MAINE FARMLAND TRUST

MAINE AUDUBON

The Nature Conservancy Maine

Committee on Energy, Utilities and Technology
% Legislative Information Office
100 State House Station
Augusta, ME 04333

May 9, 2023

RE: LD 1830, An Act to Advance Maine's Clean Energy Goals

Dear Senator Lawrence, Representative Zeigler, and Members of the Committee:

Thank you for the opportunity to submit testimony in support of LD 1830, An Act to Advance Maine's Clean Energy Goals, on behalf of Maine Audubon, Maine Farmland Trust, and The Nature Conservancy in Maine. We would like to thank Senator Vitelli for her policy leadership, and for fostering an environment in Maine that strives for the rapid deployment of critical renewable energy infrastructure while preserving key values around siting and mitigation. Our testimony includes a suggested, friendly amendment to that end.

LD 1830, in addition to requiring that the Governor's Energy Office (GEO), in consultation with Maine's Public Utilities Commission (PUC), review and report on the impact of the State's renewable resources portfolio requirement, would authorize the PUC to conduct a competitive solicitation for contracts to procure new renewable energy sources, including solar and terrestrial wind. The amount of energy procured would equal 5% of retail electricity sales in the state during calendar 2021, a meaningful step toward Maine's mandatory target of 80% of retail electricity sales from renewable resources by 2030 and 100% by 2050. Maine Audubon, Maine Farmland Trust, and The Nature Conservancy in Maine support this legislation as a critical strategy to protect wildlife and Maine's natural resources, including agricultural resources, from the worst impacts of climate change.

The bill would also require the PUC, in conducting their solicitation and selection of resources, to give special consideration to projects located on lands that have been contaminated with perfluoroalkyl and polyfluoroalkyl ("PFAS") substances (in addition to benefits to ratepayers, project viability, and effects on other Class 1A resources). Our organizations are particularly pleased with this element of the bill.

Locating renewable energy development on PFAS-contaminated lands would create an economic opportunity for farmers. Currently, there is no way to remediate PFAS contamination

in soils. As the Maine Department of Environmental Protection and Maine Department of Agriculture, Conservation and Forestry investigate the more than 700 sites suspected to have contamination based on the State-permitted application of residuals (which include industrial waste products and biosolids from municipal sewage), some properties have been found to have concentrations of PFAS contamination that are high enough to prevent farming in the near-term. Farmers across Maine are being forced to face the fact that their land may be no longer usable for agricultural purposes. This has enormous implications for the financial stability of farmers and their families. Locating renewable energy projects on these lands would provide a revenue stream from otherwise unusable land.

Incentivizing renewable energy development on PFAS-contaminated lands is also a leading example of thoughtful renewable energy siting that balances clean energy and natural resource conservation goals. New renewable energy development – like any new development – if not thoughtfully sited, can displace wildlife habitat and otherwise negatively impact Maine's natural resources, including agricultural resources. The natural resource value of PFAS-contaminated lands, however, is minimal.

The attached friendly amendment expands on the concept of incentivizing renewable energy development on land with little to no natural resource value or away from lands with exceptionally high natural resource value. Specifically, the amendment would favor projects located on PFAS-contaminated lands, impervious surfaces, capped landfills, brownfields, or away from areas of high ecological significance including, but not limited to, undeveloped habitat blocks and important wildlife corridors or prime agricultural soils or soils of statewide significance.

The impacted lands and natural resources included in the amendment were chosen deliberately. Of course, the bill already includes PFAS-contaminated lands. The amendment imbeds an existing statutory definition for contaminated lands, which includes impervious surfaces, capped landfills, and brownfields, as well as a definition for PFAS-contaminated lands. *See* 35-A MRSA §3484(6) (2019); 38 MRSA §1614 (2021). Utilizing existing statutory definitions supports consistent application of Maine law. Furthermore, incentivizing renewable energy development on "disturbed lands" is consistent with the Inflation Reduction Act[1], under which projects located on certain disturbed lands are eligible to receive an incremental 10% investment tax credit. Analysis by Synapse demonstrates that the incentive may make projects located on disturbed lands cost-competitive with projects located on "greenfield" or non-disturbed lands, like agricultural fields or forestland.[2]

---

[1] In August 2022, Congress passed the Inflation Reduction Act, which directs spending to climate change related programs aimed at accelerating the deployment of clean energy technology, among other climate-related goals.

[2] See *Final Report of the Distributed Generation Stakeholder Group*, submitted to the Joint Standing Committee on Energy, Utilities and Technology on January 6, 2023, pg. 33.

"Areas of high ecological significance including, but not limited to, undeveloped habitat blocks and important wildlife corridors . . . [and] . . . prime agricultural soils or soils of statewide significance" is synergistic with another legislative initiative that seeks to avoid – as well as compensate for – impacts to high value agricultural lands and other natural resources from renewable energy development. Representative Scott Landry's LD 1881, *An Act Regarding Compensation Fees and Related Conservation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-impact Electric Transmission Lines Under the Site Location of Development Laws*, would create a compensation fee program that would both incentivize locating renewable energy projects away from high value natural resources and account for projects that can not reasonably avoid those areas. LD 1881 would compel the Departments of Environmental Protection and Agriculture, Conservation and Forestry to define those areas. Our organization's proposed amendment to LD 1830 directs the PUC to consult with those Departments in their rulemaking; the Department rules (directed by LD 1881) could inform and be aligned by the PUC's rules (directed by this bill).

Encouraging renewable energy development away from high value natural resources is consistent with Maine's Climate Action Plan, which calls for the "[development] of policies by 2022 to ensure renewable energy project siting is streamlined and transparent while seeking to minimize impacts on natural and working lands…". Our organizations encourage the Committee to support this legislation, with our friendly amendment, to help achieve Maine's climate and clean energy goals, while conserving Maine's highest value natural resources.

Sincerely,

Eliza Donoghue, Esq.	Kaitlyn Nuzzo	Shelley Megquier
Director of Advocacy	Director of Government Relations	Policy & Research Director
Maine Audubon	The Nature Conservancy in Maine	Maine Farmland Trust

Proposed Amendment to LD 1830, An Act to Advance Maine's Clean Energy Goals

Sec. 1. 35-A MRSA §3209-C is enacted to read:

§3209-C. Distributed renewable generation

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Combined project" means a Class IA resource that is paired with an energy storage system in accordance with rules adopted by the commission.

B. "Contaminated land" means:

~~(1) Land that is or may be polluted in a manner that impedes development, as determined by the commission by rule in consultation with the Department of Agriculture, Conservation and Forestry; or~~

~~(2) Farmland, as defined in Title 7, section 52, subsection 4, that the Department of Agriculture, Conservation and Forestry has found to be contaminated with perfluoroalkyl and polyfluoroalkyl substances.~~

(1) Previously developed or impacted land as defined in section 3484, subsection 6; or

(2) Agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances as defined in Title 38, section 1614, that may no longer be used for agricultural purposes as determined by the Department of Agriculture, Conservation and Forestry in accordance with applicable state and federal food safety standards.

C. "Eligible Class IA resource" means a Class IA resource, as defined in section 3210, subsection 2, paragraph A-3, that is located on contaminated land.

D. "Energy storage system" has the same meaning as in section 3481, subsection 6.

2. Competitive procurement. The commission shall direct investor-owned transmission and distribution utilities to enter into one or more contracts for energy or renewable energy credits from eligible Class IA resources or combined projects in accordance with this section. Customers who have made an election pursuant to section

A. ...

B. ...

C. In conducting a solicitation and selecting Class IA resources or combined projects for contracts under this section, the commission shall:

(1) Consider project viability. The commission shall reject a bid if the commission finds that the system impact study required by the New England independent system operator for the Class IA resource has not been filed;

(2) Consider the expected effect of selected Class IA resources on other renewable resources, as defined in section 3210, subsection 2, paragraph C, due to congestion and curtailment; and

(3) Weigh the benefits to ratepayers and the benefits to the State's economy as follows:

(a) A weight of 70% must be given to the benefits to ratepayers; and

(b) A weight of 30% must be given to resources located on contaminated land; that avoid areas of high ecological significance including, but not limited to, undeveloped habitat blocks and important wildlife corridors; or that avoid prime agricultural soils or soils of statewide significance ~~the economic use of contaminated land~~, as determined by the commission by rule. The commission shall consult the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection in rulemaking.

The commission may only select Class IA resources or combined projects for contracts under this section if the commission finds the contract will benefit ratepayers and the bid price is less than the standard-offer service rate established pursuant to section 3212 that applies to residential customers in the territory of the transmission and distribution utility at the time the contract is executed.