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**TESTIMONY OF  
ROB WOOD, DIRECTOR, BUREAU OF LAND RESOURCES  
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**SPEAKING IN OPPOSITION TO THE SPONSOR'S AMENDMENT TO L.D. 2174  
AN ACT TO INCREASE PREDICTABILITY IN THE PERMITTING OF RENEWABLE  
ENERGY DEVELOPMENT**

**PRESENTED BY REP. KESSLER**

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

**DATE OF HEARING:**

**FEBRUARY 25, 2026**

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 the sponsor's amendment to L.D. 2174.

First, I would like to note that the Department appreciates Representative Kessler's work to develop the sponsor's amendment, which we believe is a substantial improvement over the originally printed bill. Rep. Kessler met multiple times with the Department in recent weeks to solicit our input and made several changes to the

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sponsor's amendment based on our input. Our opposition to the bill is limited to the provisions in Sections 1 and 2 of the sponsor's amendment that would result in automatic approval of renewable energy permit applications.

With that said, the Department's testimony will focus on three elements of the sponsor's amendment most relevant to the Department's processing of permit applications for renewable energy developments. Those three elements are 1) the establishment of a Site Law permit by rule for solar energy developments; 2) processing time limits for renewable energy permit applications; and 3) automatic approval of renewable energy permit applications when processing time limits are exceeded.

The Department supports the establishment of a Site Law permit by rule (PBR) for solar energy developments. The Department has existing authority to establish a Site Law PBR under Title 38, section 344, subsection 7. L.D. 2174 would facilitate the creation of this streamlined permitting pathway by clarifying that rulemaking to establish a Site Law PBR is routine technical rulemaking and by directing the Department to initiate rulemaking by the end of 2026. Regardless of the final disposition of L.D. 2174, the Department intends to initiate rulemaking for a Site Law PBR this year, and we intend for the Site Law PBR to cover certain solar energy developments as well as other types of developments, including residential housing, that can meet specified standards. Section 11 of the bill proposes eligibility criteria for solar developments to qualify for a Site Law PBR, including a 100-acre size limit and that an individual NRPA permit is not required for the project. The Department believes the 100-acre size limit is appropriate, but would prefer more flexibility to determine through rulemaking whether projects requiring an individual NRPA permit should be eligible for a Site Law PBR.

The Department is also supportive of the processing time limits for solar energy developments and energy storage system developments proposed by L.D. 2174. Title 38 already contains processing time limits for expedited wind energy developments, offshore wind power projects and tidal energy projects (38 M.R.S. §344(2-A)(A)(1)). For other types of permits and licenses, the Department must establish processing timetables annually (38 M.R.S. §344-B(1)), and the processing time for Stormwater

Management Law applications cannot exceed 90 days by statute (38 M.R.S. §420-D(2)). The bill's proposed processing times for solar energy and energy storage system developments are reasonable.

The Department's primary concern with the bill, and the reason we are opposed to the bill, is that it would result in automatic approval of permits if the Department does not issue a decision within the applicable processing time. For example, Site Law applications would be deemed approved if a decision is not issued within 185 days for expedited wind energy developments or 180 days for solar energy and energy storage system developments. The Department understands the motivation for this provision; it would create a strong incentive to meet processing times, and it would provide certainty that a licensing decision will be issued within the specified time period. However, it sets up the possibility that, if the Department fails to meet a processing deadline, a large development of regional or statewide significance could be automatically approved even if it does not meet licensing standards established in statute or rule.

This is particularly problematic when considering appeals. Judicial review of an automatic approval would be difficult because there would be no findings of fact and no articulated standards applied to the facts. In another context, the Maine Law Court has instructed that "there cannot be meaningful judicial review of agency decisions without findings of fact . . . Without such findings, there is a clear danger of 'judicial usurpation of administrative functions.'" *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 15, 769 A.2d 834 (remanding to the local board to make written findings). Courts outside of Maine have said that when there is a deemed approval of a permit application, the court is required to review the merits of the application and issue its own findings of fact and conclusions of law, either affirming or reversing the deemed approval; however, such a procedure lacks precedent in Maine. It is unclear whether a deemed approval could be appealed to the Board of Environmental Protection like a normal licensing decision, or only to the courts. It is also unclear whether potentially aggrieved persons, such as abutters to the project, would be provided notice of the

deemed approval and an opportunity to appeal, as would normally be the case to ensure due process rights.

Another concern with deemed approval is that, under Title 12, the Land Use Planning Commission (LUPC) must certify that a proposed development in the unorganized territories being reviewed by the Department under the Site Law is an allowed use within the subdistrict(s) for which it is proposed and meets any land use standard established by the LUPC that is not considered in the Department's review (12 M.R.S. § 685-B(1-A)(G)). If the LUPC does not provide this certification within the required Department processing time and the development is automatically approved without LUPC certification, the deemed approval under Title 38 would be in conflict with the certification requirement in Title 12.

Ultimately, the most likely outcome of automatic permitting is that the Department would deny more applications as deadlines approach in order to prevent a deemed approval. When deadlines are missed, it is often because the Department is seeking project modifications from applicants to ensure that applicable licensing criteria are met. Rather than allow projects that don't meet standards to be automatically approved, the Department would be compelled to issue denials.

The Department acknowledges that deadlines are sometimes missed because the Department is simply not acting fast enough. This may have provided the impetus for L.D. 2174. The Department understands that timely permitting is critical for applicants, and we are actively working to accelerate permitting timelines. For example, we recently expanded NRPA permit by rule eligibility for coastal resilience activities; we established predictable standards for shoreline stabilization projects, which are the highest volume individual NRPA applications we process; and we are now utilizing outside, third-party vendors to support Department staff in completing application reviews. The Department plans to build on this momentum by initiating rulemaking to establish a Site Law PBR in the coming year, regardless of the outcome of L.D. 2174.

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