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Joint Standing Committee on Environment and Natural Resources

***RE: LD 1363 - An Act to Support Extraction of Common Minerals by Amending the
Maine Metallic Mineral Mining Act***

Senator Brenner, Representative Gramlich, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Kaitlyn Nuzzo and I am the Government Relations Director for The Nature Conservancy in Maine. **I appreciate this opportunity to comment neither for nor against LD 1363, An Act to Support Extraction of Common Minerals by Amending the Maine Metallic Mineral Mining Act.** We appreciate the intent and general direction of this bill, but we have some feedback we would like to see incorporated into a final version. We understand there are some conversations around an amendment, and we hope these points would be considered in that version.

The Nature Conservancy (TNC) is a nonprofit conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to our world's toughest challenges so that nature and people can thrive together. We use a collaborative approach that engages local communities, governments, the private sector, and other partners. The Nature Conservancy has been leading conservation in Maine for more than 60 years and is the 12th largest landowner in the state, owning and managing roughly 300,000 acres. We also work across Maine to restore rivers and streams, partner with fishermen in the Gulf of Maine to rebuild groundfish populations, and develop innovative solutions to address our changing climate.

Lithium will play a big role in the world's clean energy and economic future. Identifying these resources in Maine has provided us an exciting opportunity to be part of that future, but it is critical that we proceed thoughtfully. It is our responsibility to work together at the state, local, and federal levels to ensure we minimize the impacts to the communities and ecosystems we treasure in our state. We believe LD 1363, which we understand had significant input from the Maine Department of Environmental Protection, would allow us to develop thoughtful approach.

In reviewing this bill, my team at TNC in Maine focused on a few broad principles that will continue to be important as our state considers how to move forward with this opportunity. These principles include:

- Any changes to the Maine Metallic Mineral Mining Act must consider broad long-term impacts. This section of law (Title 38, Chapter 3, Article 9) is comprehensive, complex, and took several years of work from state agency staff, legislators, and environmental organizations to enact. The Nature Conservancy was deeply involved in shaping these rules and had specific input in the pieces that protect Maine's water quality.
- The development of any deposit must rely on thorough and science-based site characterization. We need to look beyond the specific mineral of interest and

understand the risks or impacts of the surrounding area. Often the target of the mining operation is found embedded or within other rock types with varying levels of risk. These site specifics will need to inform the development – including the handling of materials, waste rock, tailings, etc.

- Any changes to Maine law apply statewide. We must ensure that changes we make today are protective enough to ensure any future deposits and potential sites will be evaluated in a careful and deliberate way.

With those principles in mind, we would like to offer a few specific suggestions to LD 1363. We understand that our colleagues at NRCM have been working with interested parties to offer some amended language. We support their amendment, and specifically support these aspects:

- **Section 4 – Changes to the Criteria for Approval – Water Quality**

The language added here appears to exempt mining operations that use off site processing facilities from compliance with section 490-QQ, subsection 3, which is the section of the Maine Metallic Mineral Mining Act that governs performance, operation, and reclamation standards. Subsection 3 of that Act outlines the water quality monitoring requirements. We believe this exemption was unintentional and recommend clarifying the language to direct that all operations must adhere to the water quality monitoring requirements at the mine site, regardless of where the material is processed.

- **Section 5 – Changes to the Criteria for Approval – Allowing Open Pit Mining**

We understand that lithium bearing minerals are found in spodumene crystals, which are found in granitic pegmatite rock. These deposits tend to be different than other sulfide deposits where other metallic minerals are found in Maine. It is important to distinguish the differences between these two types of deposits and the different associated risks. However, it is critical that thorough site characterization is required to understand if any aspect of the mining operation carries risk of acid rock drainage, alkali rock drainage, or metal mine drainage.

We understand the intent here to allow open pit mining in low-risk situations, but as written this section of the bill is not strong enough. Words like “potential” are subjective and undefined. What does it mean in this context? Does it mean no potential to create acid rock drainage? Low potential? How would this be measured? Against what criteria? Where within the mining operation – just at the extraction site? At the processing area? At the tailings / waste storage area?

TNC recommends strengthening this section by requiring the Maine DEP to adopt major substantive rules governing the characterization necessary to determine whether a deposit would qualify for permitting as an open-pit mine and best practices for using open-pit methods.

We recommend the following changes (in red) to language in part O:

O. The mining operation will not use open-pit mining, except that the mining operation may use open-pit mining if the mining operation will only generate mine waste that does not ~~have the potential to~~ create acid rock drainage, alkali rock drainage or ~~metal~~ mine drainage ~~containing toxic metals at levels that violate~~

water quality criteria adopted pursuant to section 420 or ~~does not~~ violate water quality standards ~~other than sedimentation and turbidity.~~

- **Section 6 - Criteria for Reclamation of an Open-Pit Mining Operation**

TNC has serious concerns about criteria (6):

- (6) The actively mined, not reclaimed portion of the open pit may not exceed 100 acres at any one time.

Which features of an open-pit mining operations are considered the “actively minded” portion? How is that different from the total mining area?

TNC strongly recommends changing this approach to require “contemporaneous reclamation”, meaning that reclamation would occur prior to the operation being allowed to open another active open pit area. Using this contemporaneous reclamation method, the operator could still operate over a large area but would be required to reclaim each section as they go to minimize the risks of longer-term exposure of the underlying rock and materials. It would also minimize the overall landscape impacts.

In addition, we recommend limiting the actively mined open pit to 10 acres or less at any one time rather than 100 acres. A 10 acre active pit size limit would mirror existing statute in title 38 section 490-D(8)(a) that governs performance standards for excavations.

The Nature Conservancy believes if we take a deliberate, smart from the start approach to developing lithium resources in our state, we can have both protective regulations and responsible mining. We hope the sponsor and this committee will take our suggested language changes and recommendations into consideration during the work session. We would be happy to answer questions during the work session or at any time during this process. Thank you for the opportunity to comment.