



Committee on Environment and Natural Resources
% Legislative Information Office
100 State House Station
Augusta, ME 04333

April 14, 2025

Re: Public Hearing, LD 269, Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act, a Major Substantive Rule of the Department of Environmental Protection & LD 1458, An Act Regarding Compensation Fees and Related Conservation Efforts for Solar and Wind Energy Development and High-impact Electric Transmission Lines Under the Site Location of Development Laws

Dear Senator Tepler, Representative Doudera and Members of the Committee:

Thank you for the opportunity to share testimony neither for, nor against LDs 269 and 1458 on behalf of the Maine Renewable Energy Association (MREA). MREA is a not-for-profit association of renewable energy producers, suppliers of goods and services to those producers, and other supporters of the industry. Our member companies include wind, solar, hydropower, biomass, and tidal energy generators and developers of such projects, as well as companies that provide services to those producers, such as environmental engineers, electricians, and general contractors.

LD 269 is a Resolve that directs the Environment and Natural Resources Committee (Committee) to review the Department of Environmental Protection's (DEP) major substantive rulemaking that creates an in-lieu fee option for solar, wind, and transmission development proposals that seek a Site Location of Development Law (Site Law) permit, as directed by Public Law 2023, Chapter 448. LD 1458 amends Public Law 2023, Chapter 448, creating an in-lieu fee option for the same development, with elements that vary from the rulemaking pursued by the DEP. MREA offers testimony neither for, nor against LD 269; while we support the bill's intent—to balance the State's natural resource conservation and clean energy goals—we believe that two amendments are necessary to achieve that intent. LD 1458 has the same underlying intent, however, may require several amendments to achieve that intent.

The rulemaking advanced by LD 269 gives project developers the option to pay a fee instead of creating conservation projects to mitigate unavoidable project impacts¹—an option

¹ Prior to Public Law 2023, Chapter 448, all projects—not just renewable energy development projects—were required to assemble conservation projects to mitigate unavoidable project impacts.

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welcomed by MREA. The rulemaking also provides project developers predictability and consistency by setting a known ceiling on compensation requirements for impacts to reasonably well-known locations. However, as written, the rules do not leave room on the landscape to develop projects that can avoid paying what can amount to large compensation fees—fees that may either cause a project to be uneconomical (i.e., not be built) or to not meet the ratepayer benefit test (i.e., not secure contracts necessary to meet Maine’s Renewable Portfolio Standard or renewable energy goals). MREA offers the attached amendments to avoid this outcome, while still incenting development to avoid valuable habitat.

The attached amendment reduces the footprint of “large undeveloped habitat blocks” that if impacted by renewable energy development must be compensated 1:1 (see Section 15-A.A)(8)). As presently defined, “large undeveloped habitat blocks” comprises 40% of the Southern ecoregion and 30% of the Central Interior and Midcoast ecoregion. This leaves veritably nowhere on the landscape to build cost-effective, grid-scale renewable energy development without triggering significant fees that, due to land values in those regions, would likely make a project uneconomical. Our proposed amendment reduces the footprint, while still incenting development to avoid valuable habitat.

The attached amendment also proposes eliminating the requirement that projects compensate for impacts well beyond the project footprint (see Section 15-A.B(1)(b)). Not only does this element unfairly target renewable energy development, particularly the first development to impact a large undeveloped habitat block, but this rule element alone may cause a significant jump in fees. For example, a known, proposed project cost in York County increases between 3 and 5 million in compensation fees (from 2 to 5.5 million) based solely on this element of the rule.

While MREA would support LD 269 if the Committee were to authorize the DEP to finally adopt the provisionally adopted rule contingent upon our offered amendments, and while we support the intent of LD 1458, we would only support the bill with the following modifications or clarifications:

- Amendments to assure that projects located on already impacted lands (i.e., areas that do not have significant habitat value) are not penalized.
- Reduced compensation ratio—the proposed 1:1 compensation fee regardless of project location (with some exceptions) would result in fees that would make projects unviable or otherwise unduly impact ratepayers. MREA would need to do additional modeling to recommend an appropriate ratio.
- It is unclear whether the bill includes a compensation ceiling. We can not support the bill if it does not.
- It is also not clear from the statute whether rulemaking will be required to implement the statute and whether the bill would override/eliminate the Chapter 375 rules. Required

rulemaking injects additional uncertainty that may cause MREA to ultimately not support the bill.

We strongly recommend that the Committee advance our suggested amendments to LD 269 or modify and clarify LD 1458 as suggested. To be clear, the rules or statute as drafted would increase project cost in southern Maine—the only area in Maine where there is currently electric-grid capacity to interconnect grid-scale renewable energy projects—by millions of dollars. These costs, particularly when coupled with routine technical rulemaking from the Department of Agriculture, Conservation and Forestry that imposes new permitting requirements and fees on solar projects, would make renewable energy projects either uneconomical (i.e., not be built) or to not meet the ratepayer benefit test necessary to count toward Maine's renewable energy goals. Our proposed amendments to the Chapter 375 rules strike the requisite balance between Maine's conservation and clean energy goals. We strongly recommend that the Committee recommend the rules contingent upon their inclusion.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Eliza Donoghue". The signature is fluid and cursive, written in a professional style.

Eliza Donoghue, Esq.
Executive Director

Proposed Amendments (In Red)

15-A. Compensation for Adverse Effects of Renewable Energy Development on Wildlife and Fisheries Habitats

A. **Definitions.** The following terms, as used in this section, have the following meanings.

- (1) Core habitat. Areas covered by forests, wetlands, natural shrublands, or natural grasslands, not including edge habitat.
- (2) Ecoregion. A region in Maine with distinctive biophysical characteristics, as defined by the Maine Natural Areas Program. Ecoregions include Southern, Central Interior and Midcoast, Central and Western Mountains, Central and Eastern Lowlands, Downeast, Northwest, and Aroostook Hills and Lowlands.
- (3) Edge habitat. A transmission corridor or an area covered by forests, wetlands, natural shrublands, or natural grasslands within:
 - (a) 250 feet of a transmission corridor;
 - (b) 500 feet of high-intensity development (80-100% impervious surface), 375 feet of medium-intensity development (50-79% impervious surface), and 250 feet of low-intensity development (20-49% impervious surface);
 - (c) 250 feet of a building;
 - (d) 250 feet of active railroads;
 - (e) 500 feet of interstates, freeways, and expressways; 375 feet of major collectors, minor collectors, minor arterial, and other principal arterial roads; and 250 feet of local, private, or gated roads; and
 - (f) 250 feet of gravel pits or quarries.

NOTE: Edge habitat and core habitat are shown on the Department's Large Undeveloped Habitat Blocks Map found under the Bureau of Land Resources heading here: <https://www.maine.gov/dep/gis/datamaps/index.html>. This map is for illustrative purposes only and is intended as guidance. Whether an area is edge habitat or core habitat is based on the definitions above.

- (4) Habitat improvement project. Reforestation, afforestation or other restoration of an area to core habitat.
- (5) Habitat preservation project. Permanent legal protection of core habitat from future development.
- (6) High-impact transmission line. A high-impact electric transmission line as defined in 35-A M.R.S. § 3131(4-A).
- (7) Important wildlife corridor. A 100-foot buffer strip adjacent to a river, stream or brook or a freshwater wetland that is contiguous with a river, stream or brook.
- (8) Large undeveloped habitat block. A contiguous area of core habitat and

edge habitat that contains a contiguous area of core habitat large enough to fit an inscribed circle larger than 500250 acres in the Southern ecoregion or larger than 750500 acres in the Central Interior and Midcoast ecoregion.

NOTE: Large undeveloped habitat blocks in the Southern and Central Interior and Midcoast ecoregions are shown on the Department's Large Undeveloped Habitat Blocks Map found under the Bureau of Land Resources heading here: <https://www.maine.gov/dep/gis/datamaps/index.html>. This map is for illustrative purposes only and is intended as guidance. Whether an area is within a large undeveloped habitat block is based on the definitions above.

- (9) Solar energy development. A solar energy system and all associated facilities necessary to operate the solar energy system, including but not limited to generator lead lines.
- (10) Wind energy development. A wind energy development as defined in 35-A M.R.S. § 3451(11) and all associated facilities, including but not limited to generator lead lines.

A. **Standard.** To demonstrate that a proposed solar energy development, wind energy development, or high-impact transmission line will not adversely affect natural resources consisting of wildlife and fisheries habitats, an applicant must compensate for likely adverse effects that cannot be avoided through alternative siting or project design. Compensation must be proposed for likely adverse effects to wildlife and fisheries habitats consisting of high and moderate value deer wintering areas, habitat of rare, threatened or endangered species, important wildlife corridors, or large undeveloped habitat blocks through on-site or off-site habitat improvements or preservation or the payment of a compensation fee in accordance with this section.

Any area of alteration that requires compensation pursuant to 38 M.R.S. §480-Z and Chapter 310 or Chapter 335 of the Department's rules will not be included in the area requiring compensation under this section. Compensation under this section may not be increased due to changes in project design made to avoid or minimize impacts to protected natural resources as defined in 38 M.R.S. §480-B, such as increases in project area required to avoid or minimize impacts to wetlands.

If an altered area that requires compensation qualifies for more than one of the compensation ratios described in sections 15-A(B)(3)(a through e), the compensation amount will be based on the highest applicable compensation ratio. Likewise, if an altered area requires compensation under section 15-A(B)(1) and also requires compensation for impacts to high-value agricultural land as defined by 38 M.R.S. §3201(1) and by rules adopted by the Department of Agriculture,

Conservation and Forestry, compensation will be governed by the statute or rule that requires the highest applicable compensation ratio for the altered area. If a higher compensation ratio is required for impacts to wildlife and fisheries habitat, then this section will apply. If a higher compensation ratio is required for impacts to high-value agricultural land, then 38 M.R.S. §484-C will apply and this section will not apply. If the compensation ratio is equivalent, this section will apply.

The Department may reduce the amount of compensation required under this section when the developer employs mitigation strategies such as vegetative tapering along project boundaries or use of wildlife-friendly fencing. Mitigation strategies for impacts to large undeveloped habitat blocks may include the creation of wildlife travel corridors. Travel corridors must be at least 500-feet wide between portions of the development and must be protected from other development.

The Department may reduce the amount of compensation required for impacts to habitat of rare, threatened or endangered species when the Department determines, in consultation with the Department of Inland Fisheries and Wildlife, that climate change is the primary threat to the species.

NOTE: For solar energy development, wind energy development, and high impact transmission lines, Section 15-A applies in place of Section 15, Protection of Wildlife and Fisheries, in the following cases: for impacts to high and moderate value deer wintering areas, habitat of rare, threatened or endangered species, and important wildlife corridors statewide, and for impacts to large undeveloped habitat blocks in the Southern ecoregion and Central Interior and Midcoast ecoregion. For solar energy development, wind energy development, and high impact transmission lines in other ecoregions, Section 15 applies for impacts to large areas of contiguous habitat. This section does not limit the Department's ability to apply Section 15 with respect to other wildlife and fisheries habitats not covered by Section 15-A, such as migratory bird pathways.

- (1) When compensation is required. A proposed solar energy development, wind energy development, or high-impact transmission line causes adverse effects requiring compensation under this section when the proposed impacts cannot be avoided through alternative siting or project design and when one or more of the following conditions occur:
 - (a) A high or moderate value deer wintering area, habitat of rare, threatened or endangered species, or important wildlife corridor is proposed to be altered, unless the Department, in consultation with the Department of Inland Fisheries and Wildlife, finds that there is no adverse effect from the alteration; or
 - (b) A portion of core habitat within a large undeveloped habitat block is

- ~~proposed to be altered such that it no longer qualifies as a large undeveloped habitat block, unless the proposed alteration is due to high impact transmission lines or generator lead lines that are co-located with existing linear infrastructure such as roads and transmission corridors; or~~
- (c) The total combined area of core habitat alteration proposed for the project within large undeveloped habitat blocks exceeds 150 acres in the Southern ecoregion or 250 acres in the Central Interior and Midcoast ecoregion, except area proposed to be altered by high-impact transmission lines or generator lead lines that are co-located with existing linear infrastructure such as roads and transmission corridors. If core habitat alteration is proposed in more than one ecoregion, the development is considered to be located in the ecoregion with the lower acreage threshold in this paragraph for the purposes of determining compensation requirements.
- (2) Compensation options. An applicant may choose whether to propose a permittee responsible habitat improvement or preservation project or pay a compensation fee to fund an off-site habitat improvement or preservation project, or a combination of these two options. A habitat improvement or preservation project:
- (a) Must consist of habitat comparable to the habitat altered by the development;
 - (b) Must be located in the same ecoregion as the solar energy development, wind energy development, or high-impact transmission line unless otherwise approved by the Department;
 - (c) May be a working forest conservation easement only if the area altered by the development is working forest; and
 - (d) Must result in permanent improvement or preservation.
- (3) Compensation amounts. Compensation must occur in the following ratios:
- (a) When the altered area is not fenced, 0.5 square feet of improvement or preservation of habitat similar to that which was impacted to compensate for 1 square foot of alteration to core habitat within large undeveloped habitat blocks.
 - (b) When the altered area is fenced, 1 square foot of improvement or preservation of habitat similar to that which was impacted to compensate for 1 square foot of alteration to core habitat within large undeveloped habitat blocks.
 - (c) 2 square feet of improvement or preservation of habitat similar to that which was impacted to compensate for 1 square foot of alteration to a high or moderate value deer wintering area, habitat of rare species, or important wildlife corridor.
 - (d) 8 square feet of improvement or preservation of habitat similar to that which was impacted to compensate for 1 square foot of alteration to habitat of threatened or endangered species.
 - (e) ~~If the alteration results in a large undeveloped habitat block no longer qualifying as a large undeveloped habitat block, the altered area will be compensated for at the ratios listed above in sections 15-A(B)(3)(a) through~~

~~(d) and the diminished value of the remainder of the core habitat within the large undeveloped habitat block will be compensated for at a ratio of 0.25 square feet of improvement or preservation of habitat similar to that which was impacted to compensate for 1 square foot of core habitat.~~

- (4) Compensation fee. If an applicant chooses to pay a compensation fee in lieu of proposing a permittee responsible compensation project, the compensation fee will be calculated by multiplying the compensation amount established pursuant to section 15-A(B)(3) by the amount paid per square foot for recent purchases of comparable land or working forest conservation easements on comparable land, as applicable, in the vicinity of the proposed development, as determined by the Department based on an appraisal conducted by a licensed appraiser or certified real estate professional. An additional fee of 5 percent of the compensation fee amount for the first \$200,000 in compensation fees and 2 percent of the compensation fee amount for the portion of compensation fees over \$200,000 will be assessed for long-term stewardship of habitat improved or preserved with compensation fees.

C. Submissions. Applications must include an analysis of how the proposed impacts to wildlife and fisheries habitats cannot be avoided through alternative siting or project design and the applicant's plan for an on-site and/or off-site habitat improvement or preservation project or the calculation of the required compensation fee.

If the Department approves a permit for the development, the permittee must initiate the permittee responsible compensation project or provide the compensation fee in the form of a check made payable to Land for Maine's Future (for alterations to large undeveloped habitat blocks or high or moderate value deer wintering areas), the Maine Endangered and Nongame Wildlife Fund (for alterations to habitat of rare, threatened or endangered species), or another appropriate fund identified by the Department prior to the start of construction. A permittee responsible compensation project must be executed before commercial operation of the development.