

March 18, 2024

To: Co-Chairs Senator Brenner and Representative Gramlich, and Members of the  
Committee on Environment and Natural Resources.

VIA In Person Delivery to Co-Chairs and Committee

**RE: Testimony in Opposition to LD 2266.**

Senator Brenner, Representative Gramlich and Members of the Committee:

I am testifying as legal counsel on behalf of the Islesboro Islands Trust ("IIT") in connection with its **opposition to LD 2266 and strongly urge you to vote "ought not to pass."**

This bill is both premature and irresponsible. While IIT continues to support the development of offshore wind resources in the Gulf of Maine it strongly opposes the pre-selection of a proposed port site and industrial manufacturing facility at Sears Island. Let's be clear – this Bill is part of a bigger choice and there are far better alternatives that do more to mitigate climate change effects and do not require stripping away, as this Bill does, environmental protections implemented over the last three decades. With this Bill the Governor appears to simply ask that you just look away from nearly a half century of opposition to the development of Sears Island and begin to remove well settled protections – here for coastal dunes found on the island.

Coastal dunes are clearly protected under the Maine Natural Resources Protection Act, which requires among other things, that development not interfere with such dunes. Even a cursory reading of the Maine Title 38 statute and its implementing rules suggests these protections were also explicitly enacted to mitigate climate change effects.<sup>1</sup> This Bill removes the very climate change protections that the Governor seeks to address with its broader wind power objectives and is also inconsistent with the state's climate change laws and regulations.

Further, federal and state law under the National Environmental Policy Act ("NEPA") is clear that pre-selection of a site is unlawful because it creates a result that is

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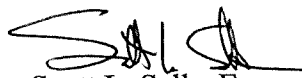
<sup>1</sup> "In 38 M.R.S.A. §480-A, the Legislature stated that the State's coastal sand dunes systems are resources of state significance and that "there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources". In order to protect valuable coastal sand dune systems, *the department will evaluate proposed developments with consideration given to future sea level rise and will impose restrictions on the density and location of development and on the size of structures.*" Maine Department of Environmental Protection Rules 06-096, Chapter 355 at p. 1 (emphasis supplied).

essentially a foregone conclusion. With its clear implications for the development for Sears Island, this Bill also appears to be another step in the Governor's attempt to do just that.

In the enthusiasm to achieve the Governor's strategic offshore wind power goal, the Bill mistakenly assumes that it really doesn't matter where the supporting factory is located. Instead, to support its preference, it has embarked on a course of action that ignores the legal and negative climate change impacts and clear choices that exist. As a result, the Committee has before it an effort to legislate away concerns before an objective and transparent site selection process can be performed. At a minimum, this strategy betrays an unconscionable lack of planning on behalf of the Governor's office and at worst is certain to invite state and federal litigation which will thwart or at least materially delay the very objective the Governor seeks – the timely development of Maine's offshore wind resources.

Accordingly, this and any proposed legislation regarding or related to the Mack Point/Sears Island site selection process should be voted "ought not to pass" until the people of the State of Maine, this Committee and its constituents, have had the benefit of all the facts, objective analysis, and the legal and practical consequences of the Governor's pre-determination.

Respectfully submitted,



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cc Stephen Miller, IIT