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TESTIMONY OF
Rob Wood, Director of the Bureau of Land Resources
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 2030

**AN ACT TO EXEMPT CERTAIN EMERGENCY ACTIVITIES AND STRUCTURE
ELEVATION INCREASES IN FLOOD ZONES FROM PERMIT REQUIREMENTS
UNDER THE NATURAL RESOURCES PROTECTION ACT**

SPONSORED BY SEN. LYFORD

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

JANUARY 10, 2024

Senator Brenner, Representative Gramlich, and members of the Committee, I am Rob Wood, Director of the Bureau of Land Resources at the Department of Environmental Protection, speaking in support of L.D. 2030. I appreciate Sen. Lyford for sponsoring this bill on the Department's behalf.

L.D. 2030 proposes to exempt certain activities from permitting requirements under the Natural Resources Protection Act (NRPA) to make it easier for Maine towns and people

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to prepare for and respond to storm events and flooding. As we have witnessed in just the past year, storm events are increasing in frequency and intensity as our climate changes, resulting most recently in the devastating flooding caused by the December 18th storm across much of the state.

In preparation for these storm events, the Department seeks to communicate proactively with towns and citizens about applicable NRPA permitting requirements for emergency response and cleanup activities taking place in, on, over or adjacent to protected natural resources. Repairs of roads, bridges, culverts and other public infrastructure generally falls under existing NRPA exemptions (38 M.R.S. §480-Q(2-D)&(9)). Some cleanup activities, such as removal of man-made debris from a river, stream, or brook, can generally be performed through permit-by-rule (Ch. 305) after notifying the Department.

However, during the severe flood events that occurred in Western Maine in December and last summer, the Department fielded numerous calls requesting authorization to conduct emergency flood alleviation activities that did not fit neatly into an existing NRPA exemption or permit-by-rule option. In several cases, streams and brooks had jumped their long-existing banks and cut new paths that posed an immediate threat to public safety.

L.D. 2030 would establish an exemption allowing for an emergency activity conducted or overseen by the State or a local government in, on, over or adjacent to a river, stream or brook. This exemption would include multiple safeguards to ensure it is narrowly tailored and used only when necessary. First, the exemption would require that the emergency activity must be necessary to alleviate an *immediate* threat to public health or safety caused by a flood event. Second, the emergency activity must be necessary *during* the flood event; in other words, if the activity can wait until after flood waters have receded, then the exemption would not apply. And third, after the

emergency activity has been conducted, the river, stream or brook must be restored to the conditions that existed prior to the flood event to the greatest extent practicable.

An example that informed the Department's proposal occurred in the Town of Andover last June. During one of the many severe rainfall events that occurred last summer, a large amount of debris and sediment built up in a stream, causing the stream to jump its banks and head into a populated area, threatening houses and other infrastructure. After communicating with the Department, the town determined that, in order to protect public safety, it would need to excavate a temporary diversion to reroute the water away from the houses. The town is now working, with guidance from the Department, to close off the diversion point and restore the stream to its original, pre-flooding channel.

In addition to this type of emergency activity, L.D. 2030 proposes to exempt certain minor modifications to existing infrastructure designed to make that infrastructure more resilient to storms and flooding. The bill proposes to exempt elevating or replacing an existing building foundation if the building is in an area of special flood hazard, if the building remains in the existing building footprint, and if other conditions are met. Such an activity is already allowed under permit-by-rule (Ch. 305 §2) when the activity is not in a coastal sand dune system, and it is exempt from review altogether as a *de minimis* activity under the Department's Ch. 355 rules governing activities in coastal sand dune systems. The proposed exemption in L.D. 2030 would simply codify this existing Ch. 355 exemption, while moving the activity from permit-by-rule into an exemption when the activity is adjacent to another protected natural resource.

Finally, the bill proposes to exempt the one-time elevation of an existing pier by up to two feet. The repair or replacement of an existing pier is already exempt under NRPA (38 M.R.S. §480-Q(2)) or allowed under a permit-by-rule (Ch. 305 §4), provided that the dimensions of the pier remain the same. The newly proposed exemption would allow for

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elevating the pier one time without a permit, as long as the other dimensions of the pier remain the same.

Taken together, the package of exemptions proposed in L.D 2030 would support resilience to climate change and emergency response to storm events for Maine communities.

Thank you for the opportunity to provide testimony. I am available to answer questions of the Committee, both now and at work session.