprehensive planning effort).

While there has been some encouragement of regionalism, it is a difficult fit for the CDBG program because of its focus on paying for *local* infrastructure, such as sewer and water. The program was really designed for large urban areas, so DECD has worked to find a good fit for Maine towns. Approximately \$1.4 million of the CDBG funds are used for downtown grants.

DECD also administers the Municipal Investment Trust Fund (MITF), which Ms. Schaffer characterized as similar to the CDBG grants, but without the federal strings. The MITF was developed in 1993, although no funding was available to it until the summer of 2001. Currently, the Fund has \$4.3 million available from two bond packages. DECD is currently developing rules for the Fund. Working closely with the Maine Bond Bank, DECD foresees that it will be able to double the amount of funds available to municipalities by offering low-interest loans instead of concentrating on grant funding.

Currently only five cities in Maine, all in Aroostook County, are qualified to receive grants from the MITF because they have Certified Growth Management Programs. DECD is considering proposing legislation to remove the grant program, in order to focus on establishing a revolving loan fund that would benefit a larger number of communities and not draw down the Fund as quickly.

In addition, DECD is working closely with the Department of Human Services (Drinking Water Program), the Department of Environmental Protection, and the federal Rural Development program when new projects are proposed to maximize the funding matching opportunities and ensure the "biggest bang" for the local buck.

- Jim Rier, State Board of Education: Mr. Rier provided the Committee with a summary of Recent Accomplishments that Support Effective Growth Planning <handout>. The state's Renovation Fund of \$100 million has impacted over 100 school units, involving nearly 150 school buildings. The Department of Education (DOE) received applications from 375 – 400 projects, although not every application represented a single school. Renovation projects have, until this point, focused on health and safety issues, although Mr. Rier expressed the hope that upgrades and focusing on quality "learning space" will soon play a larger role in the funding. In two rounds of funding, the Renovation Fund has funded 35 schools; the capital value of the projects is approximately \$375 million (that is not the same as the cost of the projects to DOE).

Particular concerns of the Department include the rapidly changing school-age population. School enrollment projects released the day before the CPAC meeting

showed that in 500 municipalities, 412 expect declining enrollments, some with declines as much as 20 – 40 percent. There is a lively discussion of whether or not building (or renovating) high schools for a small number of students (e.g., less than 300) is a good use of funding. The Department also recognizes, however, the difference between elementary, middle, and high schools in this discussion.

Mr. Rier was asked if there have been any changes to the rules regarding campus size of schools, which can make siting a school in already developed areas very difficult. He responded that the rules had not changed to reduce the minimum campus size, although the Department will allow exemptions for noncontiguous sites to count (e.g., off-site playing fields).

Mr. Rier was asked about the opportunity for changing the scoring of projects to reflect the proximity of excess capacity in close proximity to the proposed project. He responded that the scoring is based on the needs of the students and that the solutions proposed do not play a role in the prioritization of projects.

In response to a question about greater integration of school siting and planning with broader community development activities, Mr. Rier noted that districts and communities have frequently begun their project planning prematurely, before the Department has had an opportunity to lay the groundwork for the process. There has been some success in increasing community involvement and getting the State Planning Office involved early in the process, however communities generally begin to move ahead as soon as their names appear on the renovation list.

Mr. Rier noted that incentives for regionalism would work toward addressing issues of the large number of school boards and superintendents in the current system.

- Kathy Fuller, Department of Transportation: Ms. Fuller highlighted the Department's Access Management Program <handouts>. The program, although on the books since the 1950s, really started in 1999. New rules were released in 2002, which include greater focus on planning, corridors, and a regional approach to planning. The Department is currently collecting information in an inventory to examine the impacts of the new rules.

One aspect of corridor planning the Department is investigating is the opportunity for conservation of significant resources adjacent to corridors. For example, MDOT could purchase the access rights, while another agency or group could purchase the development rights.

Two emerging programs at MDOT were described. The Department is looking at integrating transportation planning with Urban, Service Center, and Village policy and investments. The current BTIP will identify these investments, while the next Six Year Plan will begin to integrate these areas. On a related topic, MDOT is also investigating the use of state-funded transportation block grants for transit incentives, building out of last year's legislative session allowing Local Road funds to be channeled into transit incentives. The Department is also interested in introducing rules or guidance for the transportation elements of a comprehensive plan. The Planning and Land Use Regulation Act does not incorporate recent changes to state law, including the Sensible Transportation Policy Act of 1991.

When asked about linking density and land use planning to transportation investments, Ms. Fuller responded that the Department is starting to do this in some areas. For example, MDOT has a new sidewalk policy where they will pay for sidewalks in dense neighborhoods with appropriate setbacks, proximity to schools, and other features.

- Peter Merrill, Maine State Housing Authority: Working through a series of *handouts*, Mr. Merrill noted the forces of supply and demand of affordable housing units are not balanced at the local level. It is in a town's best interest to limit the supply of additional housing units because of the additional costs involved, and some towns are actively discouraging residential development through growth caps, zoning, and cumbersome local approval processes. This is impacting growth because homebuyers are being pushed out because they cannot afford in town and pulled out because property taxes are so much lower outside of the cities. The tax policy discussion is a good opportunity to get at school funding and tax policy's impacts on affordable housing issues.

Sen. Mills inquired whether the mill rate maps in the handouts were based on the "true value" mill rates available on the State Treasurer's website. Mr. Merrill will investigate and report back to the Committee.

- Jerry Nault, Bureau of General Services: Mr. Nault shared information developed for the recent Downtown Conference, including a list of selected leased spaces in service center downtowns and growth areas. *<handouts>* The Bureau provides a monthly report to the Governor that includes new leases. Rep. Koffman asked if it included variables such as where the space was located (in a service center, growth area, downtown), and if it is taxable.
- Beth Della Valle, State Planning Office: Reviewing an open letter to the Committee *<handout>*, Ms. Della Valle highlighted significant accomplishments by the past growth management Task Forces, and encouraged the Committee to consider the linkages between patterns of development and tax policies, smart growth and affordable housing, and options for inducing growth and redevelopment in service centers and downtowns in the short-term.

Discussion of Priorities for Committee

- Summary of Survey Results: Tallies of the responses to the survey were provided, sorted by number of responses to the short- and long-term priorities. *<handout>*
- Discuss and Set Priorities: The conversation was opened by soliciting areas that were left over or "left on the cutting room floor" from previous Legislative sessions or task forces. The following areas were mentioned and will be discussed further at the second CPAC meeting:

Livable, Affordable Housing: The Committee is interested in additional background on this subject: What is the history of this bill, which failed last session? What did it contain? What were/are the politics contained around it? Finally, Peggy Schaffer will look into why real estate tax increment financing (TIF) programs cannot be used for affordable housing projects?

Tax Policy: The time is ripe on this issue, and the opportunity exists to identify the "carrots" that a revised tax policy can offer to encourage "smart" development. Tony Neves and Mike Allen of the Maine Revenue Service, and Laurie LaChance, the State Economist, may be good resources to draw on for this topic, as well as Sen. Mills, Rep. Koffman, and Rep. McLaughlin.

Obstacles to Infill Development: NIMBYism (not in my backyard) and retroactive moratoria lead to uncertainty that negatively impacts local development. Individual towns can block regional planning efforts. The growth cap bill passed last session does not contain any criteria or standards. There are no *regional* growth areas, or coordination of where growth areas should be across town borders. The Committee would like to discuss legislative options to address these concerns. In addition, Jerry Nault, BGS, will follow up to see what information about state-leased and owned facilities is tracked,

including location (in a service center, downtown, growth area), and whether or not the facility/property is taxable.

Transfer of Development Rights: TDRs are allowed, but not encouraged or facilitated. Land for Maine's Future could be authorized to undertake this effort. In the short-term, the Committee is interested in identifying ways to actually administer a statewide TDR program. Additional information about TDRs and how towns, regions, and states have implemented programs was requested.

Integrating Transportation: If MDOT needs legislative action to integrate transportation into the comprehensive planning rule, the Committee will consider it. The Committee is interested in investigating options for state support of mass transit and service roads as an alternative to highways. MDOT was requested to bring more information about these proposals to the next meeting.

Statewide Rehabilitation Code: The Attorney General's Office is offering legislation next session on contractor licensing. The Committee is interested in furthering its understanding this issue, including what happened last session and how they might move beyond that.

Next Steps

- 2nd Meeting scheduled for November 12th, 9 am – 2 pm, State House Room 437
- 3rd Meeting scheduled for November 25th, 9 am – 2 pm, State House Room 437

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**Community Preservation Advisory Committee
November 25, 2002
9:00 – 2:00, State House Room 437
Meeting Summary**

Attending:

Sen. Peter Mills (Chair), Skowhegan,
Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development
consultant and former Realtor
Peter Judkins, Maine State Housing
Authority (Board) and Franklin Savings
Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque
Isle
David Holt, Town Manager, Town of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Presenters to Committee:

Mary Ann Hayes, SPO – Taxation Policy
(287-1009; maryann.hayes@state.me.us)
Dave Ledew, MRS – Taxation Policy (287-
4787; david.p.ledew@state.me.us)

Welcome & Introductions

Rep. Koffman welcomed committee members and additional participants to the meeting and reviewed the agenda for the day's meeting. Members of the Committee and other attendees introduced themselves. Liz Rettenmaier and Susan Johannesman introduced themselves and briefly described their roles in staffing the committee.

Tax Policy

Mary Ann Hayes of the State Planning Office introduced the tax policy discussion, outlining the primary challenge to the Committee: determining the appropriate angle on the tax policy discussion for the Community Preservation Advisory Committee within the context of the current number of tax policy reform discussions and proposals.

Dave Ledew of the Property Tax Division of the Maine Revenue Service (MRS) began with the state equalization process, and how money goes in and out of the state's coffers:

New assessors are given about 15 hours of training, which will be summarized today in about 15 minutes. Property tax is basically a local tax that provides revenue for local services. Unlike income and sales taxes, a municipality knows how much is going to be earned each year through

Presenters to Committee (continued):

Adam Krea, Treasurers Office – Taxation
Policy (624-7479;
adam.krea@state.me.us)
Kathy Fuller, MDOT – Transportation (624-
3300; kathy.fuller@state.me.us)
Peter Merrill, MSHA – Affordable Housing
(626-4608; pmerrill@mainehousing.org)
Mike Finnegan, MSHA – Affordable Housing
(626-4600)
Alan Brigham, DECD – Housing and TIFs
(624-9800; alan.brigham@state.me.us)
Beth Della Valle, SPO – Growth Caps,
TDRs (287-2851;
beth.dellavalle@state.me.us)
Bruce Hensler, SPO – Building and Rehab
Code (287-5649;
bruce.hensler@state.me.us)

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and
Legal Analysis (committee staff)
Kristi Carlow, Treasurers Office
Sylvia Most, Town of Scarborough
Chris Hall, Maine Chamber of Commerce
Julie Jones, Office of Fiscal and Program
Review
Kirsten Hebert, Maine Municipal Association
Tim Glidden, State Planning Office
Frank Miles, Maine Farmland Trust

the property tax – it is not dependent on the economy. Municipalities set the property tax rate to ensure that they raise the money that they need to fund their programs / budgeted costs.

Tax assessors neither raise nor appropriate taxes – annual town meetings and town councils determine the property tax burden through the in the budgeting process. The assessor distributes the tax burden determined by the town in a “fair and equitable” manner, as required by the state constitution. Assessors need to establish value on each piece of property with the same ratio to market price, this doesn’t necessarily need to *equal* market price. For example, if residential property taxes are set at 80 percent of market value, every property needs to be assessed at 80 percent of fair market value.

The trend we are seeing is one of larger local dependence on property tax as a means for raising funds. Through the 1990s, the state had relatively flat property tax increases, and relatively flat valuation increases. In 1999, the current real estate market really started to take off, possibly due to investors funneling money out of the stock market and into real estate. The state began seeing big changes in selling prices and volume for sale, especially in southern Maine. This was especially noticeable in higher end properties perceived as investments (e.g., waterfront properties – not just ocean, but also lakes).

As a result, the MRS is seeing an increase in local valuation. Valuations were stable through the 1990s (seeing 2 to 4 percent increases). In the last couple years, valuations have been rising by 5, 8, or 11 percent statewide, particularly in waterfront properties.

Local assessors are forced to look at this through the “fair and equitable” lens. Without an increase in overall taxes, the burden would shift toward the increasingly expensive waterfront properties. But, since local expenditures (and therefore taxes) are going up overall, everybody is feeling it.

HANDOUT – 489 municipalities (towns, cities, and plantations), plus 12 unorganized territories (broken into regions by counties)

- *Question:* Is there any way of tracking increases in property values to income by locality?
 - *Response:* Can probably do it from Census numbers.

HANDOUT – What happens when values go up? If there is not increased local spending, tax rates will go down to have about the same amount of taxes per person.

HANDOUT – Tree Growth Primer. This exercise points out that any change in valuation scheme that gives one class of property owner a break will result in a shift to other property tax owners. In the state, we have 11 million acres in the tree growth program. The reality is, though, this type of program can have a significant local impact when the tax burden is shifted to other local taxpayers. The Legislature recognized this was an erosion of the tax base and put forth a reimbursement program to alleviate the burden on other taxpayers – the tree growth reimbursement formula is based on countrywide averages of undeveloped acreage value (usually higher than tree growth) to compute theoretical tax loss, reduced state valuation.

Adam Krea of the Treasurers Office presented a memo from State Treasurer Dale McCormick, which included the two Revenue Sharing (RS) funding formulas. Revenue Sharing I is intended to redistribute broad based taxes; it distributes funding to 493 entities (municipalities, unorganized territories, Indian townships, plus two Indian reservations). The population in the funding formulas are based on the Census and adjusted every year. The values in the formulas are not held static for the same year; the most recent of each of the numbers available is used (e.g., now using the 2000 population numbers, the 2001 tax assessment number, and the 2002 certified state valuation). RS I spits out a number, which is converted to a percentage of the total, and that is used throughout state formula. On the 20th of the month, the State will distribute 5.1 percent of

the previous month's revenues (personal income, property, and sales tax from state revenues) into the local government fund. This information (the amount of distributions, percentages, etc.) is posted on the Treasurer's website: <http://www.state.me.us/treasurer/revenue.htm>.

Revenue Sharing II started in FY 2001. The purpose is a little more surgical than RS I: to provide a little more to 90 or so service center communities in the state. The formula decreases the property tax burden by .01 before multiplying by the population. By September 1st of any given fiscal year, a ceiling is calculated for RS I – after that RS II kicks in. In bad years, distributions will not even reach the ceiling, so no RSII funds will be distributed.

HANDOUT – RS comparison – if you had the same amt of money to distribute with RS I vs. RS II, this describes how the distribution changes. Right now, this is purely theoretical, this is if the system was changed to just be RS I or RS II, which is not the case.

Dave Ledew of the MRS returned to briefly describe three state tax relief programs.

- The Homestead Exemption has an easy application process; the municipal assessor can give an exemption of up to \$7000 (if assessed at 100 percent of market value – the exemption is adjusted accordingly if the assessment is less than 100 percent of the fair market value) from the value of the property
 - In the last year or two, a lot of municipalities are taking greater pains to adjust their valuation base to be up above 90% so they can maximize the homestead exemptions possible.
 - Rural municipalities do valuations about every 10 years; more urban communities are updating their valuations more frequently so residents can take advantage of the homestead exemption.
 - The program started in 1998.
- The Circuit Breaker program has changed over the years; it establishes a household income threshold in order to qualify for a direct payment from the state if the property tax bill exceeds 4 percent of the income. The Circuit Breaker program has been in play in some shape or form since the 1970s.
 - Costs about \$22 million or \$23 million annually.
 - The income threshold was much higher in the 80s with a higher cap (now it's \$1000 per payment).
- While the Elderly Deferred Program is on the books, it has been closed for applications since 1990. There are still about 25 homeowners in the program. The program was put in place in 1989. For homeowners 65 or older, with incomes less than \$32,000, the state would pay property tax bills. The program began with 150 enrolled in the program. It was conceived as a rotating / self sustaining program after about 10 years. However, it only really operated for a year.

HANDOUT – *Mary Ann Hayes* of the State Planning Office provided a handout outlining how tax policies may influence locational decisions, how spending policies influence locational decisions, and some paths the CPAC might consider moving forward.

Committee Discussion:

- Peter Mills: I am most interested in better using what tools we currently have.
- Ed Suslovic: A recent Brookings Institution survey ranked Maine high on sprawl; sprawl was generally attributed it to over reliance on property tax and fragmented localities
- Peter Mills: There are a few things on the agenda already:

- School funding distribution. There is talk of changing current system, which average 2nd and 3rd years back of property values, to take average of more than just two years of valuation in order to provide more of a buffer over time to more rapid changes in valuation (e.g., 4).
 - Local options – e.g., local option sales tax, meals and lodging
 - Expanding the circuit breaker to higher income cutoffs and higher reimbursement levels – sometimes coupled with repealing the homestead exemption as a way to fund that.
 - Beefing up RS II, which is a more desirable way of distributing state dollars into high mil-rate communities
- Janet McLaughlin: The possible CPAC areas of tax reform recommendations (in Mary Ann Hayes' handout) are a good place to start.
- Peter Mills: We are heading into affordable housing, and can come back to specifics in the afternoon. One of the burdens we have is whether or not there is specific legislation we want to get behind in the short term.
- Ted Koffman: Here are some of the other thoughts:
 - Bring back the working waterfronts constitutional amendment;
 - Consider land banking, Doing more for farm preservation – e.g., the dairy industry;
 - Institute a capital gains tax on speculative lands sales / liquidation forestry – modeled after Vermont's tax;
 - *HANDOUT* – Muskie paper on tax policies;
 - Alter gas tax spending to allow investment in transit (operating funds);
 - Investigate how the tax system could create more exportability – distributing burden of property tax to those that are not here year-round? (e.g., differential tax on second homes).

Livable, Affordable Housing

Peter Merrill of the Maine State Housing Authority put the housing concerns of the state in context. Maine is facing more and more problems with affordable housing. One of southern Maine's MSA's is the 10th most unaffordable in the country – behind 9 in California.

The lack of a variety of housing types and prices leads to the disenfranchisement of trade and labor groups key to communities from entry into homeownership. This is especially a problem in the southern third of Maine and the coastal corridor.

HANDOUT – The livable, affordable housing bill introduced last year aimed to: create a standard for great American neighborhood, create a board that can pre-certify a design submitted for development, if approved, and limit community requirements for affordable housing so that it cannot require higher standards (in frontage, density). It would not apply where there is not a problem (as distinguished by labor market areas).

The definitions in the proposed bill included “affordable neighborhood development” – more middle-class than what is generally understood as “affordable”, addressed requirements for sewer and water, and included definitions of common and internal open space.

The law would have created a state review board of 8 members. The board would review a development's plan and either accept it as a “precertified affordable neighborhood development” or reject it with an explanation. The proposed bill included design guidelines, directing the review board to adopt rules based on basic principles (walkable, choice of housing, different incomes, space, landscaping, environment, ongoing affordability)

When the bill was debated, the issue was local control vs. central planning. The Maine Municipal Association was strongly against the bill; it never got to the Senate. The bill was reviewed by the Natural Resources and Business and Economic Development committees and voted “ought to

pass" (although the vote was not unanimous). An impressive coalition supported the bill – including religious groups, women's' groups, environmental organizations – which was counterbalanced by MMA.

Committee and Audience Discussion:

- David Tobin: This is a great bill that ought to be restricted just to service centers. In Windham, we are getting ready to do a development that is denser than is proposed in this bill. It would be vetoed in a heartbeat if this had to be vetted by Augusta.
- Kirsten Hebert (MMA): The new policy committee will be seated in January, historically, though MMA constituents were not at all fond of having a centralized board that would leapfrog local authority. We have been using the templates and model ordinances from SPO for years, and would be more than willing to revisit those first, and to assist municipalities in implementing this approach. One of the primary concerns was removing local control over siting development and addressing the impact on transportation, safety, schools, and other local infrastructure.
- Peter Merrill: This bill would have impacted nine out of the thirty-five labor markets in the state; it would not be a burden on communities where this is not already a significant problem.
- Ted Koffman: In the activities of the community group MDI Tomorrow, affordable housing is a huge piece. Did municipal officials start this organization? No – it was started by businesses. Why haven't municipal leaders really come to this issue energetically?
- Kirsten Hebert: A regional approach is being addressed without this law. Communities in southern Maine are beginning to think about growth and higher density (e.g., putting density in one municipality and preserving open space in another). People are looking to the MMA legal staff for options to increase density. Nat Tupper is the contact for information on the group of eight southern Maine towns looking at issues regionally.
- Ed Suslovic: The City of Portland's City Council voted to support this bill, so at least one municipality supports it. Would this bill mean that a municipality couldn't stop a project – certainly not. Subdivision review is still required and if a community wanted to kill it, they could. In addition, he is not aware of any municipality other than Portland that allows more dense development than zoning permits, despite what comprehensive plans say. One additional thing we need to address is local requirements for roadways – that has a major impact on affordability
- David Holt: In our town, we would certainly be opposed to the state telling us how to site things. Community members are still upset about the state rejecting the comprehensive plan for our clustering proposal.
- Sylvia Most (Town of Scarborough Counselor): We are facing some of this with the Dunston Corner proposal; we are especially concerned with the issues of transportation.
- Ed Suslovic: However, without any affordability guidelines, a Dunston Corners type of development will not ultimately be affordable despite the density and smaller size – because of pent up market demand for this type of housing (e.g., Dunston Corners has no affordability component).
- Jeff Sosnaud: The density issue will affect sprawl and the cost of delivering services, impacting affordability... Can you connect the dots between density and affordability?
- Peter Merrill: The proposed bill had affordability requirements; the increased density makes it economically viable for the developer.
- Beth Della Valle: There is pent up demand for this type of community (the "Great American Neighborhood"). Thirty-eight percent of those surveyed in an SPO study said they would purchase this type of home if they could find one – but this type of housing has not been built since the 1960s. Where there is this type of housing, you're seeing increasing values because of steady and increased demand. Other states and localities have addressed this issue. In Massachusetts, if a municipality's local ordinances prevent low and moderate income housing from being built, the state can override. In Montgomery County, Maryland, every subdivision over 50 units has to have 25% priced at low- and moderate-income levels. These units are so well integrated that unless you

knew what you were looking for, you wouldn't pick those units out, preserving the value / profit for the developer for the "regular" unit. Market forces will conspire to make those upper end / not affordable unless there is some regulation / rule in place

- Mike Finnegan: When the Dunston Corner project came up, I was concerned about the lack of affordability in it. Although the proposal does not meet the MSHA affordable housing guidelines, some of the lower priced units are just above them, which is a great addition to the housing stock in that neighborhood. The road to an unaffordable housing hell is paved with good intentions and long discussions. I think we are going to get to a constructive intersection with MMA. I think as more communities recognize the need for affordable housing and address the problem locally, we will not need a bill like this – but we're not currently seeing this happen, which is leading to a crisis of affordability.
- Peter Mills: No municipality acting on its own is going to invite this type of development because of the increased school costs, without a corresponding big increase in property valuation and taxes collected. Who would want this type of development?
- Mike Finnegan: It has been demonstrated for every 1000 new jobs, you need 700 new housing units. If you want to grow from an economic development perspective, the workers need to live somewhere.
- Peter Mills: It's a little bit like shoreland zoning, it's not going to happen locally unless you change something big.
- Ed Suslovic: The reason why the Dunston Corners project, which includes 450 units of housing, commercial, and open space on 150 acres, does not include affordable housing is that the developers were told by some City Counselors: "if you include affordable housing (by MSHA / federal standards), it will be over my dead body." Voluntarily, municipalities are not going to address the affordable problem. When speaking regionally, everybody agrees the link between affordable housing and economic development is critical – and the affordable housing can all go in the next town over to support the commercial in our town. We're dreaming if we think a bill like this will suddenly result in these things being built – towns that want to stop it will, but this sets the tone, provides a model.
- David Holt: I have worked with towns for 26 years; most towns I have worked with actively pursued the development of low-income housing. The difference in geography between southern and northern Maine is significant, but I don't encourage you to assume that local officials don't care about low-income families. I'm not sure if some southern Maine communities want *any* growth – low income or high income. The difference in cost between rehab and new building (infill) are an issue to be addressed.
- Sylvia Most: There are at least two Counselors that would have been more in favor of the Dunston Corners project if there were an affordable housing component. This project is not facing local political pressure on the face of the financial picture (which is positive for the town), but on the risk associated with the project – will the state fund the transportation changes it promises; if more kids show up than were originally planned for, who will pay for that? Right now, the risk almost entirely falls to the municipalities, and almost all the municipalities cannot face that.
- David Tobin: Maybe Windham is an exception. We have developed several "Habitat for Humanity" houses, the town itself built some housing and made it affordable, we are planning to ensure that growth occurs in our growth area. Towns around Portland are under a tremendous amt of pressure – and all we hear on a regional basis is that we want the development in downtown Portland. This type of development is great. However, I cannot stand behind the State saying where it will be, regulating engineered community waste systems, etc.

Alan Brigham of the Department of Community and Economic Development explained the current law and rules guiding Tax Increment Financing (TIF) and how it works for residential development / affordable housing. The legislative intent for TIFs was to create new employment, and improve the tax base. It was designed to encourage commercial investment to offset housing development.

The need for TIFs comes from the limitation of municipalities to one source of revenues – property taxes, and how valuation is used to determine revenue sharing, school investment, and county taxes. Increases in valuation, arising from economic development, leads to loss of state subsidies and higher county taxes. Municipalities face becoming a net revenue loser. TIF is simply a mechanism for holding a town harmless for the loss of subsidies from economic development projects. It is not a gift; it is a “hold harmless” program. A municipality does not have to report to the state in its municipal tax records what is collected in a TIF.

The legislative finding says that jobs and broadening the tax base is a public service. If the municipality were to use TIF districts to support residential development, the public purpose is less clear – the statute does not support the social / public benefit of supporting affordable housing; it only mentions tax base and jobs.

Because of the sheltering effects the TIF creates, there are some limitations (because it's avoiding the taxes / garnering the subsidies). Because one town's use of TIF subjects the rest of the towns in Maine to an opportunity cost, there are limits on how it can be used: 25 percent of the area needs to be blighted, in need of rehab, or suitable for a commercial use; authorized project costs are fairly limited – capital costs for public use; directly related improvements; economic development projects.

DECD considered using TIF funding for housing projects, but it was unclear where the benefit would go: to the developer, the homeowner? Nothing worked. If TIF was used to support a 10-unit building of units of \$100,000 each, if the mil rate was 20 mils, town would shelter \$6600 (approx) from the state – their costs in local infrastructure to support that housing development would be much, much higher. DECD also considered using TIF benefit from a major commercial project to support low-income housing – but can't do that with the same sheltering effect because the law directs the benefit to be used for economic development.

Committee and Audience Discussion:

- Ed Suslovic: The City of South Portland is working with a developer on a brownfields site to create high-end rental housing, a \$1500 rental, gated community. This was done as a TIF under the “blighted area”, used for the environmental cleanup of a commercial property (because rental, not homeowner). I am interested in adding affordable housing as an allowable project cost
- Mike Finnegan: About 3 weeks ago, I went to 3 ribbon cuttings in Norway, York, and Munjoy Hill – \$14 million in housing capital was created with a net economic impact between \$40 and 50 million. Housing is vibrant in Maine right now. Think about the world in terms of community development: the lending industry is really talking about the synergy between economic and housing opportunities. To do these housing projects, you call on a multiplicity of sources – CDBG, TIFs, tax breaks, ... TIFs are just one tool; other towns / states have addressed housing needs with TIFs. A housing TIF becomes an additional housing tool. I respect the challenges in the current statute, but we should be visionary in thinking about the future.
- Peter Mills: If we change the legislative language, this doesn't mean towns will use it.
- Alan Brigham: This discussion is based on what is currently there; it can be changed.
- Janet McLaughlin: Where we go doesn't even have to be a TIF – it can be something else. We're not thinking creatively to community preservation, mixed use, and affordable housing.
- David Tobin: A lot of us see statutes as ways of forcing communities into doing things they don't otherwise want to do. Housing means more costs, higher valuation, less funding from the state for education...
- Mary Ann Hayes: TIFs are not necessarily a deal with a developer; some are just targeted areas
- Alan Brigham: The majority of TIFs are around a contract with a developer
- David Holt: Has anybody looked at the impact of TIFs on school funding?

- Alan Brigham: DECD has not; maybe MMA has? As long as the state funds education the way we do, you are not going to be able to get around this problem. The shelter from a TIF is fairly minor compared to the impact your new housing is actually having. There have been 179 TIFs created in Maine, over 150 remain active, all over Maine in all kinds of communities.
- Mike Finnegan: When people hear the term affordable housing, they think of really low income. Affordable housing also serves young single folks, senior citizens, those that will not create that impact on schools.
- Ed Suslovic: We need to keep an eye on the demographic trends. Public school enrollment in Maine is on the decline; we need to consider what we are going to be doing for our elderly.

NIMBY, Infill, and Growth Caps

Beth Della Valle of the State Planning Office presented a brief history of the growth caps bill that was before the last legislature (*HANDOUT*). SPO is seeing more growth caps, especially in southern Maine, but towns don't have guidance for when to use caps or even necessarily knowledge of what they are good for. Many towns, e.g., in York County, are not using growth caps as a meaningful planning tool, but because everybody around them does.

SPO asked for legislative guidance or direction to create rules on how SPO would review local growth caps, but did not get them from the legislature. As a stopgap approach, SPO is developing some guidance documents, but they won't have the same force.

SPO sees both good and bad reasons for growth caps. The Bill proposed last session includes some legitimate bases for implementing growth caps – e.g., temporary caps, as a way to direct growth away from rural area, as a means to deal with unforeseen impacts. SPO is opposed to the use of caps as a way of towns saying “we just don't want growth” – that attitude drives housing costs up, drives development to the next town over (or two or three over) – towns that aren't historically prepared to deal with the development. While those taxes are low at the moment, this will probably push it up pretty quickly.

Committee and Audience Discussion:

- Ed Suslovic: A lot depends on where you are in the state, but in the faster growing parts of the state, there are many examples of active growth caps, or towns adjoining growth cap towns considering growth caps. This is a critical community preservation issue. Growth caps by themselves do nothing to alter the pattern of development, just the pace of development. It just takes a while longer for it to happen... In fact, what we have found working with developers trying to build higher density developments – a growth cap is a significant barrier. Large housing projects are infrastructure-intensive – and expensive. If a project is projected to be 300 houses – and you need to build the infrastructure to support 300 houses – and local growth caps only permit 10 houses to be built a year to go with that infrastructure, it just can't be done financially. Commuting times in Maine are going up. In some sections of Maine, commuters are following the jobs, but in southern Maine, people having to move further out to afford housing to go with that job
- Beth Della Valle: Except for one, all the growth caps in place are town-wide caps, and they're all permanent caps. Durham has adopted a temporary cap, differentially between growth and rural areas – 30 units per year in the growth area, 15 in the rural area. There is no consistent methodology in developing the numbers in these caps. I have yet to find one growth cap that I find consistent with their comprehensive plan.
- Jeff Sosnaud: Growth caps are a pretty blunt instrument; why are people not looking to fine-tune these instruments more carefully? What's the motivating force?
- Beth Della Valle: It depends on what the local motivating force is for adopting a growth cap. If it is an anti-growth sentiment, a blunt instrument is good enough. Some towns

are working to address shortfalls in the state funding formulas – you’re “punished” for more housing. Some formerly rural towns have been seeing the highest increases in housing are now facing the bills for that – schools, roads, government, planning. Differential caps have been discussed for the last dozen years, and it’s just starting to happen. There is a little bit of a concern about legal right to do this – when towns don’t see the explicit authority to do it, they get nervous about a challenge.

- Mike Finnegan: The case law on growth caps isn’t completely defined. The Fair Housing Act has not been tested against Home Rule and a growth cap as being exclusionary for affordable housing within a community.
- David Tobin: Scarborough is building 200 new homes a year, a new HS addition. Windham has about 50 new homes a year. A lot of planning is in 20 year increments; if we suddenly got 200 homes a year, it would throw a lot of planning out the window.
- Ed Suslovic: It is a blunt instrument. I think one of the reasons towns go for it is because state fiscal policy leads it in that direction. The vast majority of growth caps I’m familiar with specify that age-restricted housing is exempt from the cap, yet if you want to build housing that can accommodate households with children, you’re out of luck. Is that something we want to be encouraging in Maine? Municipalities do have impact fees available to them to assess the development with the costs of its impacts. Finally, I think Rep. Tobin’s point is an important one. There are communities that do face unprecedented and unexpected impacts, and we had a “circuit breaker” type provision in the language at some point to give communities an “out” for two-years while the town could step back and plan? This Committee has the option to propose something; the Administration will not be proposing something this session. Without transfer of development rights, growth caps are a significantly blunt instrument – you face challenges of “taking” if you put a high cap on the growth area and a very low cap in the rural area – essentially taking the value of the rural land.
- Peter Mills: What is the current status of mobile home parks?
- Beth Della Valle: Each community must provide areas where mobile home parks may be sited. There are provisions for what is an acceptable site and allowing communities to have standards for “look and feel.”
- Peter Merrill – I would be fired if I didn’t point out the link between the mobile home law and the Great American Neighborhood bill.
- Ed Suslovic: I’ve heard that from school valuation, mobile home parks are the best you can do – lots of kids, low valuation development, but yet you still don’t see them done.

Transportation

Kathy Fuller of the Maine Department of Transportation (DOT) introduced The “Transit Bonus.” A new law was passed last year that allows Maine DOT to capture a piece of the highway funding and allow for a municipality that is already allowing some form of transit service to increase their contribution with a dollar-for-dollar match from MDOT. This is a brand new program; it has not been launched yet. Letters are going out to communities in the next couple of weeks, with the money to go out in the summer. Funding is coming from the Highway Fund (state dollars from fuel, excise taxes, fees). MDOT already supports operations, but this is the first time the Highway Fund has been used for something like this.

HANDOUT – This is a good beginning, and we’ll know more about it as we use it. We’re planning \$200,000 in the first year, \$300,000 in the 2nd year, and then go back to the legislature to talk about benefits / impacts. By MDOT’s calculations, forty-seven communities will be eligible for the funding. The communities that are eligible are so because they are dense enough to allow transit to be developed and used. Towns that are spread out cannot support transit. One of the reasons we support Dunston Corners is that it allows densities that will be able to attract and sustain transit.

The department has not taken an active role in transit-oriented development projects, although we have been having discussions with interested developers over the years. We would certainly like to see more of it.

- *Question:* Looking at the problems, it is not a problem of running busses from the outlying communities into the center, but how they get around the center. People aren't going to give up their own auto when they get right to their office, if they would have to get to a central location and then take a cab.
 - *Response:* The Bonus program is looking to promote extension of services in an already dense and serviced area.

HANDOUT There has also been an internal dialogue regarding the creation of a new program related to Access Management. Two other key components of Access Management program (in addition to the newly promulgated rules and technical assistance) include acquisition of access rights on high-priority highways and development of incentives and alternatives for towns impacted by lack of access development rights (e.g., develop parallel routes / links between arterials).

The next MDOT budget has a small amt of funding to pilot these approaches – purchase of development rights and mixed-use frontage roads.

- *Question:* How do we pay for the acquisition rights? Maybe bonded and paid for with a small increase with the gas tax.
 - *Response:* This program will focus primarily on national highway system where posted speed is over 50 MPH. We can see today where congestion is being experienced and where it is going to be 20 years from now based on traffic counts and modeling.
- *Question:* The first mistake is paving the road. Most of it is residential curb cuts, one after another.
 - *Response:* In some areas, it's not just residential, but also commercial. Once the curb cut is there, it's hard to have them relocate or make adjustments based on a change of use.
- *Question:* Why has that development occurred in this sprawling, multiple curb-cut fashion? What are the local municipal ordinances regarding density? If you cannot allow density, what else can people do? The same night they were talking about the impacts of the traffic impacts of this walkable community (Dunston Corners in Scarborough), they were discussing an office park corridor where it was being boasted that you wouldn't be able to see one building from another.
 - *Response:* Another big change is that municipalities are no longer building local streets; only the state is building streets these days...

Committee and Audience Discussion:

- Beth Della Valle: Another reason those roads aren't being planned and built is the NIMBYism. In my community, there is a real paucity of roads, and every time anybody suggests connections, there is a flurry of pressure to not even address it.
- Ed Suslovic: The number-one challenge in building housing in Portland is traffic.

Building and Rehab Code

Bruce Hensler from the Maine State Planning Office addressed the issue of a statewide building and rehabilitation code. Code enforcement in Maine is a patchwork quilt of state, local, and federal regulations. Creating a one-code-fits-all approach was very difficult for the Maine Building Rehabilitation Code Advisory Council convened by Governor King last year.

- *Question:* Some work that NJ, MD, RI did to find some more streamlined approach to the rehab of existing / older buildings, often in our downtown, was the impetus for convening that Council – New codes don't work very well for these older buildings. It's sad if we lose older buildings downtown because we can't really figure out how to save them.
 - *Response:* A team from NJ presented a great framework, but the Council rejected that. There is nobody in the state of Maine that takes complaints about codes, so a lot of that ends up on my desk.
- *Question:* Because there are two basic codes, is there any merit at all to having legislation that would say towns can pick Code A or Code B (as opposed to a uniform code)?
 - *Response:* Very simply, towns under home rule could develop any code they want to already; they could adopt Code A or Code B today. We come back to the problem of divergence with existing state legislation where there is not a match-up between state elevator or accessibility requirements and the federal guidelines without anybody to stand up for them.
- *Question:* What are the most common codes.
 - *Response:* There are two organizations, one is fire-oriented, one is building-oriented. The codes, dollar for dollar, are about equivalent. ICC (formerly BOCA) and NFPA (fire); it's a marketing issue.
- *Question:* How many of the 489 municipalities have a code?
 - *Response:* About 55% of communities are protected by a version of a code. Many of them adopt it, but don't update it, so some towns have codes that are 20 years old.
- *Question:* It seems like there is a convergence of interest, if not in a statewide rehab code, then in a model, in contractor licensing. We recognize that if you don't have a statewide building code, you can't have a statewide rehab code, or a licensed contractor. Before, there was no penalty if there was no agreement; there were almost incentives for the status quo. What if we put a deadline in – in 2 years, we will adopt this statewide code unless you do something else?
 - *Response:* The codes have to have a home. Right now, the only home is the Fire Marshal's office, if you want to do ICC, you will have to create another state agency to administer it. The 2nd highest number of consumer complaints in the state has to do with shoddy residential construction; 2nd only to the Lemon Law. The lack of licensing is a statewide concern. This was proposed last year, sent out for study. There was a proposal that would require any contractors doing work over \$3000 to be licensed by the state of Maine and to follow a code; there would be a state Board to run the program... If that proposal went through, the contractors would be licensed to the standard of the international residential contracting code, which is one of ICC's codes...
- *Question:* So, you could have a contractor licensed by the state, legal by the local code, that doesn't meet the state code they are being held to?
 - *Response:* Yes.
- *Question:* What is the logic in having different codes in different towns? How is one town fundamentally different than others?
 - *Response:* "Maine is too diverse" – was the answer given to the Council. Maine is one of six states nationwide without a statewide building code. The insurance industry is likely to send their lobbyists up to this session to lobby for one...
- *Question:* A comprehensive building code would cover residential as well as everything else?
 - *Response:* It would make more sense to have a separate residential code, I believe. The Business and Economics Committee has jurisdiction. They had an interesting issue with the plumbing code last year... A building code would be separate from plumbing code, electrical code.

Rural Preservation Surrounding Growing Communities

Beth Della Valle of the State Planning Office presented background information on transfer of development rights (TDR) programs. *HANDOUT.* TDRs are not new; they're an attempt to even

things out. The enabling legislation in Maine has been on the books for a long time, at least two municipalities have adopted them, but haven't used them. There are several TDR programs across the country. However, few have been used, and even fewer have worked very well – causing one to ask why.

There are some fundamental reasons:

- Setting up a TDR is not an easy thing to do. It is having the public get involved in the marketplace;
- You need a good sense of the business of things – setting prices and monitoring / adjusting them over time;
- The places where they have worked have been in hot real estate markets, where there is pressure; and
- You need ongoing local record-keeping, bureaucratic capacity.

With one or two notable exceptions, this just hasn't really worked very well at the local level. At the regional level, one of the earliest examples is also one of the most successful, Montgomery County, MD. In that case, you had a hot market, a well-off community, and a capable bureaucracy. NJ has a state TDR program – but it has never been used.

There is a distinction between purchase of development rights and development rights bank – Montgomery County has a purchase of development rights program – sellers and buyers interact directly, not through the use of an intermediary (selling to the county).

HANDOUT - Density Transfer Fee – Fee in lieu of TDR program. A density transfer fee is different than an impact fee, different than the negotiated process in Scarborough. Set infrastructure in town, though an ordinance, with a set of calculations and delineation between areas where increase in density was wanted and lower density was wanted. I don't know if this could be done on a regional basis. I'm not sure if this requires anything out of the legislature. What would probably be more useful is some technical assistance...

I think we need to dispel the notion that a statewide TDR would ever work. Anything that we would develop statewide would have to reflect regional sensibilities. While it may have a central administration, would have to be managed by regions (at the largest).

Committee and Audience Discussion:

- David Tobin: This is something we tried in the early 1990s, and couldn't figure out how to make it work. The density transfer fee looks like something we can use. The challenge to a TDR program was finding a willing seller and willing buyer at the same time. This density transfer fee looks like an option. I don't think Windham would be in favor of buying development rights in Gorham and building it up in Windham. We have a 2-acre lot minimum, which we are hoping to use as leverage to encourage density in our growth area in the future.
- Ed Suslovic: In Scarborough, we used several different formulas to get to the \$1 million impact paid by the Dunston Corner developers – traffic impact, school enrollment, which the town will be using to further the town's preservation ideals (\$ will go to the Scarborough land conservation trust). It is frustrating, though, that we cannot address impacts and move beyond town boundaries.

Next Steps:

Next meeting scheduled for **December 9th – 9:30 – 2:00.** This will be committee discussion – with cloture scheduled for December 20th, 2002, this is our shot to get our foot in the door.

- Taxes – incorporate CPAC short-term next steps from Mary Ann Hayes' handout as items of discussion as starting point. The paper from the Muskie student includes a piece on Vermont's Capital Gains on Speculative Sales policies.
- Look forward to strategizing as a committee to see which areas are the most important to follow up / discuss
- Still interested in looking at the Retroactive Moratoria Bill introduced last session bill that would make citizen initiatives on retroactive moratoria illegal (Ed Suslovic).
- One – two page summary of major items and rough proposals based on the 11/25 meeting, outlining issues to address, will be provided to members.

List of Handouts Distributed at the Meeting:

1. Agenda
2. Memo from State Treasurer Dale McCormick
3. Municipal Revenue Sharing Monthly Distribution, FY 95 – 03
4. Municipal Revenue Sharing Comparison between RS I and RS II
5. Property Taxation Handout, 1975 – 2001
6. 2001 Municipal Valuation Return Statistical Summary
7. What Happens When Local Values Go Up and Tree Growth Scenarios
8. Homeowners Guide to Property Tax in Maine
9. Chapter 908: Deferred Collection of Homestead Property Taxes
10. Comparison of Initiative Proposals Currently on File with Secretary of State (DRAFT)
11. How Tax and Spending Policies May Influence Locational Decisions and Possible CPAC Areas of Short Term Tax Reform Recommendations
12. Muskie Tax Policy Paper (DRAFT)
13. Affordable Housing Memo to CPAC
14. LD 2099: Regulation of Affordable Neighborhood Development as proposed
15. LD 2099: An Act to Revise the Definition of Affordable Housing as adopted
16. The Use of Tax Increment Financing for Affordable Housing
17. Chapter 206: Municipal Development Districts
18. Rate of Growth Ordinances Memo to CPAC
19. LD 2062: Rate of Growth Ordinances as proposed
20. LD 2062: An Act to Clarify the Use of Municipal Rate of Growth Ordinances as adopted
21. New Transit BONUS Payment Program (two handouts)
22. Highway Access Acquisition and Road Network Connectivity White Paper
23. Report on the Development of a Maine Building Rehabilitation Code Executive Summary
24. Transfer of Development Rights
25. Density Transfer Fee: A Fee in Lieu of a Transfer of Development Rights (TDR) Program

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**Community Preservation Advisory Committee
December 9, 2002
9:30 – 2:00, State House Room 437
Meeting Summary**

Attending:

Rep. Peter Mills (Chair), Skowhegan,
Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development
consultant and former Realtor
Peter Judkins, Maine State Housing
Authority (Board) and Franklin Savings
Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque
Isle
David Holt, Town Manager, Town of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and
Legal Analysis (committee staff)
Rep. Scott Cowger
Kathy Fuller, MDOT
Bruce Van Note, MDOT
Harvey Boatman, DoE
Peter Merrill, MSHA
Alan Brigham, DECD
Peggy Schaffer, DECD
Elaine Clark, BGS
Mary Ann Hayes, SPO
Chris Hall, Maine Chamber of Commerce
Kirsten Hebert, Maine Municipal Association
Ginger Davis, MEREDA
Linda Gifford, Maine Realtors
Jennifer Burns, Maine Audubon

Summary of Actions / Decisions

Bills to be Proposed by CPAC Legislative Members to the 121st Legislature

1. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
2. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
3. Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
4. Create a bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
5. Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

6. Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
7. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).
8. Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

Non-Legislative Actions Recommended by the CPAC

1. Insert incentives / points for regional cooperation in Transit Bonus rules. MDOT is reviewing the rules, which have not been finalized, to see if modification is possible in the short term.
2. Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, *or* create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)
3. Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).
4. Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Administrative Update

The focus of this meeting is to finalize a list of any legislation the Committee wishes want to introduce in the 121st Legislature. The rules of the Legislature generally only permit submission of bills into the first session, so this may be the only opportunity for the next two years. Also, the Committee cannot introduce legislation as a Committee, so it is up to the six legislative members of the Committee to sponsor any legislation the Committee puts forward.

If the members concur, the Committee will have its next meeting in early January to review the list of bills submitted to the Revisor, continue the discussion and elaboration of details, and set the long-term agenda.

CPAC will be submitting a report to the Governor and Legislature in early January, which will include the legislation that the Committee supports, as well as recommendations for non-legislative action.

Transportation: The Transit Bonus Payment Program and Permitting Motor Vehicle And Motor Vehicle Fuel Revenues To Be Used To Fund Transit

Presenters: Kathy Fuller, MDOT; Bruce Van Note, MDOT

HANDOUT – Copy of passed LD for Transit Bonus Payment Program

The Chairs posed the question: "Are there legislative changes needed to use a portion of the gas tax (highway fund) to support transit?" The Transit Bonus Payment Program appears to do so. Article IX, Section 19 allows fuel tax revenues for highways, and past interpretations of the Court and past attorney generals are fairly strict on this. The short-answer to 'is there a way to leverage it to provide incentives' is Yes, and it has happened in the Transit Bonus Payment Program.

The Transit Bonus Payment Program builds on the URIP (Urban-Rural Initiative Program – the old Local Road Assistance Program) to provide additional funding to municipalities' annual disbursements. The program allows a bonus to that check – which must be used for highway purposes – if that municipality increases their transit spending on operational expenses and capital above a base year's amount (FY '00).

The PL that created the Transit Bonus Payment Program is significantly different than the original bill submitted by Rep. Boyd Marley. The original bill would have increased General Fund expenditures for transit. In the law that passed, if a municipality increases investments in transit, there will be a corresponding increase in their local assistance check. Again, and consistent with Section 19, that funding, including the increase, must be used for highways.

The last section of this law (Chapter 681; LD507) requires rules; those are in process right now. MDOT is planning on taking applications to this program next year (2003). There's an overall funding cap of 2.5% of the URIP program – approximately \$475,000 annually.

- *Question:* A community that had a program in existence prior to the base year might not have the same benefit as somebody that is making improvements?
 - That is correct. If a municipality was "doing it right," and had already increased their levels of funding to transit, it would not get the same benefit as somebody that improves their service during the time of this program.
 - *Response:* Maybe this isn't the year to do it, but I would like to see a way to reward communities that undertake new transit programs and benefit communities that have already made the transit investment that is working well.
- *Question:* Is this going to be a yearly thing – with increasing applications, won't you have decreasing benefit to towns?
 - That's a possibility. There will be an opportunity in three years for the Legislature to reexamine the program and expand it if there is a lot of interest on the part of municipalities.
- *Question:* Are any of you aware of efforts to change the constitutional limits on this to permit the funding to be used beyond highways and bridges?
 - That is an ongoing issue. To date, the court has interpreted that section of the Constitution very closely. However, most of the opinions of the Justices are legislatively generated. In recent history, in the past 8 years, I'm not aware of an effort to amend the Constitution that got much support.
- *Question:* Have we been able to tap federal money for key transportation infrastructure?
 - Yes, there are federal highway funds, federal transit funds, federal airport funds – and each of those are very compartmentalized.
- *Question:* Has there been a state needs assessment, or anything like it, that might educate the Committee to the need or potential for transit, if the Legislature would only support it?
 - MDOT recently completed a new Needs Assessment, which highlights some high priority needs across the state. MDOT can provide highlights of the Assessment to the Committee on transit needs included; the transit needs outlined primarily focus on bus systems.
 - MMA put out a transportation funding issue this summer in The Townsman that was very good.
- *Question:* What was the rationale for the requirement that municipalities have operated a transit system for three years to be eligible for the Program?

- We wanted to benefit towns that are really making a consistent effort to provide transit opportunities, towns that just needed a boost to get them to the next level.
 - The 47 communities that are eligible for the program have a fairly heavy maintenance load, so we wanted to offset their costs in transit so they could do more road maintenance. Those 47 communities (which seemed like a high number to the Committee) include senior bussing operations.
- *Question:* A lot of communities have had trouble converting residents from a car-oriented culture to a transit- or bus-oriented culture; what are the types of programs that will assist people in making that transition, rather than just adding a bus?
 - There are a number of education / promotion programs through the programs MDOT has today – kids in transit, rideshare, etc. The key is to make sure that the option is seen as an alternative to meet their convenience needs.
- *Comment:* I don't see anything in this program to encourage regionalization. For example, in the Portland area, South Portland has its own transit system; they pulled out of Metro. We should be demanding that towns in a region coordinate, connect to one another, and best serve the customer. I'm getting increasingly frustrated at the real lack of connection between land use and transportation. The only way we are going to have shared transportation is to increase residential and commercial (destination) density. Every community that we're trying to build a denser community gets blocked by the community because of traffic concerns. There ought to be a formula where communities are rewarded for increasing allowable density from MDOT. Need to get you some statutory authority to have that carrot – and stick.
- *Comment:* It's rare to see buses crossing the Casco Bay bridge more than one-third full – the south Portland to Portland commute would be the ideal one to use transit on. If that's the test case, what are the figures, is it working, is it not – and why not? There is definitely a car culture; what are the incentives to change that behavior?
- *Comment:* Communities across the country are investing in transit-oriented development; if we don't allow it, they're not going to come. The time is ripe for the Legislature to declare we value transit. It may be like the Municipal Investment Trust Fund, which wasn't funded for 10 years. I don't see why we shouldn't declare this as a value, change the constitution, and wait a few years until the revenue returns to put some money into it.
- *Question:* In terms of the rule-making for the Transit Bonus Payment Program, would it be possible to build in the preferences for density to create some incentives within the rules?
 - My concern would not be legal, it would be if we were going beyond the scope of what the Legislature originally intended. This bill was not seeking to address regionalism concerns; this was looking at a modest first step to reward those transit providers that want to take the next step.
- *Question:* You will probably have a greater demand for this Program than you have money, so if you are setting up a scoring / priority system, would there be a way to put some favor on those proposals that come forward that suggest regional integration, transit oriented development, greatest benefit to the greatest number of people (density), etc?
 - The rules are currently being written; MDOT will ascertain their status. They may be very close to being published.

Proposal: Submit resolve to amend Article IX, Section 19 of the Maine Constitution¹ to permit funding transit from motor vehicle and motor vehicle fuel revenues.

¹ **Section 19. Limitation on expenditure of motor vehicle and motor vehicle fuel revenues.** All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state

- If this section is opened up, many legislators and other interests may want to add a lot of other exemptions, e.g., reimbursement of utility relocations.
- Can MDOT present an alternative to a Constitutional Amendment to provide significant encouragement and funding for transit development / support? Other states are.
- The Legislature has had this debate repeatedly; the highway fund has been protected by the Legislature because their constituents want to get to work.
- The only way that most Mainers can get to work now is by getting in their single-occupancy-vehicle because they don't have another choice.
- If we open up the highway fund, the Transit Bonus Payment Program will likely get caught up in it.

Proposal: Insert incentives / points for regional cooperation in Transit Bonus rules.

- MDOT will review the rules, which have not been finalized, to see if modification is possible in the short term.

Proposal: Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)

Proposal: Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, or create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)

Proposal: Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.

- It would be very difficult for the Legislature and MDOT to change the main transportation funding formula.
- MDOT and SPO have talked about amending the Comprehensive Plan Review Criteria rules related to transportation and comprehensive planning, connecting transportation and land use. That might be an opportunity to help communities do the planning that we can later reward.
- Providing preference to communities allowing increased density would be a major policy shift for MDOT. It would almost certainly have to be directed by the Legislature.
- I'm not sure that communities always have the ability to control the way development happens. I wonder if communities know what the state goals are regarding transportation and development densities.
- The mechanics for tying planning to funding would be an LD that called for more detailed rules around transportation, either in the Growth Management Act or the Sensible Transportation Act, with the hook that MDOT then find a way to target funds to those areas that are implementing / meeting those goals.
- When a town does a comprehensive plan, there are certain areas required, transportation is not one of the required inventory areas – it should be.
- Transportation is generically included in the required Public Infrastructure section. When you go to the next step, there are criteria for review, putting something in statute to direct DOT and SPO to clarify those rules regarding transportation would help.
- MDOT's preference would be to amend existing administrative rules that we have, rather than to amend the Growth Management Act. MDOT and SPO could work together to develop some language for an LD to direct that effort.

department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

Transportation: Using Public Transportation for School Transportation

Presenters: Harvey Boatman, Department of Education

The Chairs posed the question: Are there opportunities for increased efficiency using transit to transport older students to/from school?

The federal definition of a school bus is very specific; any unit transporting more than 10 children on school-related activities is a school bus; that vehicle must then meet Federal Motor Vehicle Safety Standards. There are circumstances, in some locales, where transit has been used for some parts of their transportation – most often used for activity that start at the school and go somewhere else.

- *Question:* So, in Boston, public school students are no longer issued T passes?
 - They may be. I'm not aware. I do know that Boston has one of the largest fleets of school buses in the US.
- *Question:* Is there a differentiation in the law / rules between secondary and primary?
 - No.
- *Question:* Students that are 18 can't get on a municipal bus because it doesn't have flags and bars?
 - That's the regulation. There are exceptions, but they are fairly well defined. The school bus provides the safest form of transportation in the U.S. A child getting to and from school in any other means is eighty times more at risk. School bus drivers require a higher license endorsement (Y) than transit drivers (P). The Y endorsement requires fingerprinting, background checks, training for special needs children, annual physicals, etc. Another fundamental concern is that most municipal transit systems are not equipped to meet the needs of special needs children, which a school bus does. Also, many states have regulations that require exclusive use for school buses during school hours, to separate the general public from little kids.
 - *Response:* It sounds like there are a lot of impediments to this idea.
- *Question:* How is Maine's school bus fleet rated in terms of air quality?
 - On a national basis, Maine is rated a C – our school bus fleet averages about 8 years old; any bus over 10 years old is polluting 95% more than a 1 year-old bus. A 2004 bus will have significant new controls, meeting a new set of standards. Our emphasis is to improve turnover to move the older buses out.
- *Question:* What is our goal for the school bus "grade?"
 - We want to get to no bus more than 10 years old, which will get us to a B or an A. In addition, Maine DEP has been working with the Department of Education to test the buses.
- *Comment:* I see half-empty school buses following half-empty transit buses. I would like to think that a small, but dedicated working group could tease out Maine regulations to permit this. We also need to look at kids overall health – the risk on buses is not just accidents, but obesity, diabetes, etc. It is also worthwhile to encourage kids that riding a public bus is a good thing. A key consideration is the alternatives we can provide to make the alternatives to buses safer, such as bike paths, sidewalks, and crossing guards.
- *Comment:* I would suggest move this item to the mid-term agenda, include it in the CPAC annual report, and ask Harvey if he could work with MDOT and Motor Vehicle to move this further with some comparison of the different standards so we could examine that in relation to the fleets we have in Maine. If there are only 47 transit systems, the universe isn't too big.
 - *Response:* That would have to be done through the commissioner, because time in this Administration is short.
 - There was a bill last session to permit the use of school buses for other uses, which was defeated.

Affordable Housing: Using Tax Increment Financing for Affordable Housing

Presenters: Alan Brigham, DECD; Peter Merrill, MSHA

The Chairs posed the question: If we are in agreement that tax increment financing (TIFs) are an appropriate tool to encourage development of affordable housing in our communities, how can we proceed?

MSHA and DECD agree that it is a good tool, but differ in their opinion of how it should be administered. DECD suggested that the existing TIF statute is a good template for an affordable housing TIF, and that the program would best be administered by MSHA. MSHA suggested that the most viable projects mix uses (residential-rental, residential-ownership, and commercial), so it makes sense to have the existing TIF statute integrated as well. MSHA would assist DECD in its application by providing its assistance and expertise.

- *Question:* Why couldn't the TIF be extended to owner-occupied housing?
 - a. Incorporating a mechanism for owner-occupied housing has been very difficult for MSHA (e.g., who receives the benefits; the developer or the buyer).
 - b. *DECD Response:* That's further argument for stand-alone legislation for affordable housing that could address owner-occupied and rental housing. It is not a good fit with the commercial bill. I would propose a stand-alone statute would have its own funding cap, to get around the cap in the existing TIF authorization, so that using the TIF for housing does not limit the municipality in using it for commercial purposes.
- *Comment:* I don't see residential development and commercial development separately. They are absolutely connected.

Proposal: Submit a bill proposal that is fairly non-specific and assemble a CPAC subcommittee of interested members and other key parties (MSHA and DECD must be involved) to discuss and decide on the details of the bill, such as scope, applicability, administration.

- *Comment:* As a representative of a community that has done commercial TIFs, I have some hesitation. The impact of the sheltered taxes that has been passed on to other communities, while we are holding the TIF, is not insignificant. I am very worried about having a last resort financing tool for commercial purposes diminished by having that TIF capacity increase significantly. I need to be shown the need for affordable housing TIFs are complementary to commercial TIFs and necessary.
- *Comment:* It would be up to each community to use this tool or not.
- *Comment:* Has the Committee considered a regional TIF tool? The people living in that community are a plus for the whole region. Are there opportunities for regional agreements, similar to FirstPark?
- *Comment:* Should the Committee be focusing on using this tool in service center areas, which are facing the pressures?
- *Comment:* My city has a public housing authority that serves a number of families, and has taken advantage of several programs. I'm concerned about the diminishing of the commercial TIF tool; we continue to need jobs more than housing.
- *Comment:* There would be nothing to require towns to use this tool. If anything, it would be an enhancement of local flexibility.
- *Comment:* One option is to limit its applicability to the housing markets that are deemed unaffordable. Whether we did that or not, those are probably the only places that would adopt it.
- *Comment:* Those are often the areas that are most affected by the sprawl problem.
- *Comment:* I think this is a tool that communities such as mine could use; I would be reluctant to tie it to the existing TIF; it should be a stand-alone tool. If we mix affordable housing in the commercial TIF, we may never use it again. Sheltering the value of the new housing would be very useful.

Affordable Housing: Revisiting LD 2099, the Livable, Affordable Housing Bill

Presenter: Peter Merrill, MSHA

LD 2099 never came to a vote in the House. It probably could have passed in the Senate, but wasn't voted on. The bill received an "ought to pass" recommendation from the Natural Resources and Economic Development committees.

- *Comment:* LD 2099 may be a good place to start, but there may be things to make it more palatable, less of a threat. E.g., two issues came up from the last meeting that we may think about: authorize the density transfer concept / approach; and incentive rather than mandate affordable housing, making it a more palatable opportunity by sheltering value against the school aid / funding formulas.
- *Comment:* One of the missing links in LD 2099 is a road width and right-of-way requirement. The bill addressed minimum lot size and frontage, but not the importance of road width. SPO has been working on some model ordinances that cover those types of issues.
- *Question:* Does LD 2099 have any value to be salvaged?
 - *Response:* It depends where it comes from. If there is a whisper of state mandate, a project invoking this bill will not be supported by our town council.
- *Comment:* The general rule of thumb for developers is you don't want to build projects that are 100% affordable. 30-40% of the units are about as high as most people feel you ought to go. One approach is to incorporating mixed use, to create walk-to-work opportunities. LD 2099 used the concept of a state board to ensure that all those come together.
- *Comment:* You could flip-flop it; not make it mandatory, but have some meaningful incentives (e.g., TIFs).
- *Comment:* In Massachusetts, the decision rests at the local level, but if the town turns down a project with a significant affordable housing component, it can be moved up to the next level (the 40-B program).

Proposal: Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

- Use the CPAC subcommittee that is examining residential TIFs to clarify the bill.
- *Comment:* Municipalities, councils of government, and the MMA policy committee may have some interesting input into this conversation.
- *Comment:* There are thousands of Mainers living in shelters that cannot afford to rent or buy a place to live because municipalities acting out of rational self-interest put the costs off on the next town. That is the most rational thing to do.
- *Comment:* I'm sensitive to the fact that there was a certain momentum initiated last session. I'd hate not to have something go in this session and lose that momentum. Maybe the Committee can recommend a bifurcated approach, move forward legislatively, but also work on the outreach and communication front through some public forums and consciousness-raising.
- *Comment:* I have a pretty strong philosophical objection to legislation that would mandate affordable housing. We're making it work in our town, with local reviews and regulations. However, we're not getting the legal guidance that we need from the state. If we're developing regulations, state government should be helping us work on this. Right now, we're only getting the information from MMA.
- *Comment:* I share the wariness in undertaking a battle we are likely to lose, but everything we try to do to address the problem of sprawl is going to come back to local control. It's the thread through everything we do. If we cede the local control argument out of the gate, we have lost already.

- *Question:* Can the municipal sector articulate how the state can help municipalities meet these goals?
- *Question:* Would municipalities like to see some goals? A menu of options that towns could use for a local solution?
 - *Response:* The state goals and the criteria rules have been in place since 1989 and we haven't seen meaningful action from the municipalities in any way. I'm happy to come up with alternatives, but need some committed local interests involved – and willing to push those options locally. At the same time of moving down a legislative path, I would encourage a specific outreach effort, engaging partners, including MMA, DECD, MSHA, SPO to do some quick outreach to bring that input back in to modify this bill, if appropriate.
- *Comment:* We talked about MMA's opposition to this bill last session; it was significant. But there was a host of other organizations that supported it. There has been a lot of outreach done; we are not the first task force to address this. MMA staff have been involved along the way. This has not been done in a vacuum; municipal officials have been involved. This is the epitome of a regional issue, and we don't have a means to deal with regional issues in the state.

Proposal: Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).

- Jim Lyson from the City of Lewiston is planning a workshop on this topic in the spring.

Building and Rehab Codes

Presenter: Rep. Scott Cowger

Rep. Cowger will be introducing legislation regarding contractor licensing. This has always failed because it would require mandated building code put on municipalities. To address this, the proposal will create a licensing system, similar to electrical contractors, where contractors would be licensed according to a state licensing code. This would create some basic standards statewide and be enforceable by the state. However, the licensing code is for the licensees only; municipalities don't need to enforce it.

- *Question:* Under your scenario, if a municipality had its own code that was in conflict with state code, how would that work?
 - The state code would be a state minimum. Generally municipalities would have a higher level. If they are just conflicting – not better or higher – but different, we would have to figure out how to deal with that.
- *Comment:* Six states do not have a statewide building code to some degree; however, not all of those are mandatory or applicable to single-family residential construction.
- *Comment:* The legislation Rep. Cowger is proposing is strictly limited to 1-2 family homes; it does not apply to commercial building contractors.
- *Question:* Most towns are using the BOCA (international code), Chapter 24 addresses rehab. Does that cover what we need?
 - If you look at what towns are using, they are either using BOCA or the Life Safety / Fire Protection industry code. On top of that, there are variations depending on when the codes were adopted and if they have been updated. Both of the national associations have developed rehab codes to go with their base codes. If a community updates their codes, they will likely adopt rehab codes as well. However, if they adopted a building code in 1980 and haven't touched it since, they probably don't have a rehab code.

Proposal: Create a bill to offer incentives to communities for adopting both a building code and the rehab component of either type (BOCA or Health and Safety), for example preferences for

DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.

- *Comment:* The lack of a consistent building and rehab code is a significant factor to the cost of doing business in Maine; a tremendous amount of expense is related to figuring out what codes apply. Many of the local developers are small-business people that don't necessarily have the expertise. One incentive might be economic development funding – strip away barriers to development.
- *Comment:* Large commercial buildings are generally built to a national standard anyway. Developers generally don't look to local standards that probably won't be as high.
- *Comment:* We want to be able to allow developers to bring rehab projects up to code incrementally, otherwise there is an incentive to move to greenfields.
- *Comment:* I think one code, rather than each town just having a code may assist developers in determining what the cost of the project will be.

Clarifying Growth Caps

HANDOUT – the language provided to the task force (pre-LD2062)

The original language of LD 2062 recommended by a subcommittee to the last growth management task force outlined three types of caps, and put some guidance in place for each type. In the Growth Management Act a couple years ago, there was language added that a town cap would have to be consistent with the plan (and therefore consistent with the goals of the Growth Management Act). However, there is no guidance or rules for towns, and no direction to SPO to develop that guidance.

- *Comment:* I don't see why it doesn't make sense for towns to target their growth according to their plan. I don't have any issues with that.
- *Question:* Would you support limiting a perpetual cap to let your planning catch up?
 - Although permanent caps make perfect sense in a community sense, they encourage sprawl in a regional, statewide sort of way.
- *Comment:* Last year, MMA was fine with revisiting the cap and ensuring it's consistent every 2 years. We want to ensure that municipalities that have caps can get the guidance they need to ensure that they are consistent. Beth's idea to get some rules in place would be very useful.
- *Comment:* right now there is almost no guidance in state law
- *Comment:* I don't believe that Windham has an active growth cap, but last year, we had 160 housing starts. What happens if we get 360? The town needs that tool to give them a break, a chance to catch up.
- *Comment:* What this provision prevents is the communities that are really putting a cap on growth because they just don't want any additional growth.
- *Comment:* I feel this bill is absolutely essential from this community's perspective. Growth caps may be very sensible for a municipality, but they have dire regional impacts. Growth caps do not distinguish between the types of development; they in fact often encourage sprawling patterns rather than clustered, denser developments that need to have a certain number of permits per phase / year to be economically viable. I thought there was a circuit-breaker type clause in the legislation proposed last year; if an emergency situation, the town could implement a 6-month moratorium, and they could adopt a growth cap after that for up to 2 years (with opportunity for an exemption).
 - *Response:* That would have been in the rule-making.
- *Comment:* I think there needs to be something to address rate-of-growth; what happens when your build-out scenario is happening within 4 years instead of 20? That might happen under rule-making, but it needs to be addressed.

Proposal: Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).

Proposal: Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Citizen-Initiated Referenda Imposing Retroactive Moratoria

LD 796 was introduced last year to address issue in Portland (the Munjoy Hill development and the resulting citizen referendum) and the uncertainty for developers and planners created when a citizen-initiated referenda can reverse, retroactively, a city's or board's decision. During the session, LD 796 was associated with other citizen-based bills, which hurt its chances.

- *Comment:* Although this can be used for affordable housing, it can also be used to stop the Wal-Mart from moving in. One might ask, "how else do you stop Wal-Mart?"
- *Comment:* If it is this easy to do a retroactive moratorium and derail a project, why bother to put the effort into good community planning? How many projects that have the words "infill" and "affordable housing" in them face a lot of community bias? Citizen-initiated retroactive moratoria are the tools of choice.
- *Comment:* I believe MMA supported this last year
 - *Response:* Yes, but MMA would oppose it this year because we would have to support the rights for citizen referenda.
- *Comment:* In this case, you would have the unfairness retroactively imposed. This would apply equally to Wal-Mart and affordable housing permits.
- *Comment:* I could go along with something that allows referenda during the appeal period.
- *Comment:* The prohibition was on something that had already been approved. If the petition was filed before the approval, that was OK.

Proposal: Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

- The Committee would like a 1-page summary of the bill and what the issues were.

Tax Policies related to CPAC Issues

Some of the tax policies related to the mandate of the CPAC include tax incentives / support for working waterfronts, a version of Vermont's bill to reduce liquidation forestry by imposing higher capital gains taxes, and aspects of various tax proposals currently being debated in the public.

The Vermont law imposes capital gains taxes on land sales that benefit from liquidation forestry if use changes after land cleared. According to documents, the Vermont forest products industry hasn't seen a particular change in their actions, but the tax department has seen a change.

- *Comment:* This ties back to the growth cap bill. If we are actively pushing the development out into the white pine forests, I would be uncomfortable in supporting that type of bill. If we are making development easier where it should go, I think we can support that.
- This program has been in place in Vermont for about five years. It has not been a revenue gainer, but they have essentially stopped liquidation harvesting. VT passed two bills addressing liquidation harvesting.

The chairs have also considered a new idea for subsidies for dairy farmers, and other rural communities. A very small tax, in percentage terms (maybe 0.1% or 0.2%), on the gross receipts from big-box retail (stores of a certain size, or stores serviced by parking greater than a certain size) would generate maybe \$15 million annually for a Rural Communities Preservation Fund to:

- i. Generate price supports for milk;
- ii. Provide property tax relief for farms and working waterfronts (support current use valuations);

- iii. Set aside funding for Land for Maine's Future without having to go through bonding;
- iv. Support downtown rehabilitation.

Big box retail produces all these intangible costs; why not tax it and support those forms of land use that our state policy encourages? This bill could get support from the NRCM, sportsmen, agriculture, waterfront users.

- *Question:* Does the state usual tax things in small increments; is that something that is easily done?
 - Yes, there is a whole menu of tiny little special purpose excise taxes on all kinds of things.
- *Question:* Will your bill include Hannaford, Shaws, and LLBean?
 - Yes, but I don't know how else to do it.

Other active discussions are focused on the Circuit Breaker program; there will probably be activity this session. The Local Option Sales Tax and Chebeague Tax Proposal will also likely be discussed. The Chebeague proposal is being billed as the "Maine Personal Land Bank and Community Preservation Program."

Proposal: The Committee will not endorse individual tax reform proposals.

Proposal: If the CPAC develops criteria for evaluating tax proposals in relation to the goals of the Committee, members will be able to speak at the appropriate time.

Next Steps

The Committee should have a conversation that isn't focused around cloture, that addresses individual issues, goes into more depth; thinks more in long term.

In the Committee's report, we will want to try and open the door to have the possibility to submit legislation next session.

Next Meeting: 1/14: 10:00 – 12:00, location TBA <NOTE: Since the meeting on 12/9, the Legislature announced it would be in session at 10:00 AM on 1/14. A new time will be announced soon.>

Affordable Housing subcommittee volunteers: SPO, Alan Brigham, Peter Merrill, Ed Suslovic, Ginger Davis, Kirsten Hebert, Ted Koffman and/or Peter Mills. DECD and MSHA will be the substantive leads on the TIF discussion.

At the end of the green handout there are several areas next session that are related to the CPAC goals: school construction rules; stormwater rules; contractor certification; (possibly) access management.

**Community Preservation Advisory Committee
Affordable Housing Subcommittee
December 15, 2002
10:30 – 1:00, State House Room 437
Meeting Summary**

Attending:

Rep. Peter Mills
Rep. Ted Koffman
Rep. Ed Suslovic
Beth Della Valle, SPO
John DelVecchio, SPO
Mary Ann Hayes, SPO
Alan Brigham, DECD
Peggy Schaffer, DECD
Peter Merrill, MSHA
Susan Johannesman, OPLA
Geoff Herman, MMA
Ginger Davis, Maine Association of Realtors

Proposed Agenda:

- Examine TIF or TIF-like tool; discuss specifics of how to do it, where to house it, who it is available to, etc.
- Revisit 2099; can it be put into an incentivized form, instead of mandatory
- Moving forward outside the legislative agenda: regional affordable housing workshop / forums – if there is time remaining

NOTE: This meeting was in discussion format. The summary that follows are not exact quotes and are not attributed.

Using TIFs as a Tool for Affordable Housing Developments

Comment: If you accept the premise that TIFs are predominately an economic development tool, in order for housing to be included in the TIF, it has to be an economic development piece: housing for economic development purposes rather than housing for social justice. So, if a municipality wants to include any housing in a TIF, they have to demonstrate that lack of housing is a barrier to economic development. There are parts of the state where that isn't the problem, where plenty of housing is available.

So, we could amend the TIF statute to allow housing as it relates to economic development. That could be done with a certification from the MSHA director that the area is in an unaffordable housing market – where median income is too low to meet the median house ownership or rental costs. For those communities where this does apply, the community will have to manage their 5% cap and allocate it according to their priorities to housing or commercial projects.

This proposal is not limited to affordable housing; there is either enough housing or not enough housing from an economic development point of view. This also reduces the need to monitor affordability over time.

Comment: I would assume the TIF, if we want taxpayers to contribute to it, ought to be focused toward workforce housing – not retirement housing or high-priced housing.

Comment: I like the simplicity of the first proposal. I was talking with Jim Brown at the last meeting. He was suggesting that for Presque Isle, the issue wasn't necessarily

the affordability of houses for sale, but the availability of rental units. What they are seeing developed is almost exclusively single-family detached housing. At a minimum, communities should have to make the case that the development they are recommending is appropriate in that town, to encourage economic development.

Comment: Who is the target group for this tool? Is it about housing generally, or is it affordable or workforce or...

Comment: I think you can make an argument either way. In an unaffordable market, any housing, any increase in supply is a positive for the market. On the other hand, the affordability is certainly an issue.

Comment: DECD has concerns about amending the existing statute, and would like the subcommittee to consider another proposal. The Department has serious concerns about opening up the existing TIF statute and going beyond the original legislative intent. We have drafted legislation to create a housing TIF, a separate program administered by MSHA. We support the concept of a housing TIF, but we support it as a housing-directed program, as opposed to a business development program. We are also concerned that limiting the availability of this tool to a community that could prove that housing is a barrier to economic development would eliminate most of the state from using it.

Should a worthwhile housing project have to compete with an industrial project? If it is important, it is important in its own right. Lots of things are important to economic development, for example, transportation, but they are not all included in our TIF program.

When discussing this matter with MSHA, one possibility we considered was to modify the existing statute. There is already an exemption in the statute for government buildings located in a growth area / downtown. If housing / affordable housing is an important component of a town's economic development plan, in a designated and approved downtown development district, we would consider a specific exemption for those type projects. The area and value limitations in the statute do not apply in designated downtown TIF districts. But, if it is going to be outside that district, we think both the purpose of housing, of fostering development of housing, is best served by a different program. A separate housing TIF program could work in partnership with existing TIF programs or independently, but it would remove the issue of the 5% cap, there would be easier administration, and all towns could use it.

Comment: How could a TIF be directed to increasing affordable housing? Targeting specific areas, e.g., downtowns, may be the right place to begin, starting with MSHA's work to identify markets that are underserved.

Comment: When one town uses a TIF district to shelter value, the cost of the burden is shifted to the rest of the state. So, there has to be a means test: if a town is going to use a TIF district to provide housing, they have to demonstrate that they need housing to move their economic development plans forward. If we are going to be asking others to shoulder the burden, it ought to be tied directly to economic development. The MSHA affordability index is a straight-forward, pre-existing resource to do that. The challenge becomes one of data collection and coming up with a formula. I don't see hundreds of Maine communities flocking in to do a TIF for housing. I don't know if we want to create a whole other system of

data collection and monitoring when we have a good one in place with MSHA's data, and when it will probably not be a huge program.

Comment: If we have limited resources, and limited takers, shouldn't we also target the most impacted area (e.g. the worker coming from five different counties to get to Jackson Labs because they cannot afford housing on MDI)? I personally think we should focus these TIFs on workforce housing.

Comment: I thought the problem we were trying to solve was affordable housing, specifically, and a TIF program would design two issues to do that:

1. remove disincentives from bringing affordable housing into a community (the sheltered benefit / value of TIFing); and
2. create a system to get resources to the developer of affordable housing, through the movement of tax dollars.

A TIF separate from the current commercial TIF tool avoids having to create and pass a qualification test would make it more doable. One more test to pass creates a natural bureaucratic resistance to the program, so I am leaning toward supporting DECD's proposal of a separate program. I don't think the market would develop affordable housing where it is not needed.

Comment: So long as we stick with the theme of affordable or workforce housing, if there is an income test, then you are probably right. The people in Millinocket are probably not going to put up TIFs to build affordable housing, but they might in Bar Harbor.

Comment: One thing that would be helpful in the existing TIF program would be to permit infrastructure development investments under the economic development TIFs to be used by workforce residential development. It would be nice to clarify in statute that an approach like that is OK.

Comment: Working with Traditional Neighborhood Developments and mixed-use communities, getting the flexibility in the TIF that it could be used for commercial or residential would be important.

Comment: How do we define workforce housing? If it's tied directly to a business development project, is it the workforce for that project? Or is housing affordable for the statewide median workforce? The Evan Richert scale - \$12 – \$20 / hour?

Comment: The DECD draft, defined "affordable" housing as affordable to a household earning 120% of median.

Comment: This is a matter of local control. As TIFs work, the municipal legislative body must approve them. If a developer comes into Bar Harbor and asks for a TIF to build seasonal retirement homes, your town council or selectmen are going to have to decide if that is in the best interest of the community, if it is worth allocating some of your 5% cap, etc. In Portland, one of the challenges may be a lack of high-end luxury apartments for business executives, so if a developer demonstrate a need and the city decides to apply their resources that way, it is their choice. I have no problem, as we do now, to require MSHA or DECD to sign-off on whether housing would indeed further economic development. I can't picture more than two handfuls of towns that would even seriously consider a TIF for housing. For simplicity, let's just put it out there. As soon as you enter into specific affordability guidelines, monitoring and compliance becomes huge. For a handful of towns, we ought to keep it as simple as possible. Let localities

decide. A separate program, a separate process, a separate district is a disincentive in itself.

Comment: One other strategy to think about is the general political reaction. It makes sense to target as much as possible. There is a growing restiveness between towns that use TIFs and those that don't, exacerbating political challenges to the TIF program in general. It would make political sense to target this to affect certain prescribed outcomes in the affordable housing market.

Comment: Municipal support would depend on how the money flows. A targeted program would be more acceptable than a loose one. If you are sheltering value of affordable housing, you're not going to create huge subsidy shifts. If a development that contained 25 or 30 percent affordable units, were able to TIF the entire development, including the non-residential areas, that creates more of a subsidy shift.

Comment: MSHA has been interested in an affordable housing TIF because the agency is interested in providing as many tools as possible to solve the affordable housing problem. The TIF is another option that seems it would work. MSHA has had the policy discussion with any number of people regarding the problem; in the end, the question may be what could get through the legislature more easily.

Comment: There are four things I am hearing I would be advocating for:

1. affordability – this is a burden that we are shifting on another part of the population, so there should be a public purpose. I would think affordability would be defined as up to 120% of median income.
2. I would advocate that it not exclude retirees – they are still going to be in competition for that same piece of the market. The supply met for them will relieve the pressure on the rest of the population. Many of the retirees are working at least part time anyway, and we are going to see that increasing.
3. In our attempts to get people out of their vehicles, we should be focused on mixed use when we can, mixed by type of housing and mixed by use (residential and commercial)
4. These projects should be located in targeted pieces of geography – service centers and designated growth areas.

Comment: From a "stop sprawl" perspective, TIFs are not included under the general rubric of the growth related capital investments act – you can TIF anywhere you want. There can be an existing saw mill outside the growth area that needs at TIF to expand / survive. So, I'm not advocating limiting TIFs to growth areas, entirely. But, for housing, it makes sense to focus that geographically. The downtown definition is a little too narrow; growth area is more appropriate.

Comment: With 170 TIF districts approved and 155 or so operational, DECD is see increasing attempts to find loopholes to use TIFs to pay for 'nice to have' investments or things the town was going to invest in anyway. Without having this clearly targeted, you open the door for proposals for municipalities that are not commercially developed (or want to be commercially developed) to shelter value and use the gain for amenities.

DECD has developed a proposal for a free standing TIF (subchapter 3 of chapter 206 of the development district statutes). *Walk through of proposal draft / HANDOUT.*

- This statute would have its own legislative finding that articulates the public purpose of housing, which is different than business or economic development.
- The definition of affordable housing can be modified; an emphasis on growth areas or service centers can be added.
- The structure of this proposal basically mirrors the business development TIF statute.
- Properties in downtown development districts do not need to worry about the 2% / 5% area limits in the existing TIF statute; you might consider adding that here.
- The committee may want to examine the criteria for determining residential districts, maybe add language about designated growth areas and consistency with comprehensive plans.
- The details of the program would have to be determined, or direct MSHA to create rules.
- If this were to include owner-occupied housing, transfer/sale of the property needs to be addressed.
- There is also a piece that reflects the existing TIF statute for other residents of the town that feel impacted by the proposed TIF. The local legislative body is directed to consider those impacts and has to include them in the application to the state.
- This draft would specifically disallow owner-occupied housing, so it would have to be modified if you want to include that.
- Recreational facilities are not in current TIF law, unless they are ancillary (like a swing set in a greenspace), so they are disallowed. In a housing district, you may want to change the language to include certain recreational facilities that are appropriate to the district's residential needs.

Residential TIFs address a unique policy area, and are a good opportunity to be examined clearly and separately.

Comment: How do you define affordable housing?

Comment: Is the answer to say that at least 30% of the project needs to be 120% of median or less.

Comment: The solution in LD 2099 was pretty good: 30% of the units had to be affordable to people with 120% the median income and of that 30%, 10% needed to be affordable to people earning 80% of median income or below.

Comment: If a developer comes in with a plan to leverage a project for tax purposes, and draws some lines around a small portion of the project in order to meet the criteria, I'm not comfortable with that.

Comment: There are two questions. What can you shelter and what can you invest those benefits in? If you just shelter the part of the development that is 30% affordable, can you use the resources to develop open space for the entire development / community?

Comment: It's important to distinguish between the captured value and the project costs. You don't care if you include some expensive homes in the district, if you don't send the money back to those expensive homes.

- Comment: I keep coming from a different direction. The easiest way for a housing TIF to work is for commercial apartments, and maybe a condo – a single owner or entity you can do a contract with. The neighborhoods envisioned in LD 2099 are entirely more difficult. If we can bite off a little piece and make it workable, maybe we can expand it later. Focus on what we know how to do, what is easy and simple.
- Comment: I have some real concerns about that. Part of the reason we're looking at this tool is that it is one incentive we can put in the place of a mandatory 2099. If we lose the replacement value for mixed use, for full communities, it loses its value.
- Comment: Developments with an affordable housing component regularly use covenants to maintain the affordability through income requirements and recapture components. Peter Merrill has copies of those covenants.
- Comment: We have to do something simple enough so that complexity doesn't kill it. There are enough disincentives under state policy to accept *any* housing, so even if we cast it as open as possible, I don't think we are going to be seeing huge demand for this. Also, it has to pass the local legislative body, so they are going to have to be satisfied with the justification. If we need to tighten this up down the road because so many communities in Maine are trying to TIF housing, that is a great thing. We can put a sunset on it so that we can either come back and tighten it up or get rid of it if it isn't working.
- Comment: From the municipal side, there is a lot of pressure to engage in TIFs from commercial and industrial investors. I don't think that's going to be the case with residential developers, so I don't see the need for the same type of restrictions. If the development proposal includes a certain component of affordable housing, and the rest is commercial, market housing, even high-scale housing, the legislative body has the task to overcome public concern regarding utilization of tax resources.
- Comment: I don't think this TIF bill would be as restrictive as the type of projects described in 2099.
- Comment: In a competitive market, I would like to see a Great American Neighborhood have some leg up with the TIF tools.
- Comment: There are a lot of details that can be worked out in Rules. Just capturing the affordable housing component is not enough, but if you allow capture of the whole thing, you need to ensure that it is not taken advantage of...
- Comment: I am supportive of some sort of recapture provisions, although I would like to see them be reasonably applied so individuals can build equity over time. In terms of the smart growth aspect, we want the sewer there so that towns can reduce minimum lot size, increase density, and favor a compact pattern of development. There are still some potential positives, even if the area fails to remain affordable. What we hear over and over is that we cannot become compact because we don't have the infrastructure.
- Comment: I think we are agreed to put this thing in. Do we create a separate TIF statute or modify the existing statute; do we give it to MSHA or DECD?
- Comment: MSHA has always said they would do the affordable housing part. What DECD offered is to teach us how to do the TIF, or handle the TIF, and we could take care of the affordable housing piece. If this goes to MSHA, I would hope to do it with existing resources, and with a lot of help from DECD.

Comment: I go back to let's keep this as simple as possible. If we are overrun with towns coming in and getting really creative, we can tie it down. But if lack of housing is hindering economic development, a municipality should be able to TIF a housing development or a mixed-use development with housing and commercial intertwined. If that has to be done with two districts instead of one, that would be a major disincentive.

Comment: MSHA has floated a draft for amending the existing statute; DECD has presented a draft for a separate statute. We could submit them both and kill one after Friday. I am hearing strong incentives for MSHA to run this.

Revisiting LD 2099: Livable, Affordable Neighborhoods

Comment: Is the focus of the incentives the Municipal Investment Trust Fund (MITF)? If you wanted to get into the MITF financing and other forms of grants or financial awards, then you would have to meet certain standards? As a matter of general principle, I think it is fair to say that these are state resources, and these are the ways you can qualify for them. The challenge is when moving resources to someplace takes them away from someplace else. However, obviously, there is going to be municipal resentment of further manipulation of the MITF.

Comment: As someone who has been writing the rules for the MITF, the rules are really multilayered. If you are going to be adding preferences, make them very specific.

Comment: I have three suggestions for incentivizing LD 2099:

- Use vague language as currently exists in the Growth Management Act regarding discretionary grant programs;
- Shelter valuation with respect to school funding formulas. Obviously, that does not come without some burden because it does shift money around.
- Reserve the first 1% of the municipal revenue sharing to support communities. Laurie Lachance said 1% of FY '03 project revenue sharing would be about \$1 million.

I am still concerned unless we have something that is truly an incentive, this will not be effective. We might also link back to the TIF proposal we are discussing, perhaps explicitly favoring a Great American Neighborhood model.

Comment: I have two ideas:

- Include not just the valuation, but the population part of the General Purpose Aid to Education (GPA) formula to lessen the burden on the host community;
- Create a new tax on the high-end homes. Redirect tax income into an affordable housing funds

Comment: How are these preferences going to help towns on the wrong side of the "Volvo Line"? There are lots of towns where affordable housing is not an issue. If you're linking preferences to things on this list, you can be hurt if you don't have an affordable housing problem. I would like to see some type of more meaningful incentive. The dollars we are talking about are just not that encouraging / influential.

Comment: I think this process would need a statewide board that will review proposals. Otherwise, with just a minimum standard, you can encourage a cookie cutter approach, which is exactly what people don't want. With a board, you can have some interaction on how the goals are met, location-specific conditions, etc.

- Comment: An argument has been made that it is the lot size that is the first order of problem. If municipalities had an incentive to reduce lot sizes in a growth area in areas on sewer and water, that could be the first step.
- Comment: I want to move this beyond lot size. If something comes in with the minimum lot size, but nothing else, that shouldn't get the benefits. There is a need to draw upon greater resources beside local planners.
- Comment: The question is where the reward will come from – and where it will go.
- Comment: Is it a reward to the developer or the municipality?
- Comment: If you want to set some revenue sharing and put it into the coastal community, if you want to move GPA out of the system into the coastal communities, it will not work. It has to be a little more interesting to the whole state. I think the grant programs are fair for that type of treatment, more so than GPA or revenue sharing.
- Comment: Unless you give the town money or make them do it, this bill is not going to make a difference locally.
- Comment: None of the incentives that we are talking about will make a difference. As David Tobin said, if you come to my town with this club, the town will tie it up for 3 or 4 years if they don't want it. The incentives need to be really powerful. The challenge is that if the zoning isn't already in place, why would any developer in their right mind put all of their money on the table and then go for contract zoning or a zoning change? Unless it has been changed in advance, it just isn't worth it. We have to be more complete in what we are looking for. Density alone is not enough.
- Comment: If it is an area served by sewer and the town's minimum lot size is 1 acre or higher, we have the patient sewer revolving loan fund to influence some funding. We also have MDOT Compact Urban areas, and are coming to terms with municipal cost sharing and local density / conditions.
- Comment: I think it would be easier to develop the environment in which these types of developments might occur, than to do it all at once. Sewer and water money, whether new construction or retrofit, is key. Loans are not attractive to towns, but if you can grant money, you can certainly leverage those grant funds to create local change in ordinances. I don't know how the planning board could fight a proposal once you have different regulations in place – smaller lot sizes, streamlined zoning...
- Comment: My experience in southern Maine is not that the municipality pays for the water and sewer, but the developer does it. That's why the patient loan has been useless because only municipalities are eligible.
- Comment: I don't know how to do this without generating money somewhere. There has to be a tax component.
- Comment: I'm not sure the creation of the board and that system is a necessary first step. It's the second step. If they approve project X, but it's not allowable or acceptable locally, what does that mean.

- Comment: The money that we don't have doesn't flow until a project is deemed acceptable by this board. Until we find money, there is no incentive. Towns can adopt local zoning changes any time they want.
- Comment: In addition to the legitimate issue of home rule, was another issue with LD 2099 that a project approved by the board could have a negative financial impact on the town?
- Comment: The concern was that very large proposals could be pre-certified and imposed on a municipality (e.g., 300-400 unit developments). Subdivision and site review would then have to be the way to slow that down, and sort out those impacts.
- Comment: The developer and the town should come to this board together and present a proposal to the board.
- Comment: That's what we did in Scarborough: the developer and the town went together to MDOT to address key traffic concerns. This wasn't new money; it was reallocating existing money.
- Comment: Traffic and schools seem to be what gets the community upset. If MDOT and Education could work with the board to reallocate existing resources...
- Comment: Those two plus water and sewer. Transportation is a shifting of resources, but with schools, you would be taking it from somebody. And, I don't see any money at all for sewers, outside of loans.
- Comment: With these things, we're generally going to be talking about impact fees, also.
- Comment: Towns can use impact fees regardless of this bill. What we're talking about is something new.
- Comment: Impact fees can only go for capital; they can't be used for operational costs that the municipalities are concerned about.
- Comment: But the impact fee can be used for new water and sewer, new schools. It can be used to address the concern the municipality has about long-term impact.
- Comment: But that's out there today, that's nothing new.
- Comment: What is the incentive for towns and developers to go to the board?
- Comment: We need a traditional neighborhood investment fund – and we need to put money in it.
- Comment: I wouldn't want state money going out just to change zoning. I want to see things being built.
- Comment: If a project is presented to the board and meets the criteria and the town approves it, we could have a formula to give money to the town to buy development rights over the next xx number of years.
- Comment: It makes sense to increase density in one area if you pair that with protecting land somewhere else in the community.
- Comment: That is one approach, but you may not want to limit it just to purchase of development rights funds.

- Comment: So Land for Maine's Future (LMF) could be one of the programs where a municipality gets preference – or maybe even guaranteed funding. It doesn't make sense that a town would want to increase density without protecting land somewhere else.
- Comment: Is that the whole sweetener? That's not going to be enough. Local purchase of development rights is difficult...
- Comment: I don't think you need to be too prescriptive about what types of benefits / incentives the town will provide or receive.
- There are a couple of approaches:
- develop a new bonding program similar to LMF; or
 - propose your own funding source, which means making somebody else pay. For example, you could redirect some MSHA money they get from the real estate transfer tax into a fund.
- Comment: You could target high value housing transactions (e.g, over \$200,000)
- Comment: There's about \$13 million paid into in the real estate transfer tax fund annually; MSHA gets about \$5 million.
- Comment: So, some of that money could be redirected into this fund, maybe \$1 million per year. MSHA will administer it. The bill will include a cap on what the incentive can be per unit of housing constructed. Put a sunset on the bill so that it would be up for review after four years and any money left could be returned to MSHA if it wasn't working. The neat thing about that money is that it is unrestricted by federal programs.
- Comment: It strikes me as a very positive way to move some of these projects along. Once people see they aren't so bad, it creates a ripple effect of acceptability. In 1991, the state took a chunk of the real estate transfer tax from MSHA, and gradually gave it back.
- Comment: This starts sharing the impacts; it doesn't lay it all on the shoulders of communities.
- Comment: You may want to include some report back to the legislature on the progress of the program.
- Comment: Is there any support for local option taxes?
- Comment: ECO-ECO has a component, but there is so much going on right now. MMA isn't pursuing something in particular.

Summary

Peter Mills will submit both the MSHA / Gary Wood and DECD bills for affordable housing TIFs.

Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will tie into the transfer tax distribution section. Beginning 10/03, \$100,000 a month from the transfer tax allocated to MSHA will be set aside in a separate fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would

be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07. Any uncommitted money would return to MSHA's standard funding.

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Community Preservation Advisory Committee

January 14, 2003

11:00 am – 1:00 pm, State House Room 437

Meeting Summary

Attending:

Rep. Peter Mills (Chair)
Rep. Ted Koffman (Chair)
Rep. Janet McLaughlin
Ed Suslovic
Jeff Sosnaud
David Holt
Beth Della Valle
Mike Johnson

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes
Rep. David Tobin
Peter Judkins
Jim Brown

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, OPLA (committee staff)
Jenn Burns, Maine Audubon
Jodi Castallo, Maine NEMO
Elaine Clark, BGS
John DelVecchio, SPO
Linda Gifford, Maine Association of Realtors
Kirsten Hebert, MMA
Kathy Fuller, MDOT
Peter Merrill, MSHA
Mike Trobh, Modular Homebuilders Assoc.
Gary Williams, MDOT

Preparation of CPAC Annual Report

Committee Staff Liz Rettenmaier (SPO) and Susan Johannesman (OPLA) are preparing the CPAC Annual report. A proposed outline of the report was circulated at the meeting (and via email). Comments on the structure of the report (available online at <http://www.state.me.us/spo/cpip/cpac/meeting4.htm>) should be directed to Liz Rettenmaier (liz.retttenmaier@state.gov; 287-6417) as soon as possible. A draft of the report will be circulated and discussed at the next CPAC meeting, tentatively scheduled for February 3rd, 2003.

Clarification of CPAC Bill Proposals

Peter Mills submitted nine bills for the CPAC before cloture. The legislative members of the Committee will meet to discuss sponsorship and co-sponsorship of the bills (not all will continue under Peter's sponsorship).

1. Resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
 - o MDOT is very concerned about moving forward on this bill without having an opportunity to provide the committee with additional information about the impacts of and alternatives to a constitutional amendment.
 - o Rep. Mills expressed interest is in maintaining the bill to start the conversation on the importance of alternative funding sources for public transportation.
 - o Kathy Fuller (MDOT) asked for an opportunity to present additional information on the matter to the Committee before moving forward. Two germane studies have been completed in the last eight years, one by Dana Connors and one during John Melrose's tenure, which addressed funding alternatives and provide important information relevant to this topic. MDOT would also like to present the Committee with information on the funding process and the limitations on funding, the funding sources, and how MDOT has put their budget together. MDOT would prefer that the Committee did not move forward with this bill at this time. To give the committee a sense of the agency's commitment to non-highway projects, the agency requested \$78 million in General Fund Revenues in their budget; \$40 million is highway related, and another \$38 million is non-highway related.

- Rep. Mills reminded the Committee that legislators cannot submit legislation again until November 2004. One option is to leave this bill in the hopper for the time being, and revisit it in the spring. If the Committee meets again in February or March, the transportation issue should be on the agenda (20-30 minutes). Members decide at that point if it is appropriate to withdraw it. No committee would have acted on it by then anyway.
 - Jeff Sosnaud concurred. The Chair's point about losing this issue for two years does concern me; this may stimulate conversation on the subject. In terms of our meeting schedule, in my view, it needs to meet more than four times that are mandated, or we will be playing catch up continually. I would be willing to meet without the per diem and I imagine other members are as well.
 - Rep. Mills expressed the desire for a mid-session meeting.
 - Beth Della Valle asked Susan Johannesman about the Committee's ability to introduce legislation between biennia, and if that could be built into the Committee's report.
 - Even if included in the report, that doesn't give the Committee the authority to submit bills.
 - The members of the Legislative Council can approve it on a bill-by-bill basis. The two chambers would have to change the legislation to authorize the Committee to offer legislation.
 - The other option is if the delegated committee (depending on topic) is willing to report out legislation themselves.
 - If this committee got behind something next fall, it probably wouldn't be a problem.
 - We ought to include Committee priorities that have not had legislation introduced this session in the report so we can set the stage for future actions – regionalism, funding transportation, etc.
2. Bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
- MDOT has no objections to this proposal.
3. Bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
- MDOT has no objections to this proposal.
- 4&5. Bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
- Rep. Mills submitted two bills to the Revisor's Office. The first expanded the existing TIF legislation to include residential development and kept the program in DECD, based on language drafted by Gary Wood and MSHA. The second created a new TIF program housed at MSHA, based on language drafted by DECD.
 - Another legislator submitted a third bill, which would house the program at DECD and was not limited to affordable housing, only limited to high cost areas.
 - Rep. Mills will withdraw "An Act to Amend the Tax Increment Financing Law to Include Affordable Housing." The Committee will move forward with "An Act to Establish a Municipal Affordable Housing Development District Program," which establishes the program under MSHA.
6. Bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

- From the Affordable Housing Subcommittee Meeting on 12/15: Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will create a fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07.
- Rep. Mills recounted that the funding option for the incentives proposed in this bill was unacceptable to MSHA (who had left the meeting before the proposal was made). As an alternative, MSHA suggested using the expansion of the real estate transfer tax that captures corporate acquisitions / transfers. These funds currently are allocated to the General Fund. It is important to consider this bill, to work to make the language viable. Even if it doesn't pass this year, it will likely come back when the economy picks up again.
- Susan Johannesman will follow up with OFPR to determine if the corporate transfer tax has a steady revenue stream and an approximate funding level that would be appropriate for the "affordable neighborhood development fund."
- David Holt enquired if there was an appeals process beyond the proposed committee.
 - Peter Merrill responded that if you wanted to draft an appeals process, it could be to the director (who would be on the panel to begin with), or the MSHA Board of Commissioners. The Commissioners are appointed by the governor, approved by a legislative committee, and confirmed by the senate.
 - Linda Gifford commented that there isn't an appeal process included in the language of LD 2099. If an application is denied, the board would have to provide the reason and the applicants could resubmit. But, this bill could certainly add an appeals process.
 - Peter Merrill expressed concern that the appeals process not open the gate for NIMBYs, etc. They need to keep that at the local level, where they have standing.
 - The Bureau of Purchasing has an appeals process that specifically applies to grants given by the state.
 - Peter Mills asked Susan Johannesman to verify there is an appeal available over this board, similar to existing MSHA and DECD boards.
- MMA does not have any comments on this proposal. Geoff Herman worked with the committee during the process. Since this process is voluntary and the town and developer work together, MMA has no objection.
- Beth Della Valle raised the concern that Land for Maine's Future (LMF) may not be the most appropriate source of funds for open space preservation; may want to get Conservation / Parks and Recreation program involved. LMF's focus is critical resources; there might be a better fit with some other state programs that create park and recreation activities.
- Mike Johnson pointed out that this proposal seems to focus on new development, and asked if there was a way to incorporate utilizing existing housing stock, or redeveloping existing structures.
 - There is a project being proposed in S. Windham, where there is an abandoned industrial structure a developer is interested in redeveloping, including developing some new residential units. That would fit into this model.
 - This bill was originally envisioned as building new neighborhoods of freestanding units, to build the "Great American Neighborhood."
 - The first rule of community and economic development is to shore up what you have. SPO is very supportive of that effort. That was not originally envisioned here; maybe this is or isn't the place for that.

- Mike Johnson would like to see some incentive for that redevelopment over new construction.
- Beth agreed that both are needed, but that this bill would have to be changed significantly to address some renovation projects.
- Rep. Mills expressed that the goal is to create incentives for affordable housing, regardless of its location or age.
- Peter Merrill pointed out that the bill started as a vision for GANs; the genesis of the bill was SPO's desire to incent or override the 2-acre minimum lot size zoning for new development.
- Rep. Mills pointed out the statute says you can't insist on a certain lot size.
- Beth Della Valle replied that the standards in Section 5.a really apply to single-family houses.
- Peter Merrill pointed out if this is a really lucrative incentive, and includes rehab and everything we want to include in here, then every development is first going to want to stop by this program to see if they can pick up some cash, resulting in a very long line of people at the door.
- Beth Della Valle expressed concern that the benefits outlined in the bill would not be enough to generate interest and get these proposals built. Communities' primary concerns are not the one-time costs for capital construction; it's the ongoing expense of educating students. The Committee originally discussed forgiveness against the valuation; she would like to see the cash as well as sheltering from valuation.
- Peter Mills responded that the valuation impact is not going to be that great. Simply taking it off or reducing it from the school funding formula is a fairly small impact. You still have the kids and a fairly thin funding stream. Three or four years ago, this would have passed with money. It may again in the future.
- Peter Merrill noted that in a town where they are losing students, this type project might be very attractive with the extra incentives.
- Beth reiterated that there are lots of perceptions and biases related to affordable housing and dense housing – one being the number and cost of additional school children. If what we need to do is attack perceptions, to take away the 'penalty' of additional units, it will be a symbolic display. It will give people at the local level an opportunity to counterbalance that perception. If we don't have something like this, we may not find a willing town.
- Ed Suslovic noted that while the bill last session was not successful, it garnered a broad coalition of support. It tells me we were on the right track. It was geared only to those in unaffordable areas, where there is a shortage. This was not meant to fix a problem that doesn't exist. If it was the right thing to do, we should do it again.
- Ted Koffman reminded the committee they had discussed jointly sponsored workshops in some key regions, looking at the issues, and work on the education side.
- David Holt asked if the proposed housing TIF bill passed, could a development get both a TIF and these incentives?
 - Peter Mills replied that should be the case. Communities that "take a hit" under revenue sharing can apply for the TIF sheltering.
- Peter Mills proposed to keep the bill as drafted; focus schools on page one to "renovation, construction, and capital improvement."
- Beth Della Valle proposed adding streetscape improvements (street, sidewalks, trees, landscaping – language in the municipal investment trust fund is similar) to the list of benefits.
- Kirsten Hebert proposed adding public safety costs (police, fire service) to the list of benefits.
 - Ted Koffman noted that for most communities, the impact is likely to be reduced emergency service costs, since you don't have to go 12 miles out to respond to a call.
 - Peter Merrill concurred. The unstated issue here is the perception that affordable housing is for poor people, who require more police services. You don't hear people talking about that with suburban gated communities.

- Peter Mills noted that absent capital costs, those services could not be funded anyway.
 - Beth Della Valle wanted to know if this bill is limited to places with documented affordable housing needs like it was last year?
 - Ted Koffman wondered if the market would take care of that.
 - Peter Mills suggested MSHA account for that in the rule making
 - Peter Merrill asked what would happen if a town were extracting an impact fee from a developer **and** asked for this funding.
 - Peter Mills thought this would be in lieu of the impact fee.
 - Beth Della Valle responded that allowing this fund to pay the portion of the impact fee instead of the developer would make the impact fee system work better, because the developer of affordable housing would not be penalized.
 - Peter Mills noted that any funds awarded must be in lieu of an impact fee assessed to the developer. We don't want double dipping.
7. Bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
 - The committee had no comment on this bill. DECD not present to comment on the funding source proposed.
 8. Bill mirroring the original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).
 - The committee had no comment on this bill.
 9. Bill mirroring the original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.
 - The committee had no comment on this bill. Non-Legislative Actions Recommended by the CPAC:

Building Support For Bills Supported By The CPAC And Proposed By CPAC Legislative Members During This Session

This will largely be coordinated via email through Liz Rettenmaier.

The Committee will tentatively meet on February 3rd, 2003, 10:00 – 2:00. Proposed agenda items include:

- Transportation constitutional amendment – Presentation by MDOT
- Final look at all the bills
- Discussing Co-sponsors and Committee assignments for the bills
- Review draft annual report (draft will be circulated via email prior to the meeting)
- Review other legislative titles related to CPAC charge proposed by other legislators (possibly invite sponsors to present – briefly – to the Committee). Consider presenting the CPAC's opinion to appropriate committees.
- Identify future priorities, projects, research

**Bills Proposed by CPAC Legislative Members to the 121st Legislature
(Submitted by Rep. Peter Mills to the Revisor of Statutes)**

1. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
2. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
3. Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
4. Create a bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
 - a. Two bills were submitted to the Revisor's Office. The first expanded the existing TIF legislation to include residential development and kept the program in DECD, based on language drafted by Gary Wood and MSHA. <NOTE: This bill title was later dropped.> The second created a new TIF program housed at MSHA, based on language drafted by DECD.
5. Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines. .
 - a. From the Affordable Housing Subcommittee Meeting on 12/15: Using the Definitions, Board description, and development criteria from LD 2099, submit a bill that will tie into the transfer tax distribution section <MSHA strongly objected to this funding source>. Beginning 10/03, \$100,000 a month from the transfer tax allocated to MSHA will be set aside in a separate fund known as "Affordable Neighborhood Development Fund." MSHA will create rules and administer incentive funding (grants) based on decisions of the Board described under 2099, using standards in 2099. Applications to the board would be joint between the developer(s) and the town(s). Grants would be used to compensate municipalities for expenses related to the project / impacts on transportation (roads, sidewalk), sewer and water, schools, and/or open space preservation. Money would be released based on certificate of occupancy; funds would be relative to the number of units (amt of funding per unit). Direct Board to work with other agencies (MDOT and LMF) to meet funding needs before allocating own resources. Sunset 10/08 (five years). Report back to legislature January '05 and January '07. Any uncommitted money would return to MSHA's standard funding.
6. Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.
7. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).

8. Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

Non-Legislative Actions Recommended by the CPAC

1. Insert incentives / points for regional cooperation in Transit Bonus rules. MDOT is reviewing the rules, which have not been finalized, to see if modification is possible in the short term.
2. Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, *or* create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)
3. Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).
4. Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

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Community Preservation Advisory Committee

February 3, 2003

10:00 am – 2:00 pm, State House Room 126

Working Group Meeting Summary

Attending:

Rep. Ted Koffman (Chair)
Rep. Peter Mills (Chair)
Rep. Janet McLaughlin
Rep. Ed Suslovic
Rep. David Tobin
David Holt
Jeff Sosnaud
Beth Della Valle
Mike Johnson

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes
Peter Judkins
Jim Brown

Department of Transportation Presentation re: Constitutional Amendment Proposal

Kathy Fuller and Bruce Van Note of the Maine Department of Transportation presented information to the Committee on highway funding and funding options for transit that MDOT has investigated in the past.

The Highway Fund has been unstable and has not kept up with inflation. The General Fund and General Fund bonding have made up the difference.

Last session, the motor fuel tax indexing law was passed. It will help MDOT by adding ½ cent tax on an annual basis, but it is not expected to help the Agency meet its bottom line, completely.

The highway fund continues to be such a challenge in part because of aging infrastructure. The state has a significant number of assets that have to be maintained. We rank pretty high among other states for the number of miles per capita – over 8,300 miles of road, over 2000 of which are substandard (based on modern day standards). These are generally rural roads; they create an economic link between natural resources and the markets. The estimated cost is around \$1.3 billion to upgrade those in the next 10-20 years.

In addition, our bridge infrastructure is slowly losing ground. We've been spending \$95 million per biennium over the last six years to ensure our bridge infrastructure remains safe. We're looking at increasing that to \$108 million / biennium to just keep up. A number of bridges were built around The Depression, 50-75 years ago, which is about the useful life of a bridge.

When the state Sensible Transportation Policy Act passed in 1991, it required MDOT to invest in all modes of transportation, but it did not provide additional funding to do that. MDOT relied a lot on the general fund, particularly general fund bonds, to meet the non-highway expenditures (rail, transit, etc.).

All of the department's maintenance and operation needs are entirely reliant on the Highway Fund. A couple of exceptions are interstate maintenance funding, which gets some federal funding, and the congestion mitigation air quality program, which allows us to use federal dollars for operational purposes for a short period of time (e.g., the Island Explorer) for start-up costs.

MDOT does get a significant amt of federal dollars, but that has proven to be inadequate, and is based on a minimum guarantee formula. The federal dollars represent a fairly sizable amount, but don't meet the need. Congress sets the ceiling on how much the Administration can distribute in a six-year period, but the Administration doesn't need to distribute the whole amount. With all the talk of war, other needs, and the federal deficit, we are facing, potentially, a negative impact on what we can expect from the federal government.

In addition, MDOT will likely be asked to repay a previous surplus deposit into the Highway Fund from the General Fund, due to the current General Fund situation.

A handout to the committee included:

- Types of funding that were included in the last biennial program (Table 1);

The current MDOT budget is still under development; we're unsure what the totals are going to be because of the volatility at the federal level.

The Department is preparing a list of extraordinary needs right now to submit to our congressional delegation over the next six years as TEA3 is being created. We don't expect we'll get \$664 million – hoping \$20 million a year for the next six years. Most of these projects rely on a match from the Highway Fund, but a number of them (non-highway/multimodal systems) will require a match from other sources – probably general fund bonding. If we're successful in receiving \$142 million in multimodal earmarks, 80% would be federal dollars over 6 years.

- Pages 4-5 are simple summaries of a 1993 and 2002 report that identified some options for funding non-highway and highway-related investments in our transportation system.

Discussion

Van Note: The question we have is if time is right for a new program. We don't have enough money to do what our current mission is. These are hard numbers out of our Planning Department; the "unbuilt" roads have not been touched since WW2.

Mills: The bill in the hopper would add "the cost of public transportation" to the constitution.

Koffman: My assumption was we were trying to set the stage for when revenues were flowing more copiously that we could see some funds, not that we would try to leverage transit over your priorities today – so that we could look at all of those needs when we have the funds to do so.

Van Note: My concern is one of timing. We're in a General Fund budget crisis situation. The Governor's Office understands that everybody needs to take a hit, he closed the '03 deficit with \$7.2 million of Highway Fund dollars – and we expect another \$8.1 in the next budget.

Koffman: How would this proposal change anything?

Van Note: Once it's allowed in the Highway Fund, the Legislature will be less willing to fund transit projects out of the General Fund during time of crisis. If the constitution allows broader use of Highway Funds, legislators won't use General Fund dollars for these projects.

Mills: Are transit systems state tax exempt?

Van Note: There is also a concern that other folks would step tot the table to get their pieces in – Rep. Faircloth's LD 108 opens up highway funding for "such costs as the legislature considers appropriate" including mass transit, trails, ...

Koffman: Is there a way to do this without putting a hole in the dike?

Van Note: This legislature and your constituents have set long-standing priorities – the roads. They see the direct connection between the gas tax and the road improvements. Highway and bridge funding is very highly supported, across the state – it's an economic development issue. That connection isn't as strong for non-highway purposes.

- Koffman: I didn't realize there is a lockbox here. In a sense, public transit is a stepchild.
- Van Note: We've been funding it through General Fund in the past.
- David Holt: I get paid by people who would agree with you. However, I am concerned that we'll never address public transportation with that idea. Is there any opportunity so that the beneficiaries could pay a higher tax to fund what we're proposing, since in the long run it would probably result in savings to the Highway Fund because of reduced wear?
- Van Note: That would be a significant administrative burden. This committee also expressed interest in rural transit options. It would be very hard to have this as a "user pays" approach.
- Fuller: Passenger transportation was \$110 million out of \$613 million last year; not quite a stepchild. Of that, \$24m was for transit; the majority of it was from Federal Transit Administration (80%) – MDOT primarily provided the required state match.
- Tobin: Can we look at this politically? We just passed an indexing bill last year, which some of us took a pretty heavy hit. That indexing bill comes back every year – and it only won by 1 vote last year. I can sell the indexing if it's going to roads and bridges, but not if it's going to busses. This is going to be perceived as a bill for the metropolitan part of the state, and it will be the rural caucus vs. the rest of the state. I think, politically, that answer is clear.
- Mills: Is it fair to say that the rural portions of the state receive a larger portion of the benefit of the highway fund, or is that unfair?
- Fuller: We looked at the total pie and looked at "urban" and "rural" towns based on the federal definition. 33% of the investment went toward urban communities; 67% was going outside of those urban areas – which does include towns like Hallowell, Manchester – which have centers and downtowns, but aren't considered urban by the feds.
- Mills: Would you say that more than 1/3 of the dollars has been collected from urban users.
- Van Note: We haven't looked at it that way. We look at seven divisions statewide and the percentage of substandard arterials and allocate the funding that way. The arterials, by definition, have the highest amount of traffic – arterials carry 62% of the load. Theoretically when we get done, all the substandard roads across the state are rebuilt at the same time – in the next 8-10 years (\$2 million/mile – down from approximately \$2.5 million at the beginning of the project). The collector system will be more like 30-40 years to be rebuilt (\$0.5 million/mile based on statewide standards). Any money not going to that job is going to make it take longer; the funds are not increasing... The federal level is looking worse – about \$30 million less than last year.
- Koffman: I don't know if we need to continue too much longer. Rep Tobin's wisdom will carry the day for me. My perception of this group is community preservation, enhancing downtowns, and encouraging folks to enjoy a higher quality of life by living closer to downtowns, with transit options being part of that formula. I think the state needs to come to terms with its investments in transportation infrastructure; we're a poor state putting a lot of funding into a lot of miles of roads.
- Fuller: We'll be happy to come back to talk about Access Management some more and our evolving Urban and Village policies.
- Sosnaud: How do we go about changing our reliance on the traditional methods of transportation? We finished a record era of prosperity that would have been the opportunity to make

those decisions – and we didn't. Another school of thought says you make those changes in times of crisis. When do you do it? I lived in Bangor for 12 years, and I know that bus system can be more effective; we're not only talking about the largest metropolitan areas.

Fuller: What you're really talking about is behavior modification. People tell us they want all the choices they can get their hands on – they're not saying one choice is preferred over another. What we're trying to do is provide the choices and hope that people choose the right thing. The ways other countries have done it is to increase the fuel tax significantly, but I don't think this country – or Maine – is ready to go there. We're trying to make the choices available with a limited number of resources.

Koffman: Thought on schools. In 1975, spending \$9m on busses; when The Cost of Sprawl was complete, it was about \$58m; now up to \$62m – is that all state funding?

Van Note: It's a combination of general fund and local resources.

Mills: The percentage of state funding is dreadfully high. One of the reasons we have great busses in rural districts is that the state subsidizes that based on some past education funding decisions that incorporated income into the school funding criteria.

Tobin: One of the drivers on that was regionalism. We had 1 school bus with 8 schools; we consolidated and needed to bus a lot more kids because they couldn't walk to school any longer.

Koffman: When we didn't allow schools to upgrade / maintain their existing local elementary and middle schools, they got built further out – where kids would have to take a bus to get there.

Mills: I think it would be a highly suitable amendment, but I get the sense that the committee is wavering.

Beth: This is one of those areas where we are going to be tripping over ourselves until we figure out how to do it right. I would like to suggest that we move this off the short-term agenda to the mid-term and work with MDOT to establish additional information so that we can continue to gather information and get advice. I don't think we can lay out the detail on that agenda, but I would like to encourage that we try to formulate the questions that we have and work with MDOT to get their input back on this during the coming season so when we get to the end of the spring, we can have some sense of what we are going to try and tackle, who is going to do what, etc.

Sosnaud: I am sympathetic to that. I would like to ask the legislators if there is something to be gained by going forward at this point?

Mills: It might get killed 13-0 in the transportation committee... You need 2/3 to get it out and even discussed on the floor.

Koffman: Transportation is in an orbit that was shaped 40 years ago; changing it will be a struggle. This caucus has not been involved in that to this point; maybe we need to continue the transportation / smart growth / community preservation dialogue.

Van Note: I would agree. The debate that you're creating is having an effect on this education component. I moved from the country into town so my kids could walk to school, we could walk to the market, etc. I think you win 1 person at a time.

Sosnaud: It's beyond our ability to advance legislation as an advisory committee. It's not beyond our ability to education, to set something in motion that would help promote this dialogue so that it starts somewhere.

Mills: I have lived in Maine for most of my life; I have never seen an era when the roads are deemed to be "good enough." Mainers will never say that the highway budget is sufficient. I think this ought to be on the long-range agenda. I don't think there will ever be a political climate when this will be popular. The only way to expand it would be 55,000 signatures and a referendum.

Suslovic: 3/25/43 legislative record. There were some good arguments as to why it wasn't a good idea to put the gas tax the constitution. When we talk to people who want to solve the traffic problem, it is usually more lanes, more lights – it is really because people want to get from A – B without being slowed down. One way to reduce that, besides building capacity, is to reduce trips, reduce amount of time on the road. The Healthy Communities groups get excited and see the need for a Transportation Policy rather than a Highway Policy. We're not going to win on every one of our bills, but I don't think that's a reason to pull back.

Tobin: It is going to take education before everything else. If you increase the gas tax enough – which you can only do when the public is ready – and allow it to go into transit, when that the gas tax gets high enough and the transit systems are funded enough, folks will change their behavior.

Suslovic: There are parts of the state that transit will be an alternative for people; is a differential gas tax an option? I can hear the legitimate complaint from rural Maine that is not going to see transit options for years and years.

Holt: Can it be local option?

Tobin: Why can't we benefit rural communities – run express buses between communities.

Fuller: A differential may cause an unintended consequence.

Koffman: I was thinking the opposite – lower the gas tax in service centers (similar to Gov Dean's lowering the sales tax in downtowns).

Holt: If you make it local option at a penny a gallon, nobody would even notice.

Della Valle: The conversation we're having is why I'm advocating we move a little more slowly. We've created so many unintended consequences in our legislative proposals; we don't generally slow down to think about what happens in the next layer. If MDOT is on board, they know the system, they know the smart growth principles. We can think through the consequences, we may be able to avoid creating more messes than we clean up.

Mills: Consensus is to withdraw the bill, keep it alive on the long-range agenda, but not press it in this legislature.

Della Valle: I would like to press the committee to articulate that research agenda so that as we get through this calendar year, approaching summer, that we can have some sense of what we will be addressing in the late summer.

Sosnaud: Long-term agenda doesn't mean we put it away for the long term, but that we continue to work on it...

Mills: I would like further information on the exemption from the gas tax, which is an interesting form of subsidy for schools and municipalities.

CPAC Annual Report

A draft of the Annual Report is posted on the CPAC website, with comments requested by February 10, 2003 (<http://www.maine.gov/spo/cpip/cpac/meeting5.htm>). Comments or suggestions should be submitted to Liz Rettenmaier (liz.rettensmaier@maine.gov).

Members suggested that the transportation amendment be moved to the long-term, and that education of transportation alternatives be included as a component of the discussion. Also, SPO and MDOT should work together to develop a paragraph about transportation policy and community preservation for mid- and long-term goals, including service roads strategy for addressing sprawl on arterials, similar to Vermont's strategy.

Beth Della Valle recommend including the Committee's concern that the LMF tool be very closely tied to the smart growth efforts, in term of preserving farmland and unique resources, with recognition that the preservation should not pull resources out of the development stream.

David Holt suggested adding a sentence that rehabilitation of existing buildings serves the interest of the Committee, and that the Committee support programs and policies that make it easier to rehab existing buildings and facilities (including schools).

Current Bills

An Act to Establish a Municipal Affordable Housing Development District Tax Increment Financing Program (LR 787, Koffman)

Merrill: The Tax Increment Financing for affordable housing bill language is coming together; Susan Johannesman is working with me to draft it.

Tobin: Will this bill piggy back on the existing TIF program? I'm concerned that a TIF can actually cost a municipality, if the money isn't spent wisely. The Town of Windham has 2 TIFs in place, and they each cost the town about \$100,000/year. When you set up a TIF, you design the zone, take the increased tax revenue, and shield it from the state, and put it in a fund. It goes into a fund that has to be spent as your fiscal plan denotes. For instance, most TIFs take 80% of the area and shelter it; those dollars do not go into the town's general fund. If you're smart, when you set it up, you include infrastructure associated with the improvements in your plan. If you exclude the TIF fund you're penalizing your general fund. It would be nice if this bill could be used by the municipality to finance school infrastructure that the development creates.

Suslovic: I have a bill in at request of the City of Portland that would open up the existing TIF language to housing. Portland and many service center communities have excess capacity. If Portland or South Portland were to TIF a housing project, they would be trying to get as many school children as possible to live there – increasing enrollment without increasing valuation. The incentives for this bill are coming from developers who say that the cost of living is too high for employees.

Tobin: The first ring of towns is also becoming prohibitively expensive. If something doesn't happen, the second ring of towns is next.

Holt: I would be interested in speaking on behalf of the TIF bill.

An Act to Provide Incentives for Affordable Neighborhood Developments (LR 789, P Mills)

Mills: I'm not sure where that is, but I think the funding is straightened out. We're looking at real estate transfer revenues; have yet to find out if we have produced any revenue from that since July 1. (Peter will follow up with Susan to ask OFPR.)

An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda (LR 792/LD 389, Suslovic)

Suslovic: I think LR 708 and LR 792 are identical, LR 708 is being withdrawn.

An Act to Enhance the Duties of the Community Preservation Advisory Committee (LR 706 / LD 522, Suslovic)

Suslovic: LR 706 adds two charges to the CPAC (sort of similar to Barstow's bill) that addresses looking at counties, labor markets.

Tobin: I think Ed's going the right direction. This may lay some of the groundwork for it in the future.

Suslovic: This bills says that regionalism is important to this committee and that county boundaries are an impediment to that

Della Valle: This group has a legitimate place at the table, but this issue can consume a lot of energy. The State Planning Office worked for over two years on the Proposal to Reduce the Cost of Government through Reform of Governmental Relations (available on the SPO website).

Suslovic: At least half of the State and Local Committee is ready to address this issue.

Resolve, Directing the Department of Education to Use Money for School Transportation Costs for Payment of School Crossing Guards (LR 407 / LD 624, Suslovic)

Suslovic: This proposal requires DOE to include crossing guards in the same formula for reimbursement as school busses

An Act to Protect Motor Vehicles From Dangerous Pedestrians (LR 295 / LD 63, O'Neil)

Suslovic: I would oppose this bill because it sends the wrong message, but we need better enforcement at cross walks.

An Act to Create Broadband Internet Access in Rural Areas of the State (LD 90, Goodwin)

Della Valle: This is a bill that makes me ask "who is going to pay for this" – if the cost is on the backs of the communities with a more compact settlement pattern, extending another utility into a low density area, I would be concerned.

An Act to Establish Rent Caps on Property in Southern Maine (LD 42, Laverriere-Boucher)

Suslovic: The focus has changed from rent caps to removing barriers to construction of affordable housing (not rent caps). I'm planning on going tomorrow to support this

Four bills affecting the Land for Maine's Future Program: An Act To Require the State To Hold Title to All Land and Easements Purchased with the Land for Maine's Future Fund (LD 176, Carr), An Act To Limit the Use of State Funds To Purchase Land or Conservation Easements (LD 94, Joy), An Act to Require

Joint Standing Committee Approval for Certain Purchases Proposed by the Land for Maine's Future Board (LD 92, Sherman), and An Act to Limit State Land Ownership (LD 348, Shorey)

- Suslovic: I'm having a harder time drawing a link to this committee.
- Koffman: The current LMF program statement stipulates 20% to support agriculture in fast growing areas and another percent to support open space near fast growing areas, shifts that were brought about by the smart growth movement. From everything I've heard, the real threat to prime agricultural soils is in Southern Maine. I think we should oppose this.
- Tobin: We just took advantage of that program in Windham, right beside our growth area. You'll find that people in Northern and Eastern Maine have a completely different outlook.
- Audubon: We feel very strongly about maintaining the integrity of LMF program; I would encourage the committee to look carefully at LD 92 and 94. 176 would require the state to hold the entire title; this would reduce the partnerships between the local land trusts and municipalities.
- Suslovic: One concern I have with LMF in southern and coastal Maine is that it is another tool for NIMBYs to set aside land that is appropriate for development. How do we ensure that LMF doesn't support the NIMBY movement, factoring smart growth principles into their decision?
- Tobin: The LMF Board is very careful to address that very issue.
- Della Valle: Last summer, we met with Tim Glidden and Evan Richert (former Director) on this to make sure that LMF is doing its part on the livability aspect and fine-tuning how they address this NIMBY issue. There was a strong focus on this issue in the last round of applications. A number of submitted projects were rejected for that very reason. LMF is now talking about not just preserving the "relic farms" but creating a system, not just the isolated parcels.
- Suslovic: My experience with the Presumpscot River parcel makes me worry that there isn't a strong smart growth voice on the LMF board to replace Evan.
- Della Valle: In the report, I recommend raising the issue of direction to the Governor / Administration that we remain concerned that the LMF tool be very closely tied to the smart growth efforts, in term of preserving farmland and unique resources, but concern that it doesn't pull resources out of the development stream.
- John Piotti: I wanted to confirm what Beth says – looking at critical systems for farmland is important. In terms of farmland (remember LMF doesn't purchase the farm, it purchases the development rights), the point is moot in Northern and Eastern Maine – there are no deals in Eastern or Northern Maine where it is worth purchasing the development rights on agriculture land there.

An Act to Streamline Maine's Planning Process (LD 308, Glynn)

- Della Valle: This bill calls for elimination of SPO and redistribution of its programs. I would suggest that SPO would have some serious concerns about these bills. One of the functions of SPO in statute is as a coordinating function among various state agencies, staying above the "nose to the ground" program approach; that would be lost if broken up and redistributed. What has been amazing to watch over the last 8 years is watching the silos come down, even at SPO. In a program, you focus on the day-to-day requirements of that program. There was a time, when we pulled all the programs out of SPO and SPO was just a policy shop; both the policies and the programs suffered from that approach. Bringing these two pieces back together was remarkable.

NEXT STEPS

- Koffman: Is there a need for another meeting during this session?
- Suslovic: One of the things we need to keep in mind is that we are not a task force that will go away after a year. We, as a committee, need to keep pushing some of these in the short

term, and consider some of these in the longer term. I think there is a need to continue to meet this session to stay informed about what is bubbling up. I would like to identify 6, 8, 10 bills that we should be officially supporting or opposing.

- Mills: A productive format was like this morning focusing on transportation policy. If you wanted to have focused time on various issues, we can do that – school construction (conversion of regional vocational areas into school districts), dairy farms, regional government.
- Della Valle: And the LMF issue
- Suslovic: Evan is creating a whole plan around regionalism; it would be nice to hear where he is coming from.
- Mills: This issue will be part of the Governor's "State of the State" address; it's part of MMA's proposal, 2% for regionalization.
- Johnson: When we're talking about regionalization of schools, are we talking about a single campus?
- Mills: Generally, we're talking about consolidating administration; consolidating schools are local (very contentious) decision.
- Tobin: There is a bill in there to make Aroostook a single school district (An Act Concerning Restructuring of School Districts, LD 230, Martin). I don't see why that wouldn't work.
- Suslovic: An Act to Increase Revenue Sharing to a Municipality by 5% of its Allocation if it Shares Fire, Police and Recreation Services with Adjoining Municipalities (LD 141, Martin) is also an interesting one.
- Mills: Why don't we schedule a meeting to look at regionalism issues, inform ourselves about it – pull out bills that are focused on this, get copies available to the committee, prepare an agenda for a meeting that concerns itself with regionalization as a theme. Enlist Jim Rier to come down from Calais to address the committee on his plans. Might ask John Martin to attend for his views. Jim Brown to give us an Aroostook county perspective. Evan Richert to have his thoughts together. Beth can give her dog and pony show on counties. (30-40 minutes each). Invite the State and Local and Natural Resources Committees. March 21, starting 10 AM.
- Koffman: We will also want to touch on affordable housing, transportation later – maybe 30 minutes each on how each of those connect to regionalism discussion, an integrated approach.
- Suslovic: PACTS has been struggling with doing regional transportation planning when you don't have control over local land use – maybe get them in for 15-20 minutes.
- Della Valle: Both Kathy Fuller and I have been working with the PACTS committee for the last few months. The planning committee unanimously recommended that the policy committee amend its 20-year transportation/land use plan to design a system that would link transportation investments in arterial corridors to the municipalities making commitments to certain types of land use regulation. It was acknowledged that this was a very tricky issue that needed some refinement. The policy committee, made up of town managers and selectpersons, got nervous about the unanswered questions and responded that they wanted the committee to keep working on it and bumped it down in the priority list.

Mills: MMA is another player. Doug Brooks, who is now on the House Speaker's staff, has written some of the best stuff on it. The five towns north of Portland initiative is another potential area of interest.

Holt: I think it's a mistake to say that local governments don't favor regionalism. There are some good examples out there. Some of the successes can give people courage.

Della Valle: I think MMA has also put together something on the successes.

McLaughlin: Evan would be good thinking about regionalism in New England. Successes come when you tailor the players to the situation; county government is too big for some things, but too small for others.

Mills: There is also the COG system.

Suslovic: Without providing some mechanism for towns to link comprehensive plans together, we're never going to get out of our own way.

Della Valle: We got legislative changes last year to put multi-town plans on equal footing; the next step is getting some incentives to actually create and implement them.

Koffman: Some time ago, when we were talking about affordable housing outreach, workforce housing, rental and ownership... Have you thought about that, perhaps targeting some specific geographic areas? Should we be sponsoring something in a collaborative way to look at how we can change our ordinances, change our laws.

Merrill: We met with a rep of a group in Southern Maine in the last couple of weeks that wants to do exactly that. My inclination would be to work with them, help them organize to do it. Based on that success, replicate in parts of the state that organization doesn't serve.

Koffman: It may be that you or DECD might know of communities that are ripe for such a thing...

Suslovic: Along those lines, we have three excellent videos, this community could help by getting out. The MSHA 20 minute video on housing; Save our Lands, Save our Towns, the Livable Landscapes documentary specific to ME, NH, and VT. It would be great to get those in front of the rural caucus and build some bridges.

Della Valle: We have all those available if the legislators want to arrange showings, we can provide the videos.

Appendix D: Growth Management and Sprawl Legislation History

119th and 120th Legislatures

Summary of Activity

The following is a brief summary of the efforts of three state task forces², the Governor's Sub-Cabinet Committee on Smart Growth, and the 119th and 120th Legislatures in areas related to sprawl, growth management, and community preservation. For each of the last three years, a separate legislative task force or study committee was convened in the fall to explore smart growth issues and prepare a package of recommendations for legislative consideration and action the following spring. In addition to legislative efforts, the Governor convened a Sub-Cabinet Committee, which prepared and adopted a three-year strategic plan called Smart Growth: The Competitive Advantage. The statutory outcome of these efforts is summarized below by topic and is arranged alphabetically under the broader headings of Land Use, Transportation, and Taxation issues. As the Community Preservation Advisory Committee moves forward, it is useful to note what has been accomplished in the past.

Land Use Issues

Affordable Housing: LD 2099³ amends the definition of affordable housing in the growth management laws. The amended bill does not include the Joint Study Committee to Study Growth Management's more extensive recommendation to create an Affordable Neighborhood Development Review Board and direction for direct affordable housing development in municipalities where affordable housing is a particular challenge.

Building Rehabilitation: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's recommendation that the State Fire Marshal convene a stakeholders' group review state codes and federal regulations that restrict the reuse of existing structures to recommend revisions to encourage their renovation was not adopted.

LD 1331⁴ directed the State Planning Office and the Maine Building Rehabilitation Code Advisory Council to develop a model building rehabilitation code for Maine, incentives for municipalities to adopt the model code, and, to the extent funding is available, technical assistance and training in the use of it. The Council discontinued its efforts when two things became clear. First, that a single statewide building code is a necessary precursor to development of a overlapping rehabilitation code. And second, that both of the national code organizations were in the process of creating rehabilitation codes to integrate with their model codes. The Council recommended that the Legislature reexamine the desirability of developing a model statewide building code for Maine and create incentives for municipalities to adopt it.

Downtowns: LD 2600⁵ established the Maine Downtown Center to encourage downtown revitalization in Maine communities through advocacy, information, training and technical assistance to communities. It directed the State Planning Office, Department of Economic and Community Development, Maine Development Foundation, and other state agencies to work collaboratively to coordinate the programs of the Center and appropriated \$100,000 for grants to revitalize downtowns. Several state agencies also committed to raising three years of operating funds for the Center. LD 2600 also directed DECD to develop an investment policy to improve the condition of downtown properties and infrastructure to meet the multiple use needs of downtowns, review state codes and federal regulations that restrict the reuse of existing structures and recommend revisions to encourage renovation of existing buildings, and report its recommendations to the Legislature. The Legislature did not adopt the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's

² Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development in 1999; Task Force to Study Growth Management in 2000, Joint Study Committee to Study Growth Management in 2001.

³ Enacted as PL 2001, chapter 673, in second session of 120th Legislature in 2001.

⁴ Enacted as Resolve 2001, chapter 29 in first session of 120th Legislature in 2001.

⁵ Enacted as PL 1999, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

recommendation to create a Downtown Leasehold Improvement Fund to help state agencies secure space in downtowns by providing for capital improvements to leased properties.

Geographic Information System: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that funds be appropriated for the position of Statewide Geographic Information System Coordinator in the Office of Geographic Information Systems. This recommendation was not adopted by the 119th Legislature.

LD 578⁶ directed the State Planning Office to convene a steering committee to study and design a statewide geographic information system that can be utilized for a variety of planning purposes. The steering committee made recommendations that resulted in LD 2116, which was adopted in the second session of the 120th Legislature as described below.

LD 2116⁷ creates the Maine Library of Geographic Information and the Maine Library of Geographic Information Board. LD 2120⁸ also resulted in inclusion of \$2.3 million in the November 2002 environmental bond issue. It was hoped that the bond would include \$4 million to assist municipalities with digitizing parcel maps.

Growth Management: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that additional funds be appropriated for financial and technical assistance to municipalities, regional councils, and alternative growth management initiatives. This recommendation was not adopted by the 119th Legislature.

The Task Force to Study Growth Management was charged with studying the state's growth management laws with the goal of making them more responsive to the issues of sprawl. It investigated a significant shift in approach to growth management, known as the "outcome-based approach," that would establish measurable performance measures. Municipalities would be expected to plan for and manage their growth in accordance with those measures. Failure to meet those measures, without good cause, would result in assessment of penalties to that community. Under the proposal, two different levels of planning were explored – multimunicipal and single community planning regions. The Task Force concluded that continued discussion of the outcome-based approach was needed and warranted, but that certain changes to the Planning & Implementation Act were required without delay and made a recommendation for an intermediate proposal to amend the Act. Among other recommendations, the Task Force proposed that the goals of the Act should be modified to include the three performance measures it had developed⁹; current deadlines for towns to adopt a comprehensive plan and consistent ordinances should be staggered for high, moderate, and slow growing communities; and towns that enter into regionally based comprehensive plans should be exempt from established deadlines for enacting consistent comprehensive plans. The Task Force also recommended increased funding for financial and technical assistance for municipalities and regional councils.

LD 1693¹⁰ amended the comprehensive planning and land use regulation laws in a number of ways, including adjustment in administration of the Community Planning & Investment Program, clarification and increased flexibility in the timing of the requirement for consistency between local land use regulations and comprehensive plans, reducing the requirement for consistency between local plans and land use ordinances to include only zoning, rate of growth ordinances, and impact fees; increased flexibility in the designation of growth areas for slow growing communities, and increased coordination among state agencies and support for local planning efforts.

⁶ Enacted as Resolve 2001, chapter 23, in first session of 120th Legislature in 2001.

⁷ Enacted as PL 2001, chapter 649, in second session of 120th Legislature in 2002.

⁸ Enacted as Private and Special Law, chapter 71, in second session of the 120th Legislature in 2002.

⁹ Three performance outcomes were proposed: a. At least 70% of new residential growth must occur in areas designated for growth; b. At least 10% of new housing must be affordable; c. Commercial development should be located in such a way that the capacity of arterial and major collector roadways is not exceeded.

¹⁰ Enacted as PL 2001, chapter 406, in first session of 120th Legislature in 2001.

LD 2510¹¹ appropriated \$1.6 million for financial and technical assistance to municipalities and regional councils and for pilot programs to support alternative growth management initiatives and updates of older comprehensive plans.

LD 2094¹² amended the comprehensive planning and land use laws to adjust administration of the Program; and increase the flexibility in designating growth and rural areas by including a provision for critical rural areas, critical waterfront areas, and transitional areas, and by placing multimunicipal planning projects on an even footing with single town planning efforts. See Regionalism in Growth Management.

Growth-related Capital Investments: LD 2600¹³ defines state growth-related capital investments¹⁴ and directs them to locally designated growth areas as identified in comprehensive plans, or if there is no comprehensive plan, to areas with public sewers capable of handling the development, in areas identified as census-designated places or in compact areas of urban compact municipalities. There are exceptions to this requirement.¹⁵

LD 2071¹⁶ is intended to ensure that hospitals and other quasi-public facilities that use state or passed-through federal dollars are treated like other public entities regarding growth-related capital investments.

Impact Fees: LD 2600¹⁷ clarified that school facilities are among the types of infrastructure facilities for which communities may establish impact fees and recommended further study by the Task Force to Study Growth Management in the first session of the 120th Legislature.

LD 346¹⁸ clarified that communities that are part of a single or multi-community school district may deposit the proceeds of school impact fees in a trust fund to be used to pay their proportionate share of anticipated school capital costs.

Model Codes for Municipalities: LD 2600¹⁹ called for the State Planning Office to develop model codes that accommodate smart growth design standards to allow for traditional, compact development in locally designated growth areas and to preserve and revitalize existing neighborhoods.

Municipal Investments: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that the Legislature appropriate \$5 million for the Maine Municipal Bond Bank to capitalize the Municipal Investment Trust Fund for downtown improvement loans to municipalities.²⁰ This proposal was not funded.

¹¹ Enacted as PL 2001, chapter 578, in first session of 120th Legislature in 2001.

¹² Enacted as PL 2001, chapter 578, in second session of 120th Legislature in 2002.

¹³ Enacted as PL 1999, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

¹⁴ Construction or extension of utility lines, development of industrial or business parks, public service infrastructure and public facilities, state office buildings, state courts and other state civic buildings, newly constructed multifamily rental housing.

¹⁵ For state investment required to remedy threats to public health and safety; mitigate nonpoint source pollution; purchase land for parks, open space, and conservation; assist natural resource-based industries; expand highways; support historic and cultural resources; and school construction or renovation.

¹⁶ Enacted as PL 2001, chapter 613, in second session of 120th Legislature in 2002.

¹⁷ Enacted as PL 2000, chapter 776 in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

¹⁸ Enacted as PL 2001, chapter 38, in first session of the 120th Legislature in 2001.

¹⁹ Enacted as PL 2000, chapter 776, in second session of the 119th Legislature in 2000.

²⁰ Downtown improvements, historic preservation improvements, parking and road improvements, park and open space amenities, purchase of development rights, and streetscape improvements.

LD 669²¹ amended the text of the Municipal Investment Trust Fund, a fund that was established in 1993 but never funded, to establish priorities for award of the fund²² and clarify eligible improvements. The Task Force to Study Growth Management's recommendation to capitalize the Municipal Investment Trust Fund in the amount of \$20 million was only partially successful, resulting in a first-time appropriation of \$300,000.

LD 2061²³ further amended the priorities for preferences for loans and grants from the Municipal Investment Trust fund to share highest priority for these funds with municipal projects undertaken by two or more municipalities.

LD 2130²⁴ authorized inclusion of \$4 million dollars in the Economic Development bond issue, which was approved by Maine voters in June 2002. The Joint Study Committee to Study Growth Management had recommended capitalization in the amount of \$8 million.

Rate of Growth Ordinances: LD 1643²⁵, which was an attempt to establish a framework for locally defined rate of growth or building caps, was carried over from the first to the second session of the 120th Legislature. The LD defined three types of caps – temporary, ongoing, and caps that apply only outside of locally designated growth areas – and parameters within which each could be adopted. The Joint Study Committee to Study Growth Management recommended that the LD ought not to pass and recommended instead LD 2062, a variation on the original bill.

LD 2062²⁶ requires any municipality that enacts a rate of growth ordinance to review that ordinance at least every 3 years. The final version of the bill did not include the recommendations of the Joint Study Committee to Study Growth Management.

Regionalism in Growth Management: LD 2094²⁷ amends the Comprehensive Planning and Land Use Regulation Act to reinforce regional and municipal roles in growth management and encourage multimunicipal planning efforts by placing them on even footing with single town planning efforts.

See also Municipal Investments for description of modified priorities for award of Municipal Investment Trust Funds to place multitown projects on an even footing with service center projects as the highest priority for the Fund.

Reports to the Legislature and Task Forces: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development was established to review and make recommendations on legislation carried over from the first session of the 119th Legislature, which focused on stimulating the health and well-being of service center communities and rural areas, including proposals to direct state investments to locally designated growth areas and downtowns, value farmland at current use, and support farms and agricultural activities.

LD 2600²⁸ required the Land & Water Resources' Council to submit a report to the 120th Legislature evaluating the use of incentives to keep rural land undeveloped.

²¹ Enacted as PL 2001, chapter __, in first session of 120th Legislature in 2001.

²² Service centers, communities with certified growth management programs and consistent comprehensive plans, and multicomunity projects with regional benefit.

²³ Enacted as PL 2001, chapter 621, in second session of the 120th Legislature in 2002.

²⁴ Enacted as Private and Special Law, chapter 73, in second session of the 120th Legislature in 2002 and approved by voters in June 2002.

²⁵ Carried over from first to second session of the 120th Legislature in 2001-2002.

²⁶ Enacted as PL 2001, chapter 591, in second session of the 120th Legislature in 2002.

²⁷ Enacted as PL 2001, chapter 578, in second session of 120th Legislature in 2002.

²⁸ Enacted as PL 2000, chapter 776, in second session of the 119th Legislature in 2000. Several errors in that law were corrected by LD 2334, Part R.

LD 2600 also directed the State Planning Office and Department of Environmental Protection to promote the Maine Municipal Brownfields Revolving Loan Fund and the Voluntary Response Action Program and to submit a joint report to the 120th Legislature evaluating the initiative for expansion.

LD 2600 also established the Task Force to Study Growth Management and directed it to review Planning & Land Use Regulation Act, with the goal of making it more responsive to the issue of sprawl, as well as the state's enabling legislation for impact fees and the municipal subdivision law.

LD 2600 also directed the Maine State Housing Authority to submit a report to both the Natural Resources and Business and Economic Development Committees to describe efforts to design and implement a home ownership program for service centers that was modeled after the New Neighbors program.

Joint Order HP 1330 and Senate Amendment A (S-371)²⁹ established the Joint Study Committee to Study Growth Management to study the issues related to sprawl and growth management in Maine.

LD 2070³⁰ established the Community Preservation Advisory Committee as an ongoing entity to advise the Governor, the Legislature and the State Planning Office on matters relating to community preservation.

School Siting: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that municipalities using state dollars to construct new schools site be required to site them in a community's locally designated growth area or, if it does not have a comprehensive plan that designates a growth area, in an area that is either served by public sewer, is a census designated place or is an urban compact area. If a municipality doesn't select one of these locations, state funds were recommended to be used for the project only if the municipality's land use regulations do not prohibit denser residential development within ½ mile of the school property. LD 2600³¹ took a somewhat different approach, requiring the State Board of Education to adopt rules regarding the siting of new state-funded schools and include consideration of priority locations, as detailed in the Task Force's recommendations.

This rule was subsequently adopted³² and applies to the siting of all new school construction projects that receive state funding. Under the rule, the Board of Education must consider school administrative units' requests for site approval with consideration for preferred locations, essentially defined as recommended by the Task Force. When a school administrative unit selects a site that is not within a preferred area, it must provide a written explanation of its site selection for State Board of Education consideration.

LD 2600 also directed the State Planning Office and the Department of Education to submit a joint report to the Natural Resources Committee on recommendations regarding land use and zoning ordinances near newly constructed schools.

Service Center Communities: LD 2510³³ provided for additional state-municipal revenue sharing for municipalities with a higher-than-average property tax burden. It appropriated \$3.6 million in one-time funds to be distributed in June 2001 to municipalities with disproportionate tax burdens.

The Legislature approved major substantive rules defining service centers in LD 2144.³⁴

²⁹ Enacted as PL 2001, chapter ___, in first session of the 120th Legislature in 2001.

³⁰ Enacted as PL 2001, chapter 648, in second session of the 120th Legislature in 2002.

³¹ Enacted as PL 2000, chapter 776, in second session of 119th Legislature in 2000.

³² Enacted as Resolve 2001, chapter 47, chapter 60, New School Siting Approval, in first session of 120th Legislature in 2001.

³³ Enacted as PL 1999, chapter 731, in second session of 119th Legislature in 2000.

³⁴ Enacted as PL 2001, chapter ___, in second session of 120th Legislature in 2002.

State Facilities: LD 2600³⁵ directed the Bureau of General Services to develop site selection criteria for state office buildings and community facilities that give preference to priority locations in service centers, downtowns, and locally designated growth areas. See Downtowns discussion above for description of Leasehold Improvement Fund, which was not authorized or funded.

LD 2059³⁶ clarified that site selection criteria for state facilities may require on-site parking only if it is necessary to meet critical program needs and to ensure reasonable access for agency clients and persons with disabilities. It also clarified that employee parking that is within reasonable walking distance may be located off site. Finally, it required the Department of Administrative and Financial Services to consult with the authorized bargaining agent of the employees if there is a change in employee parking at a state facility from on-site parking to off-site parking.

Subdivision Law: LD 1278³⁷ amended the definition of subdivision and provided that a municipality may not enact an ordinance that expands the definition of subdivision except as provided in the law.³⁸ LD 1278 also required the State Planning Office to study the status of municipal subdivision ordinances and report to the Joint Standing Committee on Natural Resources.

LD 2119³⁹ placed limits on the ability of municipalities to modify the definition of "subdivision" to modify and remove certain exemptions. It also provided that a municipality may not enact an ordinance that expands the definition of "subdivision" except as provide in state law. It also provided that if, at the time chapter 651 took effect, a municipality had a definition of "subdivision" that conflicts with the statutory definition of "subdivision," that municipality must file its conflicting definition at the registry of deeds. LD 2119 also removed the 40-acre lot exemption from the definition of "subdivision," except that a municipality may affirmatively elect not to count 40-acre lots as lots for purposes of subdivision review.

LD 2037⁴⁰ removed the retroactivity provision established in LD 1278.

LD 2082⁴¹ amended the subdivision review criteria for traffic to require a determination that a proposed subdivision will not reduce the speed of a mobility arterial.

Transfer of Development Rights: LD 2049⁴² clarified that a single municipality may enact a transfer of development rights program for the transfer of development rights within the municipality's boundaries. Two or more municipalities may only provide for the transfer of development rights between municipalities if the municipalities have entered into an interlocal agreement.

Transportation Issues

Access Management: LD 2550⁴³ expanded the purposes of the access management law and established a process for permitting new driveways, entrances and approaches on Maine's major highways.

LD 1774⁴⁴ authorized final adoption of Chapter 299: Highway Driveway and Entrance Rules, Parts A and B, a major substantive rule of the Department of Transportation.

³⁵ Enacted as PL 2000, chapter 776, in second session of 119th Legislature in 2000.

³⁶ Enacted as PL 2001, chapter 593, in second session of the 120th Legislature in 2002.

³⁷ Enacted as PL 2001, chapter 359, in first session of 120th Legislature in 2001.

³⁸ The provisions that would have repealed this provision as of October 2002 and apply them retroactively were eliminated in the second session of the 120th Legislature in 2002.

³⁹ Enacted as PL 2001, chapter 651, in second session of 120th Legislature in 2002.

⁴⁰ Enacted as PL 2000, chapter __, in second session of 120th Legislature in 2002.

⁴¹ Enacted as PL 2001, chapter __, in second session of 120th Legislature in 2002.

⁴² Enacted as PL 2001, chapter 592, in second session of 120th Legislature in 2002..

⁴³ Enacted as PL 1999, chapter 676, in second session of the 119th Legislature in 2000.

⁴⁴ Enacted as Resolve 2001, chapter 46, in first session of 120th Legislature in 2001.

See also Subdivision above for discussion of amendment of subdivision review criteria regarding access management.

Planning Assistance to Municipalities: LD 2550⁴⁵ required the Department of Transportation to work cooperatively with the State Planning Office and regional councils to provide training, technical assistance, and information to municipalities on road planning, maintenance, sidewalks and neighborhood involvement to assist them in addressing smart growth issues by preserving traditional downtowns, walkable communities and compact neighborhoods.

Transit Projects: LD 2550⁴⁶ required the Department of Transportation to begin a strategic planning process relating to transit, including marketing of transit, innovative financing of transit projects, connectivity to airports and rail and other issues. LD 2550 also requires MDOT to work with other agencies to identify funding sources for innovative transit and transportation projects that address sprawl and air quality issues.

Taxation Issues

Current Use Taxation: LD 2510⁴⁷ amended provisions of the Farmland Tax Law to reduce the penalty for withdrawal to the minimum required by the State Constitution. The law also required the Department of Agriculture, Food and Rural Resources and the bureau of Revenue Services to update the guidelines for the valuation of farmland by December 31, 2000 and biennially thereafter with suggested values by region, as appropriate. A critical component of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development's recommendation was not funded. It would have offered 90% municipal reimbursement for enrolled farmland as is done for land enrolled in the tree growth tax program. LD 2669⁴⁸ provided a refund of sales tax paid on electricity purchased for use in commercial agricultural production, commercial fishing and commercial aquaculture production.

LD 765, designed to increase the reimbursement to communities for lost revenue under the tree growth tax law, was not adopted by the legislature in the first session of the 120th Legislature. LD 1007⁴⁹, which prevented the use of current use tax programs (tree growth, farmland, and open space) was adopted by the Legislature.

A constitutional amendment to extend current use tax designation to the fishing industry was defeated in 2000.

Service Centers: The Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development recommended that a Service Center Relief Fund be established to provide relief to regional service center communities, which provide regional services which are generally not financially supported by area communities and many state funding formulas. LD 2510 established a second-tier of revenue sharing that transferred additional funds to service center and other communities with high tax burdens. A one-time appropriation of \$3.6 million was made in FY01 to seed the fund⁵⁰.

Sprawl Offset Tax: In the first session of the 120th Legislature, Representative Lamoine sponsored LD 1398, the sprawl offset tax. This bill, though unsuccessful, was the Legislature's first attempt to address the fact that development in locally designated rural areas is often less expensive, or at least is perceived to be less expensive in the short term, than in locally designated growth areas.

⁴⁵ Enacted as PL 2000, chapter __, in second session of the 119th Legislature in 2000.

⁴⁶ Enacted as PL 2000, chapter __, in second session of 119th Legislature in 2000.

⁴⁷ Enacted as PL 1999, chapter 676, in second session of the 119th Legislature in 2000.

⁴⁸ Enacted as PL 1999, chapter 757, in second session of the 119th Legislature in 2000.

⁴⁹ Enacted as PL 2001, chapter 305, in the first session of the 120th Legislature in 2001.

⁵⁰ Enacted as PL 2000, chapter __, by second session of 119th Legislature in 2000.

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Appendix E: Draft Legislation Implementing Committee Recommendations

The following six legislative proposals by CPAC members have been published as LDs at the time this report was completed:

1. LD 462, An Act to Direct the Department of Transportation to Incorporate Regionalism into the Transit Bonus Payment Program, Sponsored by Rep. Janet McLaughlin

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §1807, sub-§6, as enacted by PL 2001, c. 681, §1, is amended to read:

6. Rules. The commissioner shall adopt rules to implement this section. The rules must give preference to towns that operate a transit service that has a regional component. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~4-A~~ 2-A.

SUMMARY

This bill directs the Department of Transportation to adopt rules regarding the transit bonus payment program that give preference to towns that operate a transit service that has a regional component.

2. LD 463, An Act to Enhance Integration of Transportation and Land Use Planning, Sponsored by Rep. Janet McLaughlin

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §73, sub-§4, as enacted by IB 1991, c. 1, §1, is amended to read:

4. Rulemaking. The Department of Transportation shall adopt a rule within one year of the effective date of this Act, in coordination with the Maine Turnpike Authority and state agencies including the Department of Economic and Community Development, the State Planning Office and the Department of Environmental Protection, to implement the statewide comprehensive transportation policy. The rule must incorporate a public participation process that provides municipalities and other political subdivisions of the State and members of the public notice and opportunity to comment on transportation planning decisions, capital investment decisions, project decisions and compliance with the statewide transportation policy.

The Department of Transportation shall adopt a rule, in coordination with the State Planning Office, that establishes linkage between the planning processes outlined in this section and those promoted by Title 30-A, chapter 187, subchapter 2 and that promotes investment incentives for communities that adopt and implement land use plans that minimize over-reliance on the state highway network. This rule is a major substantive rule as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill requires the Department of Transportation to adopt a major substantive rule that establishes linkage between the Sensible Transportation Policy Act and comprehensive planning and land use regulation laws. The rule must also promote investment incentives for communities that adopt and implement land use plans that minimize over-reliance on the state highway network.

3. **LD 858, An Act to Amend the Tax Increment Financing Laws to Include Affordable Housing, Sponsored by Rep. Peter Mills**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA c. 206, sub-c. 3 is enacted to read:

SUBCHAPTER 3

**MUNICIPAL AFFORDABLE HOUSING
DEVELOPMENT DISTRICTS**

§5245. Findings and declaration of necessity

1. Legislative finding. The Legislature finds that there is a need for the development of affordable, livable housing and the containment of the costs of unplanned growth in Maine municipalities.

2. Authorization. For the reasons set out in subsection 1, a municipality may develop a program to provide impetus for affordable housing development within a district of the municipality, as provided in the comprehensive plan adopted by the legislative body of the municipality.

3. Declaration of public purpose. It is declared that the actions required to assist the implementation of affordable housing development programs are a public purpose and that the execution and financing of these programs are a public purpose.

§5246. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affordable housing. "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

2. Affordable housing development district. "Affordable housing development district" or "district" means a specified area within the corporate limits of a municipality that has been designated as provided under sections 5247 and 5250 to be developed under an affordable housing development program and financed under section 5250-A.

3. Affordable housing development program. "Affordable housing development program" or "program" means a statement of means and objectives designed to encourage the development and maintenance of affordable housing within an affordable housing development district.

4. Amenities. "Amenities" means items of street furniture, signs and landscaping, including, but not limited to, plantings, benches, trash receptacles, street signs, sidewalks and pedestrian malls.

5. Authority. "Authority" means the Maine State Housing Authority.

6. Captured assessed value. "Captured assessed value" means the amount, as a percentage or stated sum, of increased assessed value that is utilized from year to year to finance the project costs contained within the affordable housing development program.

7. Current assessed value. "Current assessed value" means the assessed value of the district certified by the municipal assessor as of April 1st of each year that the affordable housing development district remains in effect.

8. Director. "Director" means the Director of the Maine State Housing Authority.

9. Financial plan. "Financial plan" means a statement of the project costs and sources of revenue required to accomplish the affordable housing development program.

10. Increased assessed value. "Increased assessed value" means the valuation amount by which the current assessed value of an affordable housing development district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original, there is no increased assessed value.

11. Maintenance and operation. "Maintenance and operation" means all activities necessary to maintain affordable housing after development and all activities necessary to operate the affordable housing, including, but not limited to, informational, promotional, safety and surveillance activities.

12. Original assessed value. "Original assessed value" means the assessed value of an affordable housing development district as of March 31st of the tax year preceding the year in which it was designated.

13. Project costs. "Project costs" means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249, subsection 1 and included in an affordable housing development program.

14. Tax increment. "Tax increment" means real property taxes assessed by a municipality, in excess of any state, county or special district tax, upon the increased assessed value of property in the affordable housing development district.

15. Tax shifts. "Tax shifts" means the effect on a municipality's state revenue sharing, education subsidies and county tax obligations that results from the designation of an affordable housing development district and the capture of increased assessed value.

16. Tax year. "Tax year" means the period of time beginning on April 1st and ending on the succeeding March 31st.

§5247. Affordable housing development districts

1. Creation. A municipal legislative body may designate an affordable housing development district within the boundaries of the municipality in accordance with the requirements of this subchapter. If the municipality has a charter, the designation of an affordable housing development district may not be in conflict with the provisions of the municipal charter.

2. Considerations for approval. Before designating an affordable housing development district within the boundaries of a municipality, or before establishing an affordable housing development program for a designated affordable housing development district, the legislative body of a municipality must consider whether the proposed district or program will contribute to the expansion of affordable housing opportunities within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the

municipality. Interested parties must be given a reasonable opportunity to present testimony concerning the proposed district or program at the hearing provided for in section 5250, subsection 1. If an interested party claims at the public hearing that the proposed district or program will result in a substantial detriment to that party's existing property interests in the municipality and produces substantial evidence to that effect, the legislative body shall consider that evidence. When considering that evidence, the legislative body also shall consider whether any adverse economic effect of the proposed district or program on that interested party's existing property interests in the municipality is outweighed by the contribution made by the district or program to the availability of affordable housing within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the municipality.

3. Conditions for approval. Designation of an affordable housing development district is subject to the following conditions.

A. At least 25%, by area, of the real property within an affordable housing development district must:

(1) Be suitable for residential use;

(2) Be a blighted area; or

(3) Be in need of rehabilitation or redevelopment.

B. The affordable housing development district is subject to the area cap established in section 5223, subsection 3, paragraph B.

C. The original assessed value of a proposed affordable housing development district plus the original assessed value of all existing affordable housing development districts within the municipality may not exceed 5% of the total value of taxable property within the municipality as of April 1st preceding the date of the director's approval of the designation of the proposed affordable housing development district.

D. The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within any county may not exceed \$50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation.

E. The affordable housing development program must show that the development meets an identified community housing need. The affordable housing development program must provide a mechanism to ensure the ongoing affordability for a period of at least 5 years.

F. Acquisition, construction and installment of all property improvements, buildings, structures, fixtures and equipment included within the affordable housing development program and financed through municipal bonded indebtedness must be completed within 5 years of the director's approval of the designation of the affordable housing development district.

4. Powers of municipality. Within an affordable housing development district and consistent with an affordable housing development program, a municipality may acquire, construct, reconstruct, improve, preserve, alter, extend, operate or maintain property or promote development intended to meet the objectives of the affordable housing development program. Pursuant to the affordable housing development program, the municipality may

acquire property, land or easements through negotiation or by using eminent domain powers in the manner authorized for community development programs under section 5204. The municipality's legislative body may adopt ordinances regulating traffic in and access to any facilities constructed within the affordable housing development district. The municipality may install public improvements.

§5248. Affordable housing development programs

1. Adoption. The legislative body of a municipality shall adopt an affordable housing development program for each affordable housing development district. The affordable housing development program must be adopted at the same time as the district as part of the district adoption proceedings or, if at a different time, in the same manner as adoption of the district, with the same notice and hearing requirements of section 5250. Before adopting an affordable housing development program, the municipal legislative body shall consider the factors and evidence specified in section 5247.

2. Requirements. The affordable housing development program must include:

- A. A financial plan in accordance with subsection 3;
- B. A description of facilities, improvements or programs to be financed in whole or in part by the affordable housing development program;
- C. Plans for the relocation of persons displaced by the development activities;
- D. The environmental controls to be applied;
- E. The proposed operation of the affordable housing development district after the planned improvements are completed;
- F. An assurance that the program complies with section 4349-A;
- G. The duration of the program, which may not exceed 30 years from the date of designation of the district; and
- H. All documentation submitted to or prepared by the municipality under section 5247, subsection 2.

3. Financial plan for affordable housing development district. The financial plan for an affordable housing development district must include:

- A. Cost estimates for the affordable housing development program;
- B. The amount of public indebtedness to be incurred;
- C. Sources of anticipated revenues;
- D. A description of the terms and conditions of any agreements, contracts or other obligations related to the affordable housing development program; and
- E. For each year of the affordable housing development program:
 - (1) Estimates of increased assessed values of the district;

(2) The portion of the increased assessed values to be applied to the affordable housing development program as captured assessed values and resulting tax increments in each year of the program; and

(3) A calculation of the tax shifts resulting from designation of the affordable housing development district.

4. Limitation. For affordable housing development districts, a municipality may expend the tax increments received for any affordable housing development program only in accordance with the financial plan.

§5249. Project costs

1. Authorized project costs. The director shall review proposed project costs to ensure compliance with this subsection. Authorized project costs are:

A. Costs of improvements made within the affordable housing development district, including, but not limited to:

(1) Capital costs, including, but not limited to:

(a) The acquisition of land or construction of public infrastructure improvements for affordable housing development;

(b) The demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures;

(c) Site preparation and finishing work; and

(d) All fees and expenses that are eligible to be included in the capital cost of such improvements, including, but not limited to, licensing and permitting expenses and planning, engineering, architectural, testing, legal and accounting expenses;

(2) Financing costs, including, but not limited to, closing costs, issuance costs and interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(3) Real property assembly costs;

(4) Professional service costs, including, but not limited to, licensing, architectural, planning, engineering and legal expenses;

(5) Administrative costs, including, but not limited to, reasonable charges for the time spent by municipal employees in connection with the implementation of an affordable housing development program;

(6) Relocation costs, including, but not limited to, relocation payments made following condemnation;

(7) Organizational costs relating to the establishment of the affordable housing district, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public about the creation of affordable housing development districts and the implementation of project plans;

(8) Costs of facilities used predominantly for recreational purposes, including, but not limited to, recreation centers, athletic fields and swimming pools; and

(9) Costs for child care, including finance costs and construction, staffing, training, certification and accreditation costs related to child care located in the affordable housing development district; and

B. Costs of improvements that are made outside the affordable housing development district but are directly related to or are made necessary by the establishment or operation of the district, including, but not limited to:

(1) That portion of the costs reasonably related to the construction, alteration or expansion of any facilities not located within the district that are required due to improvements or activities within the district, including, but not limited to, sewage treatment plants, water treatment plants or other environmental protection devices; storm or sanitary sewer lines; water lines; electrical lines; improvements to fire stations; and amenities on streets;

(2) Costs of public safety improvements made necessary by the establishment of the district;

(3) Costs of funding to mitigate any adverse impact of the district upon the municipality and its constituents. This funding may be used for public facilities and improvements; and

(4) Costs to establish permanent housing development revolving loan funds or investment funds.

2. **Limitation.** Tax increments received from any affordable housing development program may not be used to circumvent other tax laws.

§5250. Procedure

1. **Notice and hearing.** Before designating an affordable housing development district or adopting an affordable housing development program, the municipal legislative body or the municipal legislative body's designee must hold at least one public hearing on the proposed district. Notice of the hearing must be published at least 10 days before the hearing in a newspaper of general circulation within the municipality.

2. **Review by director.** Before final designation of an affordable housing development district, the director shall review the proposal for the district to ensure that the proposal complies with statutory requirements.

3. **Effective date.** A designation of an affordable housing development district is effective upon approval by the director.

4. **Administration of district.** The legislative body of a municipality may create a department, designate an existing department, office, agency, municipal housing or redevelopment authority or enter into a contractual arrangement with a private entity to administer activities authorized under this subchapter.

5. **Amendments.** A municipality may amend a designated affordable housing development district or an adopted affordable housing development program only after meeting the requirements of this section for designation of an affordable housing

development district or adoption of an affordable housing development program. A municipality may not amend the designation of an affordable housing development district if the amendment would result in the district's being out of compliance with any of the conditions in section 5247, subsection 3.

§5250-A. Affordable housing tax increment financing

1. Designation of captured assessed value. A municipality may retain all or part of the tax increment revenues generated from the increased assessed value of an affordable housing development district for the purpose of financing the affordable housing development program. The amount of tax increment revenues to be retained is determined by designating the captured assessed value. When an affordable housing development program for an affordable housing development district is adopted, the municipal legislative body shall adopt a statement of the percentage of increased assessed value to be retained as captured assessed value in accordance with the affordable housing development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The municipal assessor shall certify the amount of the captured assessed value to the municipality each year.

2. Certification of assessed value. Upon or after the formation of an affordable housing development district, the assessor of the municipality in which the district is located shall certify the original assessed value of the taxable property within the boundaries of the affordable housing development district. Each year after the designation of an affordable housing development district, the municipal assessor shall certify the amount by which the assessed value has increased or decreased from the original value.

Nothing in this subsection allows or sanctions unequal apportionment or assessment of the taxes to be paid on real property in the State. An owner of real property within the affordable housing development district pays real property taxes apportioned equally with property taxes paid elsewhere in the municipality.

3. Affordable housing development program fund; affordable housing tax increment revenues. If a municipality has designated captured assessed value under subsection 1, the municipality shall:

A. Establish an affordable housing development program fund that consists of the following:

(1) A project cost account that is pledged to and charged with the payment of project costs that are outlined in the financial plan and are paid in a manner other than as described in subparagraph (2); and

(2) In instances of municipal indebtedness, a development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on any notes, bonds or other evidences of indebtedness that were issued to fund or refund the cost of the affordable housing development program fund;

B. Annually set aside all affordable housing tax increment revenues on captured assessed values and deposit all such revenues to the appropriate affordable housing development program fund account established under paragraph A in the following order of priority:

(1) To the affordable housing development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the

account and earnings on the amount, to satisfy all annual debt service on bonds and notes issued under section 5250-D and the financial plan; and

(2) To the affordable housing project cost account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual affordable housing project costs to be paid from the account;

C. Make transfers between affordable housing development program fund accounts established under paragraph A as required, provided that the transfers do not result in a balance in the affordable housing development sinking fund account that is insufficient to cover the annual obligations of that account; and

D. Annually return to the municipal general fund any tax increment revenues remaining in the affordable housing development sinking fund account established under paragraph A in excess of those estimated to be required to satisfy the obligations of the development sinking fund account after taking into account any transfers made under paragraph C. The municipality, at any time during the term of the district, by vote of the municipal officers, may return to the municipal general fund any tax increment revenues remaining in the project cost account established under paragraph A in excess of those estimated to be required to satisfy the obligations of the development project cost account after taking into account any transfer made under paragraph C. In either case, the corresponding amount of local valuation may not be included as part of the captured assessed value as specified by the municipality.

§5250-B. Rules

The director may adopt rules necessary to carry out the duties imposed by this subchapter and to ensure municipal compliance with this subchapter following designation of an affordable housing development district. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§5250-C. Grants

A municipality may receive grants or gifts for any of the purposes of this subchapter. The tax increment revenues within an affordable housing development district may be used as the local match for certain grant programs.

§5250-D. Bond financing

The legislative body of a municipality may authorize, issue and sell bonds, including but not limited to general obligation or revenue bonds or notes, that mature within 20 years from the date of issue to finance all project costs needed to carry out the affordable housing development program within the affordable housing development district. The municipal officers authorized to issue the bonds or notes may borrow money in anticipation of the sale of the bonds for a period of up to 3 years by issuing temporary notes and notes in renewal of the bonds. All revenues derived under section 5250-A received by the municipality are pledged for the payment of the activities described in the affordable housing development program and used to reduce or cancel the taxes that may otherwise be required to be expended for that purpose. The notes, bonds or other forms of financing may not be included when computing the municipality's net debt. Nothing in this section restricts the ability of the municipality to raise revenue for the payment of project costs in any manner otherwise authorized by law.

§5250-E. Administration

1. Reports. The legislative body of a municipality must report annually to the director regarding the status of an affordable housing development district. The report must:

A. Certify that the public purpose of the affordable housing district, as outlined in this subchapter, is being met;

B. Account for any sales of property within the district; and

C. Certify that rental units within the affordable housing development district have remained affordable.

2. Recovery of public funds. The authority shall develop by rule provisions for recovery of public revenue if conditions for approval of an affordable housing development district are not maintained for the duration of the district. Rules adopted by the authority pursuant to this subsection must be submitted to the Legislature in accordance with Title 5, chapter 375, subchapter 2-A.

§5250-F. Advisory board

The legislative body of a municipality may create an advisory board, a majority of whose members must be owners or occupants of real property located in or adjacent to the affordable housing development district they serve. The advisory board shall advise the legislative body on the planning and implementation of the affordable housing development program, the construction of the district and the maintenance and operation of the district after the program has been completed.

§5250-G. Unorganized territory

For the purposes of this subchapter, a county may act as a municipality for the unorganized territory within the county and may designate affordable housing development districts within the unorganized territory. When a county acts under this section, the county commissioners act as the municipality and as the municipal legislative body, the State Tax Assessor acts as the municipal assessor and the unorganized territory fund receives the funds designated for the municipal general fund.

SUMMARY

This bill creates a separate tax increment financing law for affordable housing development districts.

4. **LD 395, An Act to Clarify the Use of Municipal Rate of Growth Ordinances, Sponsored by Rep. Ed Suslovic**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4360, as enacted by PL 2001, c. 591, §1, is repealed and the following enacted in its place:

§4360. Rate of growth ordinances

A municipality may enact an ordinance under its home rule authority limiting the number of building or development permits issued over a designated time frame, referred to in this section as a "growth rate ordinance," only under the following circumstances.

1. Temporary growth rate ordinance. A temporary growth rate ordinance must meet the following requirements:

A. The temporary growth rate ordinance is needed to provide time for the municipality while it takes specific actions to improve facilities or services needed to accommodate growth;

B. The temporary growth rate ordinance is enacted for a definite term, not to exceed 2 years, unless the municipality is granted an exception pursuant to rules established by the office. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and

C. A municipality may not enact a temporary growth rate ordinance more than once during any 10-year period.

2. Ongoing growth rate ordinance. An ongoing growth rate ordinance may be enacted only as part of an integrated growth management strategy that includes the following components:

A. An adopted comprehensive plan that is consistent with the planning and land use regulation laws under this chapter;

B. A clear justification in the comprehensive plan under paragraph A that:

(1) Identifies existing or projected capacity problems regarding municipal facilities and services;

(2) Provides a strategy in the capital investment plan for increasing capacity regarding municipal facilities and services;

(3) Links the proposed growth rate ordinance to an allocation of existing and future capacity regarding municipal facilities and services;

(4) Provides a basis for the amount of growth to be allowed under the growth rate ordinance that considers the municipality's historic growth rates and its reasonable share of future growth anticipated in the region;

(5) Considers the impact of the growth rate ordinance on housing affordability; and

(6) Considers the impact of the growth rate ordinance on neighboring communities;

C. A requirement that the number of building permits issued annually under the growth rate ordinance must be no less than the average number of permits issued annually by the municipality for the 10 years prior to adoption of the growth rate ordinance;

D. A requirement in the growth rate ordinance that the municipality review every 5 years the justification in the comprehensive plan under paragraph B to determine whether the growth rate ordinance is still necessary and how the growth rate ordinance may be adjusted to meet current conditions; and

E. A requirement that residential housing units affordable to low-income households as defined by rule be exempt from building cap provisions within the municipality's growth areas as designated within its comprehensive plan under paragraph A. This exemption does not apply to communities that provide adequate housing opportunities locally for this income group and that provide a reasonable share of adequate housing opportunities on a regional basis, as determined by the Maine State Housing Authority. In reviewing and approving proposals for housing units affordable for low-income households, municipalities may require provisions ensuring that these units, as built, will be sold or rented for a price that is affordable for this group as established by rule and that the affordability will be maintained in subsequent resale or future rental of the units.

The office shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Growth rate ordinances that apply outside designated growth areas. A municipality with a comprehensive plan adopted pursuant to the planning and land use regulation laws under this chapter may adopt an ongoing growth rate ordinance that applies only to designated rural areas if:

A. That growth rate ordinance is recommended in the comprehensive plan as a mechanism for guiding growth; and

B. The comprehensive plan lays out policies and strategies for accommodating most of the community's future growth in designated growth areas.

SUMMARY

This bill outlines how a municipality may adopt a growth rate ordinance. Temporary growth rate ordinances may be enacted only to slow development while a community works toward solving the problems necessitating the growth rate ordinance. An ongoing growth rate ordinance may be enacted only as part of an integrated growth management strategy and also may be used in designated rural areas as a mechanism to guide growth within a community. The bill also clarifies that a municipality with a comprehensive plan may implement a growth rate ordinance that applies only to designated rural areas.

5. LD 389, An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda, Sponsored by Rep. Ed Suslovic

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it has become increasingly common for citizen groups to circulate petitions for citizen initiatives and referenda proposing amendments to municipal ordinances or bylaws that, if enacted, would have the effect of retroactively invalidating, repealing, revoking or modifying building permits, land use approvals or other actions permitting development after these permits or approvals were issued or these actions have been taken; and

Whereas, this retroactive effect creates uncertainty and discourages the development of commercial and industrial projects in this State; and

Whereas, immediate enactment of this legislation is necessary to eliminate the uncertainties of doing business in this State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §3001, sub-§5 is enacted to read:

5. Limitation on ordinance power. A municipal ordinance or bylaw enacted by citizen initiative or referendum may not invalidate, repeal, revoke, modify or have the effect of invalidating, repealing, revoking or modifying any building permit, zoning permit, land use approval, subdivision approval, site plan approval, rezoning, certification, variance or other action having the effect of permitting development if that permit or approval was issued or that action was taken prior to the enactment of that ordinance or bylaw.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

SUMMARY

This bill prohibits municipal ordinances or bylaws enacted by citizen initiative or referendum from containing retroactivity provisions that have the effect of invalidating, repealing, revoking or modifying any building permit, land use approval or other action having the effect of permitting development if that permit or approval was issued or that action was taken prior to enactment of the ordinance or bylaw.

6. LD 688, An Act to Provide Incentives for Municipalities to Adopt a Building Rehabilitation Code, Sponsored by Rep. Koffman

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4105 is enacted to read:

§4105. Building rehabilitation code; incentives

A municipality that adopts the most recent version of the building rehabilitation code that has been prepared by the International Code Council, the Building Officials and Code Administrators International or the National Fire Protection Association must be given preference for economic development grants administered by the Department of Economic and Community Development. The Department of Economic and Community Development, in coordination with the State Planning Office, shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill provides that a municipality that adopts the rehabilitation component of a nationally recognized building code must be given preference for economic development grants administered by the Department of Economic and Community Development.