MAINE AUDUBON

The Nature Conservancy Maine

April 14, 2025

***Joint Standing Committee on Environment and Natural Resources***

***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***

Senator Tepler, Representative Doudera, and members of the Joint Standing Committee on Environment and Natural Resources, The Nature Conservancy and Maine Audubon thank you for the **opportunity to testify in support of LD 269 and in opposition to LD 1458.**

The Nature Conservancy (TNC) is a nonprofit conservation organization dedicated to conserving the lands and waters on which all life depends. Maine Audubon is the state's oldest and largest wildlife conservation nonprofit. Our organizations share an unwavering commitment to addressing two of the most pressing global challenges before us: biodiversity loss and climate change. **We fully support the rapid deployment of renewable energy and believe that careful siting that fully considers climate, conservation, and communities will deliver the best outcomes.**

LD 269 would provide the necessary legislative approval to implement recent updates to the provisionally-adopted Chapter 375: *No Adverse Environmental Effect Standards of the Site Location of Development Act* ("Site Law" or SLODA) rules. The Maine Department of Environmental Protection (DEP), the Board of Environmental Protection (BEP), and the Department of Agriculture, Conservation and Forestry (DACF) all deserve significant appreciation for the amount of effort they invested in developing the rules before you. This multi-agency effort took more than two years, many rounds of stakeholder input, and careful attention to ensure intersecting goals and overlapping natural resource values were considered.

We would like to provide an overview of the process that led to these provisionally-adopted rules, our thoughts on the alternatives being presented today, and the goals of both the implementing legislation and the program outlined in LD 269.

## PROCESS

Phase 1 – Stakeholder Meetings

Starting in November 2022, a group of stakeholders began meeting to discuss ways to improve the existing mitigation requirements for renewable energy development. For conservation organizations, the amount of fenced land required for these projects and the pace of development drove our involvement. For renewable developers, we understood their focus was to build more predictability and flexibility into the siting and mitigation process and to develop an affordable in lieu fee option. From the start we looked to the Maine Natural Resource Conservation Program (MNRCP), our state's existing In Lieu Fee Compensation program,

which is focused on the restoration and protection of wetlands, streams, and wildlife habitat, as a model that might offer ideas on how to structure this new program.

The stakeholder meetings included representatives from the following organizations and agencies: TNC, Maine Audubon, Maine Coast Heritage Trust, Sportsman's Alliance of Maine, Maine Farmland Trust, Maine Renewable Energy Association (MREA), renewable energy developers, Governor's Office, DACF, DEP, Governor's Energy Office (GEO), and Department of Inland Fisheries & Wildlife (DIFW). The group met eight times between November 2022 and March 2023 to provide input on legislation to help create an *optional* compensatory mitigation program for renewable energy development. The Maine Forest Products Council was invited to participate but declined.

The group spent a substantial amount of time discussing the core issues – when mitigation would be required and how much it would cost. Each organization had an opportunity to offer feedback on the bill as it was being drafted. Introduced in the 131st Legislature, the final bill, 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,* included areas of overlap and several compromises among stakeholders. One outcome was that these core issues would be established via rulemaking for both agencies. For DEP, this required defining when mitigation to wildlife and fisheries habitats (i.e., deer wintering areas; rare, threatened, or endangered species habitat; important wildlife corridors; or large undeveloped habitat blocks) would be required and setting a fee structure. Renewable energy developers pushed for major substantive rulemaking.

Phase 2 – LD 1881

On May 10, 2023, LD 1881 had a public hearing in the Agriculture, Conservation and Forestry Committee a few weeks after the final stakeholder meeting. The public hearing was well attended by conservation organizations, renewable developers, farming organizations, and state agencies. The committee chairs worked with stakeholders to make some changes to the initial bill but, ultimately, LD 1881 passed out of committee with a strong majority of 11 members voting OTP-AM and two members with a minority ONTP report. The bill passed under the hammer in both the House and Senate and was enacted and signed into law in July 2023.

Phase 3 – Agency Rulemaking

LD 1881 directed DEP and DACF to conduct separate rulemakings. Each agency was tasked with crafting rules to the components of the program relevant to their authorities and expertise and directed to consult with each other, GEO, and DIFW throughout. The rulemaking process played out over the course of 2024 with initial public comment on the DEP draft rules before the BEP in March 2024 and a second round of public comment responding to the revisions in September 2024. DACF solicited pre-rulemaking public feedback in November 2023, requested public comments on their draft rule in August 2024, and reposted for an additional round of public comments in December 2024.

Each agency worked diligently to solicit and respond to stakeholder feedback. **Significant changes were made along the course of rulemaking in direct response to public comments.** Each round of reposting highlighted specific areas where the agencies sought additional comments, clarifications, or suggestions from involved stakeholders. The staff at these agencies deserve a huge amount of appreciation for this diligent effort.

TNC and Maine Audubon participated directly in both rulemaking proceedings. We made every effort to remain open and receptive throughout the process to the concerns and ideas from stakeholders and, on multiple occasions, convened conversations to try to find common ground. **Our comments on the rulemaking reflect our attempts to address vocalized issues – e.g., our organizations advocated for the initial fees to be reduced by *half* in response to feedback from developers that proposed fees would be cost prohibitive.** In the spirit of creating a program that the original stakeholders could agree represented our collective interests as best as possible, we consistently requested additional, explicit information from entities that raised concerns. When constructive feedback was offered, we raised ideas for alternative mitigation strategies to reduce compensation and reinforced many points from the other interested parties' feedback. **The result of that lengthy and inclusive process is the final legislation that is before you today.**

**ALTERNATIVES – LD 1458 & MREA's Amendment to LD 269**

TNC and Maine Audubon are opposed to both the presented alternatives - LD 1458 and MREA's proposed amendment to the rules. As noted above, throughout the lengthy process we tried to get clear feedback and input from industry stakeholders to help us collectively understand and then remedy concerns regarding both the natural resource habitat type definitions and the fee structure.

**We understand that large landowners and forest industry stakeholders support LD 1458, which introduces an entirely new method of calculating a fee that was not considered in the enabling legislation, has not undergone the extensive stakeholder process represented in the provisionally adopted rules in LD 269, and, in our opinion, does not strike the balance sought at the beginning of this process.** It is our understanding that this bill was put forward largely due to concerns regarding the inclusion of "large undeveloped habitat blocks" as one of the natural resource types requiring mitigation in this optional Site Law program as there is a prevailing belief that these places do not specifically address habitat quality. We fundamentally disagree with this assertion. **As our organizations' scientists attest, the large undeveloped habitat blocks covered by these rules provide significant habitat value simply by virtue of being large and undeveloped. A large undeveloped block is valuable for providing connectivity across the landscape and allowing wildlife to move over large distances without human interaction.** These large habitat areas are important for a wide variety of species, regardless of whether they are considered rare or not. Therefore, there is a degree of habitat quality already built into the rules, as smaller undeveloped blocks are not covered by these rules and mitigation is not required for impacts in those areas.

We used GIS analysis to identify the average undeveloped habitat block size in different areas of the state and believe efforts to prevent further encroachment in the blocks that are above average for the region would threaten wildlife's ability to adapt and shift due to changes in climate change and development patterns. **We believe these resources to be inherently valuable and thus worthy of additional protection by codifying them into the mitigation hierarchy.** LD 1458 takes a much coarser approach, requiring the entire footprint of *any* renewable energy project to pay a flat mitigation fee, unless that underlying land is located in a designated growth area by the municipality or on a brownfield or contaminated site. This means that even projects that are located in non-significant habitat blocks – like areas near highways or close to existing development – would have to pay a fee. Conversely, our approach identifies areas with *special* habitat value, the alternative treats most areas of the state the same.

Additionally, it is important to highlight that DEP incorporated changes that responded to large landowners and forest industry stakeholders' undeveloped habitat block central concern by excluding the following ecoregions (areas in Maine with distinctive biophysical characteristics) from the definition of large undeveloped habitat blocks: Northwest, Central and Western Mountains, Central and Eastern Lowlands, Downeast, Northwest, Aroostook Hills and Lowlands. This left just Southern and Central Interior and Midocast ecoregions within the habitat type's definition. Our organizations view this change as a meaningful compromise, demonstrating once more how attentive agencies were to stakeholder feedback.

We also understand that the Maine Renewable Energy Association has a proposed amendment to alter the definition of large undeveloped habitat blocks to increase the size of a block that could trigger the need for mitigation. Their initial proposal suggests that only the largest blocks – those that are large enough to fit an inscribed circle greater than 1,000 acres in size – should require mitigation. If this change were to be made, the original intent of LD 1881 would be undermined almost completely. Undeveloped blocks of this size are rare on the landscape and are generally not located near the necessary infrastructure needed to connect renewable energy projects to the grid (i.e., they are unlikely to be impacted anyway). Furthermore, most large blocks of this size in southern Maine are already protected from development as conserved lands thus they are not available for development. Therefore, this change would effectively eliminate any mitigation fees being charged for impacts to undeveloped habitat blocks.

The main argument for this proposed amendment is that the footprint of the large undeveloped habitat blocks under the current definition covers 40% of the Southern Maine ecoregion and 30% of the Central Interior and Midcoast ecoregion. This is a coarse assessment that does not consider many important factors. There are many features that make an area realistically suitable for solar development: proximity to existing transmission lines and substations, not being currently developed, not being wetlands, not being already conserved, being relatively flat, and being large enough to site a project. **Finding suitable locations for solar development is difficult. We do not disagree with that challenge. However, we disagree with the assertion that this legislation will significantly reduce the area that is realistically viable for large solar development.** The coarse assessment cited by MREA does not factor in areas where the large undeveloped block layer *overlaps* with an area that is not suitable anyway and therefore poses no additional imposition on a solar developer. We suspect those overlaps are a significant part of the 40% footprint in southern Maine – areas that are already conserved – think of Mt. Agamenticus, Pleasant Mountain, or Saco Heath – all show up on the large undeveloped habitat block map but are not available for solar development. Wetlands and landscapes that are difficult to develop (steep slopes, etc.) would show up as undeveloped but also not be suitable sites.

We also understand that MREA's proposed amendment would eliminate the requirement to provide additional compensation if a proposed impact will alter a large undeveloped habitat block to a point where it no longer meets the definition of a large undeveloped habitat block. We similarly disagree with this proposal. For one, we think this scenario will not be very common. There are not many undeveloped blocks on the landscape that are so close to the size threshold that only a very small impact will push it out of the "large" category (and thus out of the large undeveloped block definition). And secondly, we feel that eliminating this rule would put more habitat blocks at risk of development with no compensation. It is not hard to imagine a scenario where one project would make a small impact to a habitat block which would make it no longer qualify, and then future projects would be free to impact that area without any need for compensation. For those reasons, we feel this requirement should remain in the rule.

## ORIGINAL GOALS

This whole endeavor started with an attempt to balance the necessary deployment of renewable energy development with the necessary protection of key land and water resources that are critical to biodiversity. **From the outset, we focused on two goals: 1) build more predictability and flexibility in the mitigation framework in the permitting process for renewable energy developers and 2) develop an optional compensation fee program under Site Law so that it is affordable enough to allow projects to move forward while encouraging developers to avoid and minimize impacts to Maine's natural resources. The current version of the rules in LD 269 addresses both items.**

These rules are more predictable than the status quo, in that they include specific ratios that all stakeholders will be aware of in advance. This clarity will enable developers to design projects with a clearer understanding of how siting and design choices will affect the overall budget and viability, allowing them to plan effectively from the start rather than investing time and resources into project permits before knowing the DEP's mitigation requirements.

In terms of affordability, the ratios included in this draft rule represent a reasonable compensation fee program and are more moderate when compared to recent precedent established by DEP in projects such as New England Clean Energy Connect (NECEC) transmission line and Three Corners Solar array in Kennebec County. The fee structure has been reduced based on stakeholder input – including ours – to cut the originally proposed ratios in half.

It is important to remember that prior to LD 1881's enactment (and still today) DEP already had the authority under the Site Law to require mitigation for wildlife habitat impacts for any type of development project. This effort did not add this requirement to site law – DEP has already been implementing this concept through their existing authority on projects including NECEC and Three Corners Solar. **These rules do not create a *new* mitigation requirement. They add the *option* for a developer to either propose a traditional "permittee responsible habitat improvement or preservation project" or pay a compensation fee to fund an off-site habitat improvement or preservation project.**

The process to generate these provisionally-adopted rules in LD 269 was long, comprehensive, and responsive to multiple rounds of stakeholder input. The alternatives presented here today relate to issues that were extensively discussed throughout the process and already addressed. The original goals of this effort are represented in LD 269 in the creation of an alternative mitigation method – a compensation fee – for renewable energy development within Site Law. This concept receives broad public support, with a 2023 poll commissioned by TNC showing that 70% of Mainers support policy requiring renewable energy developers to pay a fee to compensate for those impacts to highly-valued lands, and use the revenue to conserve, restore, or protect lands in Maine. **These rules strike the right balance, and we hope you will support LD 269.** Our organizations would be happy to answer any questions the Committee may have in time for the work session. **Thank you for your consideration.**

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