Testimony of Jeff Thaler

Neither For Nor Against

The Sponsor Amendment of "An Act to Increase Predictability in the Permitting of Renewable Energy Development" to LD 2174, "An Act to Replace the Maine Waterway Development and Conservation Act with the Maine Renewable Energy and Associated Transmission Development and Conservation Act"

February 25, 2026

Senator Tepler, Representative Doudera, distinguished members of the Joint Standing Committee on Environment and Natural Resources, I am Jeff Thaler from Yarmouth, and an attorney at the law firm of Preti Flaherty. I am not here this morning representing any client. Rather, although I was the initial author of the permitting reform bill that Representative Kessler submitted that became LR 2930 and then LD 2174, I was not involved in the Sponsor's Amendment. Maine needs permitting reform, this Session, but the Amendment should be merged into the construct of LD 2174 as I will explain, and provided as an attachment.

I began my environmental legal career as Maine Audubon's Staff Attorney in the 1980s, when I was involved in the first projects to be addressed by the 1983 Maine Waterway Development and Conservation Act ("MWDCA"). Since then, I have handled many permitting matters in Maine and elsewhere, including a wide range of renewable energy projects for both public and private entities, groups and people. I have written, presented, and taught for years that our permitting processes are not keeping pace with rising greenhouse gas emissions and resultant damages to our health and property. Nor has Maine been keeping pace with other States in competing for investment in renewable projects.

The MWDCA singled out hydropower as "the state's **only** economically feasible, large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products", 38 MRS §631(1)(A) (emphasis added). While maybe true in 1983, clearly it is no longer true now. Thus I set out last fall to propose amending the MWDCA to bring it current, and include the needed transmission for renewable generation projects to help our decarbonization efforts; that then evolved through multiple drafts into stand-alone provisions.

In three minutes I cannot explain the various competing interests that resulted in multiple versions of the reform effort, but I am pleased to answer any questions you may have. The bottom line are these key points:

1. Massachusetts, New York and other states have enacted laws to streamline the permitting of many clean energy technologies, and Congress is trying to do so—if Maine does not do the same this Session, we will increase our competitive disadvantages in attracting new investment and jobs, while also decreasing our ability to meet the State's climate and decarbonization goals enacted by you. Attached are my short summaries of what others have done, as well as the key policy goals for this effort in Maine.

2. The Sponsor's Amendment was sent out by OPLA Feb. 18th. After conferring with Rep. Kessler, I agreed to take the Amendment and integrate it into the supporting infrastructure of LD 2174, which I did in the attached document last week. Since there was not enough time to make further changes before today's hearing, Rep. Kessler suggested that I share it with you, and then we can address it and any issues brought up by others at the work session.

3. Last, permitting can be streamlined for more than just hydroelectric projects to save time and cost while increasing more consistent and certain regulatory review **without** risking harm to the natural environment. Maine needs not just the policy but also the practice to be that development of renewable energy projects and the necessary transmission development needed to serve such projects be simplified and clarified.

4. States like Massachusetts, New York, and others are competing and not waiting; as Senator Mark Lawrence recently said in a keynote address on energy issues—"Make It Happen Now".

Thank you; if you have questions, I will do my best to answer them.

Underlying policies and goals for Permitting Reform in Maine—Jeff Thaler

- Maine has long been a national leader in working to address the climate crisis; the Legislature and Governor have set ambitious decarbonization targets and comprehensive plans to achieve these limits.

- To achieve our emission limits, the State must build more clean energy generation and at a much quicker pace than it has been built to date, and at the same time will need to upgrade and build out our transmission and distribution grids to accommodate this generation and increased electric demand.

- Clean energy infrastructure projects have too often been slowed by a number of barriers, including numerous lengthy and sometimes redundant permitting and appeals processes. Current siting and permitting processes also are not often integrated with the State's emissions reduction requirements and timelines, nor with our climate and land use goals. Siting, permitting and related appeals can be a lengthy and unpredictable process, requiring substantial investments of time and resources from all parties. Looking ahead, it is necessary to build clean energy in a responsible, efficient, and timely manner.

- Permitting can be streamlined for more than just hydroelectric projects to save time and cost while increasing more consistent and certain regulatory review without risking harm to the natural environment.

- The legislation also improves Maine's competitiveness by facilitating timely and productive community input in the siting and permitting of clean energy infrastructure, and ensuring that the benefits of the clean energy transition are shared equitably among all Maine residents. Massachusetts and New York State have each enacted comprehensive legislation in the past few years addressing these issues; if Maine does not do the same, clean energy and technology investment and development will not occur in Maine but elsewhere.

- States like Massachusetts, New York, and elsewhere are competing and not waiting; as Senator Mark Lawrence recently said in a keynote address on energy issues—"Make It Happen Now".

PERMITTING REFORM SUMMARIES--2026

Massachusetts:

On November 21, 2024, Governor Maura Healey signed into law An Act promoting a clean energy grid, advancing equity and protecting ratepayers (2024 Climate Act), which streamlined the siting and permitting process for clean energy infrastructure.

The Energy Facilities Siting Board [part of the Department of Public Utilities] reviews proposals for power plants, electric transmission projects, intra-state gas pipelines, and natural gas storage tanks.

The Climate Law calls for the Energy Facilities Siting Board to play a key role in developing a new streamlined, consolidated application and review process for large and small clean energy infrastructure facilities. The law requires the state to promulgate regulations and guidance to implement the new siting and permitting policies by March 1, 2026.

The law requires the EFSB to begin accepting applications and reviewing proposals for large clean energy infrastructure facilities using this new framework starting on July 1, 2026.

The EFSB will be responsible for siting and permitting of clean energy generation projects over 25 megawatts, clean energy storage projects over 100 megawatt hours, and certain transmission and distribution projects.

The state's Clean Energy Siting and Permitting Division of the DOER has released for comment draft regulations to implement a new consolidated permitting process for clean energy infrastructure facilities reviewed by local governments.

The new local siting and permitting process would apply to:
- Clean energy generation projects under 25 megawatts
- Clean energy storage projects under 100 megawatt hours
- Certain transmission and distribution projects

Under the new local siting and permitting process, municipal governments would have 12 months to review a "clean energy infrastructure facility" application. Project applicants would undergo a pre-filing engagement process, and the application would need to meet baseline standards set by the regulations, along with accompanying guidance developed by the Department of Energy Resources, the Department of Public Utilities, and the Executive Office of Energy and Environmental Affairs.

New York State:
New York's Legislature passed the Accelerated Renewable Energy Growth and Community Benefit Act in 2020, the first comprehensive permitting reform at the state level.

The Act centers around building out renewable energy generation capacity and significantly accelerating project approval timelines. It created the Office of Renewable Energy Siting to serve as a "one-stop shop" to address permitting challenges, conduct impact assessments, and to support project proponents to apply for state permits. It also established statutory time limits for issuing building permits, ranging from a maximum of six months for projects located on pre-approved brownfield sites to one year for all other projects. The Act also states that a permit will be automatically approved if the Office of Renewable Energy Siting does not make a decision within the required timeframe.

These reforms are primarily targeted at large-scale projects. Only projects with a capacity of 25 megawatts or greater will be administered through the Office of Renewable Energy Siting. However, projects with a capacity ranging from 20 to 25 megawatts are eligible to opt into the Office of Renewable Energy Siting process.

Federal SPEED Act:
The Standardizing Permitting and Expediting Economic Development (SPEED) Act, introduced by House Natural Resources Chairman Bruce Westerman (R-AR) and Rep. Jared Golden (D-ME), identifies the core problems—drawn-out reviews and obstructive litigation—and aims to address them through major changes to judicial review and the environmental review process itself

The House of Representatives passed the SPEED Act (the "SPEED Act," H.R. 4776) on December 18, 2025; it is now in the Senate.

The SPEED Act would in part impose the following deadlines in the National Environmental Policy Act:

- Within 60 days of receiving an application for authorization, the agency would have to acknowledge receipt and either (i) deem the application complete or (ii) request specific additional information.
- Within 60 days of determining whether an application is complete, the agency would have to notify the applicant whether (i) the action is categorically excluded or not a major Federal action, (ii) an Environmental Impact Statement notice of intent will be issued, or (iii) an Environmental Assessment will be prepared.
- Within 30 days of completing an EIS or EA, the lead and any cooperating agencies would have to issue final agency action(s).

By combining a narrowed scope of analysis, concurrent reviews, and fixed milestones, the bill seeks to deliver predictability for applicants and consistency for agencies.

Reshaping Judicial Review and Limiting Claims
The SPEED Act would materially reshape NEPA litigation in the following ways:

- Deference. Courts would have to afford "substantial deference" to agency determinations and would be precluded from substituting their judgment for that of the agency regarding identified environmental effects.

- Remedies. If a court finds a NEPA violation, the sole remedy would be remand. During an 180-day cure period, the agency action would remain in effect, limiting disruption to projects.
- Claim Limits. Challenges would generally have to be filed within 150 days of publication of the final agency action. Where a public comment period occurred, only parties who submitted a substantive and unique comment - sufficiently detailed to put the agency on notice and limited to the same subject matter - by the deadline would be able to sue.

A House floor amendment sought to constrain post-issuance agency reversals by limiting the ability to revoke, amend, or otherwise interfere with authorizations absent a (1) court order; (2) material breach of the authorization or evidence of fraud; (3) request from the applicant; or (4) new finding that the action would cause "specific, immediate, substantial, and proximate harm or damage to life, property, national security, or defense."

An Act to Streamline Environmental Permitting for Renewable Energy Development

Whereas, current permitting requirements are a significant impediment to renewable energy deployment, which requires expediency in order to be financially viable as well as competitive with neighboring states that have recently enacted permitting reform for renewable energy development and the needed supporting transmission; and

Whereas, Maine has long been a national leader in working to address the climate crisis, with both the Legislature and Governor having set ambitious decarbonization targets and comprehensive plans to achieve these targets; and

Whereas, to achieve its emissions targets and promote new economic development and long-term employment, the State must build more renewable energy generation infrastructure and at a much quicker pace while also upgrading and building out its transmission and distribution grids to accommodate this generation and increased electricity demand; and

Whereas, unless obstacles to the use of the State's substantial renewable energy resources are removed, Maine will not be able to realize substantial direct and near-term benefits but instead will increasingly risk other states capitalizing on Maine's renewable resources; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. The Legislature declares that it is the policy of the State to support and encourage the development of renewable energy projects and the necessary transmission development activities needed to serve such projects by simplifying and clarifying requirements for permits, while ensuring reasonable protection of natural resources and the public interest.

Sec. 2. It further is the policy of the State to encourage the attraction of appropriately sited renewable energy project development, including any additional transmission and other energy infrastructure needed to transport such energy to market, consistent with all state environmental standards; the permitting and siting of renewable energy projects; and the permitting, siting, financing and construction of energy research and manufacturing facilities.

Sec. 3. 35-A MRSA §3132, sub-§16 is enacted to read:

16. Local control limitations; renewable energy developments. Notwithstanding any provision of this subchapter to the contrary, a municipality may not enact or enforce a local land use or zoning ordinance or other local standard, condition or requirement applicable to transmission lines, including high-impact electric transmission lines, immediately associated with solar energy developments, wind energy developments, energy storage system developments, fuel cell or geothermal energy installations within the municipality that is more stringent than the standards, conditions or requirements of this subchapter, or the rules adopted pursuant to this subchapter, applicable to transmission lines, including high-impact electric transmission lines. Any local land use or zoning ordinance or other local standard, condition or requirement that violates this subsection is void

and has no force or effect. As used in this subsection, "solar energy development" has the same meaning as in Title 38, section 484, subsection 11, "wind energy development" has the same meaning as in section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

Sec. 4. 38 MRSA §344, sub-§2-C is enacted to read:

2-C. Special processing time limits for certain renewable energy developments. Notwithstanding any provision of this section or section 344-B to the contrary:

A. In the case of an application for a permit for a solar energy development, wind energy development, geothermal energy development, fuel cell installation, or energy storage system development under the site location of development laws, chapter 3, subchapter 1, article 6, the commissioner shall issue a decision within 180 calendar days of the date on which the department accepts the application as complete pursuant to this section;

B. In the case of an application for a permit for a solar energy development, wind energy development, geothermal energy development, fuel cell installation, or energy storage system development under the Natural Resources Protection Act, chapter 3, subchapter 1, article 5-A, the commissioner shall issue a decision within 150 calendar days of the date on which the department accepts the application as complete pursuant to this section; and

C. In the case of an application for a permit for a solar energy development, wind energy development geothermal energy development, fuel cell installation, or energy storage system development under the stormwater management law, section 420-D, or in the case of an application for a permit for a solar energy development under the laws protecting agricultural soils from solar energy developments, section 3202, the commissioner shall issue a decision within 90 calendar days of the date on which the department accepts the application as complete pursuant to this section.

Notwithstanding the applicable processing time limit for an application as set forth in paragraph (A), (B) or (C), if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A, the commissioner shall issue a decision on the application within 45 calendar days of the date of the hearing. With the consent of the applicant, the commissioner may extend the applicable processing time limit for an application under paragraph (A), (B) or (C) once, by up to 30 calendar days. Notwithstanding any provision of this Title to the contrary, if the commissioner fails to issue to the applicant a decision on an application under paragraph (A), (B) or (C) within the applicable processing time limit, the application is deemed approved.

As used in this subsection, "solar energy development" has the same meaning as in section 484, subsection 11, except that, in the case of an application for a solar energy development required under section 3202, "solar energy development" has the same meaning as in section 3201, subsection 2; "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 but does not include a wind energy development that is subject to the provisions of subsection 2-A, paragraph A, subparagraph (1); and "energy storage system

development" means a development that uses an energy storage system, as defined in Title 35-A, section 3481, subsection 6, including generating facilities and associated facilities.

Sec. 5. 38 MRSA §420-D, sub-§5-A is enacted to read:

5-A. Local control limitations; renewable energy developments. Notwithstanding subsection 5 or any other provision of this section to the contrary, a municipality may not enact or enforce a local land use or zoning ordinance or other local standard, condition or requirement applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments within the municipality that is more stringent than the standards, conditions or requirements of this section, or the rules adopted pursuant to this section, applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments. Any local land use or zoning ordinance or other local standard, condition or requirement that violates this subsection is void and has no force or effect. As used in this subsection, "solar energy development" has the same meaning as in section 482, subsection 11, "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

Sec. 6. 38 MRSA §480-F, sub-§3 is amended to read:

3. Home rule. ~~Nothing~~ Except as provided in subsection 3-A, nothing in this article may be understood or interpreted to limit the home rule authority of a municipality to protect the natural resources of the municipality through enactment of standards that are more stringent than those found in this article.

Sec. 7. 38 MRSA §480-F, sub-§3-A is enacted to read:

3-A. Local control limitations; renewable energy developments. Notwithstanding subsection 3 or any other provision of this article to the contrary, a municipality may not enact or enforce a local land use or zoning ordinance or other local standard, condition or requirement applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments within the municipality that is more stringent than the standards, conditions or requirements of this article, or the rules adopted pursuant to this article, applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments. Any local land use or zoning ordinance or other local standard, condition or requirement that violates this subsection is void and has no force or effect. As used in this subsection, "solar energy development" has the same meaning as in section 482, subsection 11, "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

Sec. 8. 38 MRSA §485-A, sub-§1-F is enacted to read:

1-F. Wind, Solar, Geothermal, or Fuel Cell energy developments or Energy Storage Systems; permit by rule. Notwithstanding any provision of this article to the contrary, the department may, in accordance with Title 38, section 344, subsection 7, establish by rule a permit by rule process for wind, solar, geothermal, or fuel cell energy developments or energy storage systems:

A. That are proposed to occupy a land area of not more than 100 acres; and

B. That do not require a Tier 3 review process for freshwater wetland alterations under section 480-X, subsection 2 or otherwise require the issuance of a permit under the Natural Resources Protection Act.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. As used in this subsection, "solar energy development" has the same meaning as in section 482, subsection 11, "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

Sec. 9. 38 MRSA §488, sub-§31 is enacted to read:

31. Local control limitations; renewable energy developments. Notwithstanding any provision of this article to the contrary, a municipality may not enact or enforce a local land use or zoning ordinance or other local standard, condition or requirement applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments within the municipality that is more stringent than the standards, conditions or requirements of this article, or the rules adopted pursuant to this article, applicable to solar energy developments, wind energy developments, geothermal energy developments, fuel cell installations or energy storage system developments. Any local land use or zoning ordinance or other local standard, condition or requirement that violates this subsection is void and has no force or effect. As used in this subsection, "solar energy development" has the same meaning as in section 482, subsection 11, "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

Sec. 10. 38 MRSA §489-E, first ¶, is amended to read:

Rules adopted by the department pursuant to this article, including rules to establish a permit-by-rule process in accordance with section 344, subsection 7, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the department after January 1, 2010 pursuant to section 484, subsections 1, 3, 4, 4-A, 5, 6 and 7 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 38 MRSA §574, sub-§3 is enacted to read:

3. Beneficial electrification. "Beneficial electrification" has the same meaning as in Title 35-A, section 10102, subsection 3-A.

Sec. 12. 38 MRSA §574, sub-§4 is enacted to read:

4. Renewable energy project. "Renewable energy project" means any development that uses a 5-megawatt or greater wind, solar, geothermal, or fuel cell resource, for the purpose of generating electrical power. "Renewable energy project" includes all energy storage systems, as defined in Title 35-A, section 3481, subsection 6, associated transmission lines, roads and other appurtenant works and structures that are part of the project development.

Sec. 13. Rescission of approved permit. After a permit for a renewable or clean energy project has been approved by the department, absent a court ruling vacating that approval or the department determining that the applicant has violated one or more permit conditions warranting rescission of the permit, the approved permit may not be revoked.

Sec. 14. Appeal of approved project. A final decision by the commissioner approving a permit for a proposed renewable or clean energy project may be appealed to the board or to the Superior Court only by an abutter or an intervenor in the underlying department proceeding. If the appeal is to the board, the board shall expedite its review of the appeal and render a final decision on the appeal within 60 working days of the filing of the appeal. If the appeal is to the Superior Court, the appeal must be advanced on the docket and receive priority over other cases.

Sec. 15. 38 MRSA §3202 is amended by adding a second indented paragraph following the first indented paragraph to read:

Notwithstanding any provision of this chapter to the contrary, a municipality may not enact or enforce a local land use or zoning ordinance or other local standard, condition or requirement applicable to solar energy developments, wind energy developments, geothermal energy developments, or fuel cell installations within the municipality that is more stringent than the standards, conditions or requirements of this chapter, or the rules adopted pursuant to this chapter, applicable to such energy developments. Any local land use or zoning ordinance or other local standard, condition or requirement that violates this paragraph is void and has no force or effect.

Sec. 16. Department of Environmental Protection; rulemaking to establish permit-by-rule process for certain renewable energy projects. On or before September 30, 2026, the Department of Environmental Protection shall initiate rulemaking to establish a permit-by-rule process for solar energy developments, wind energy developments, geothermal energy developments and fuel cell installations under the site location of development laws in accordance with Title 38, section 485-A, subsection 1-F. In developing and conducting the

rulemaking under this section, the Department of Environmental Protection, as necessary, shall consult with the Department of Energy Resources, the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry. Rulemaking conducted by the Department of Environmental Protection pursuant to this section is routine technical rulemaking, as defined in Title 5, chapter 375, subchapter 2-A. As used in this section, "solar energy development" has the same meaning as in Title 38, section 484, subsection 11, "wind energy development" has the same meaning as in Title 35-A, section 3451, subsection 11 and "energy storage system development" has the same meaning as in Title 38, section 344, subsection 2-C.

SUMMARY

This bill is in recognition that while Maine has long been a national leader in working to address the climate crisis and the Legislature and Governor have set ambitious decarbonization targets and comprehensive plans to achieve these limits, to meet those goals the State must build more renewable energy generation and at a much quicker pace than it has been built to date, and at the same time will need to upgrade and build out our associated transmission and distribution grid to accommodate this generation and Maine's increased electricity demand.

This proposed legislation would improve Maine's competitiveness by facilitating timely and productive community input in the siting and permitting of certain renewable energy infrastructure, and ensuring that the benefits of the renewable energy transition are shared equitably among all Maine residents. Massachusetts and New York State have each recently enacted comprehensive legislation addressing these issues; if Maine does not do the same, renewable energy and technology investment and development will not occur in Maine but rather elsewhere, to the economic detriment or Maine ratepayers, workers and their families.