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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 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

PRESENTED BY SEN. HICKMAN

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

APRIL 14, 2025

Senator Tepler, Representative Doudera, and members of the Committee, my name is Rob Wood and I am the Director of the Bureau of Land Resources at the Department of Environmental Protection. I am speaking in opposition to L.D. 1458 as amended by the sponsor's amendment.

The Department's primary concern is section 3 of the bill. Section 3 would place unprecedented constraints on the Department's ability to address wildlife habitat impacts from any development requiring a Site Law permit. This section would limit wildlife habitats that can be reviewed under the Site Law to those defined as Significant

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Wildlife Habitats under the Natural Resources Protection Act. Additionally, the bill would require such habitats to be defined by the Department in rule before they can be reviewed under the Site Law. These provisions would substantially change how the Department reviews developments under the Site Law.

Currently, the Site Law and the Department's Ch. 375 rules provide flexibility for the Department to consider all relevant evidence regarding the potential impacts of a proposed development on wildlife and fisheries habitats. Most Site Law applications are reviewed by the Maine Department of Inland Fisheries and Wildlife (IFW). IFW comments on the application and notes any potential wildlife impacts. While some of the wildlife impacts commonly flagged by IFW could still be considered under L.D. 1458, the bill would not allow for consideration of impacts to habitats of rare species or species of special concern. The bill also would not allow for consideration of impacts to deer wintering areas until these areas are defined in rule. Similarly, habitats of state endangered and state threatened species are not yet defined in rule. While the Department intends to propose rules to define a subset of state endangered and state threatened species habitats in the near future, the definition will likely only include a subset of these habitats and not all state endangered or state threatened species habitats.

Additionally, section 3 of the bill would prohibit the consideration of large undeveloped habitat blocks under the Site Law. As noted in the Department's testimony on L.D. 269, large undeveloped habitat blocks provide unique and important habitat values. Eliminating the Department's ability to consider these habitat values—and the value of regional habitat connectivity more broadly—would significantly hinder the Department's ability to address the landscape-scale impacts from large developments. Habitat connectivity impacts were the primary concern of environmental groups in the review process for the NECEC transmission line. Likewise, habitat connectivity concerns have been appropriately addressed in the permits for the approximately 1,000-acre Three Corners Solar project and the 1,100-acre Hartland Solar project.

Despite these proposed constraints on the Site Law, L.D. 1458 simultaneously proposes to require compensation for the development of any undeveloped land by renewable energy developments, with some exceptions. The Department agrees that the proposed exceptions make sense; a developer should not have to compensate for impacts to undeveloped land located in a municipally designated growth area and should be encouraged to site on a brownfield or PFAS-contaminated land. However, the Department disagrees that a renewable energy developer should be required to compensate for any Site Law development located on undeveloped land outside of these areas. This approach does not differentiate between a small patch of woodland that may contain very little wildlife value, versus a large contiguous area of undeveloped forestland that harbors a wide range of biodiversity. The Department believes the more targeted approach in the provisionally adopted Ch. 375 rule is science-based and is ultimately better for developers, as they can avoid triggering compensation by avoiding large impacts to large undeveloped habitat blocks.

Finally, the Department notes that the language in L.D. 1458 contains significant internal conflicts and may not achieve the bill's intended outcomes. Our understanding is that the goal of the bill is to require compensation for development of any undeveloped land from renewable energy development, with certain exceptions. However, Title 38, section 484-D, subsection 1 specifically requires compensation to mitigate the adverse effects of a renewable energy development on wildlife and fisheries habitats to comply with section 484, subsection 3—the no adverse environmental effect standard of the Site Law—and the bill proposes to substantially curtail the types of wildlife habitats that can be reviewed under section 484, subsection 3. The Department's interpretation is that, regardless of the bill's intent, the Department would only be able to require compensation for impacts to the specific wildlife habitats listed under section 484, subsection 3, which does not include undeveloped land. At the same time, the sponsor's amendment states that renewable energy developments cannot be required to compensate for impacts to those wildlife habitats listed in section

484, subsection 3. We believe additional amendments to L.D. 1458 would be necessary to clarify and achieve the bill's intended outcomes.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions from the Committee, both now and at the work session.