Kirk-Lawlor, Naomi

From: Nathaniel Sewell <sewellresourcemgmt@gmail.com>
Sent: Wednesday, August 28, 2024 7:59 PM
To: DEP Rule Comments
Subject: Comment on Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Follow Up Flag: Follow up
Flag Status: Flagged

Caitlyn Cooper
Maine Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04330-0022

August 28, 2024

Re: Chapter 575: Solar on HVAL Rulemaking

Dear Ms. Cooper,

Thank you for the opportunity to provide comments on the Chapter 575 Rulemaking. I own hundreds of acres in York County. I am interested in installing solar on a portion of my land, and I am concerned that the proposed rules are too restrictive and would make solar development not economically viable. Like most of Southern Maine, much of my land was farmed in the past but the majority has regrown into forest, and I currently manage it for forestry. I am interested in pursuing solar development not only because it would provide value in the near term, but also because when the solar project is decommissioned, I would be able to leave the cleared land to my children to farm in the future. If I am not able to do this, over time, I will likely need to convert significant portions of my land for housing development to support Southern Maines high costs of ownership.

If the intent of the rules is to protect farmland from conversion, it does not make any sense to restrict solar development on land that is not currently being used for agriculture. On the contrary, in my case, using my land for solar would actually serve to preserve & prepare the land for agricultural use in the future - thereby adding to, not subtracting from, Maine's stock of agricultural lands.

If the intent is to preserve large undeveloped blocks, in Southern Maine this is in conflict with the U.S Fish & Wildlife as well as the USDA Natural Resource Conservation Services identified critical shortage of early successional habitat. Both agencies are presently providing significant taxpayer funded payments to Southern Maine landowners who are willing to clear large (20+ acre) patches of forested land to create needed early successional habitat. Well designed solar development creates this habitat at no cost to the taxpayers as well as many other environmental and financial benefits.

In general, I do not appreciate being restricted on how I choose to use my own land. In addition, these rules arbitrarily single out primarily family forest landowners in the southern part of the state. Why should this minority group of landowners be penalized for the generations of hard work and sacrifice that have gone into preserving and adding to their land?

If new regulations are imposed, they should be written more narrowly.

Thank you for considering my input.

Sincerely,

Nathaniel P. Sewell

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September 9, 2024

Via E-Mail
Naomi Kirk-Lawlor
Maine DEP
State House Station 17
Augusta, Maine 04333-0017

Re: Supplemental Comments on Chapter 375 § 15-A No Adverse Environmental Effect Standards of the Site Location Development Act

Dear Ms. Kirk-Lawlor:

Thank you for the opportunity to provide comments on changes to the proposed Chapter 375 § 15-A: Compensation for Adverse Effects of Renewable Energy Development on Wildlife and Fisheries Habitat (the "Draft Rule"). I provided oral testimony and written comments on the initial Draft Rule. These comments supplement my prior testimony and comments. These comments are not submitted on behalf of any client or entity and represent my personal views only.

A. Habitat Blocks in Western, Northern and Eastern Maine

I support the Department's proposal to limit the areas of Western, Northern and Eastern Maine that qualify as large undeveloped habitat blocks. These areas (particularly in the unorganized territory) are largely undeveloped and do not face the same development pressures as other parts of Maine and, as a result, there is less of a need to protect undeveloped habitat blocks in these parts of the State. Option 4 identified by the Department is the most appropriate as it removes these largely undeveloped areas from the rule. The Department would still have the discretion to require mitigation in appropriate circumstances, as it has done on projects previously. If the Board rejects that option, I urge it to limit the definition of large undeveloped habitat blocks in these regions to areas more than two miles from a road. This is a hybrid of Options 2 and 3 in the Department's revised Draft Rule.

If large undeveloped habitat blocks in these other regions are based on distances from roads, the provisions requiring compensation for indirect impacts (impacts to areas outside the project footprint) should be clarified. Specifically, if the project alteration results in a large undeveloped habitat block no longer qualifying as a large undeveloped habitat block, the remainder of the habitat within the large undeveloped habitat block requires compensation at the

ratio of 0.25:1. Chapter 375 § 15-A, B(3)(e). That is a relatively straightforward determination for undeveloped habitat blocks as defined for the Southern ecoregion and the Central Interior and Midcoast ecoregions, and Section 15-A, B(1)(c) indicates that the standard applies only to those ecoregions. It is unclear how a similar standard would be applied to habitat blocks defined as a set distance from a road. I suggest that the language in Section 15-A, B(3)(e) include the following changes to the language at the beginning of that section: "If the alteration in the Southern or Central Interior and Midcoast ecoregion results in a large undeveloped habitat block ….". That change is consistent with the language in Section 15-A, B(1)(c), which applies the standard to Southern and the Central Interior and Midcoast ecoregions.

B. Mitigation Ratios

The changes in mitigation ratios reflected in Section 15-A, B(3)(a)-(e) are a positive change and will reduce the adverse impact of the Draft Rule on renewable energy development in Maine. I remain concerned, however, that the Draft Rule penalizes renewable energy projects and imposes new costs on renewable energy, but not other forms of development that may adversely impact large undeveloped habitat blocks (including other forms of energy generation). A rule that singles out and imposes additional costs on renewable energy projects sends a negative signal to the market and is at odds with policy initiatives that seek to encourage renewable energy development in Maine.

The recently issued draft rule by the Department of Agriculture, Conservation and Forestry (DACF) heightens this concern. The DACF draft rule singles out and penalizes solar development and imposes significant additional permitting costs on solar projects that do not apply to other forms of development that may present greater risks to the land types DACF seeks to protect. It is important to weigh the impact of the Draft Rule with the parallel rulemaking by DACF that creates another barrier to bringing new, cost-efficient renewable energy on-line in Maine.

C. Mitigation Options

The Department continues to recommend that mitigation be permanent, but has included language in Section 15-A, B(2)(e) that would allow term easements. I urge the Board to allow the use of term easements and deed restrictions as an acceptable means for protecting an approved mitigation parcel. The required mitigation should align with the impacts of the development. In accordance with the terms of the Site Law approval, these projects will be decommissioned, and the land will be returned to its prior condition. The required mitigation should align with the nature of the impact on the landscape, which supports allowing term mitigation.

The draft language in Section 15-A, B(2)(e)(ii) indicates that the Site Law permit would have to include an expiration date to allow use of a term easement. Site Law permits attach to the land and remain in effect in perpetuity. There is no reason that the Site Law permit would have to include an expiration date to allow term mitigation. Instead, the expiration of any conservation easement or deed restriction could be tied to the date the project is decommissioned in accordance with the Site Law permit (or that date plus ten years to ensures that protection of the

mitigation parcel remains in effect until the project land has an opportunity to return to its prior condition). That is how the approved deed restrictions were structured in the recent Three Corners Solar project.

Finally, the Draft Rule has language allowing a term conservation easement. I recommend that a deed restriction also be included as an acceptable tool for protecting the mitigation parcel from development. The same level of land protection can be achieved through a deed restriction that is reviewed and approved by the Department as part of the Site Law process. Conservation easements are subject to statutory requirements and limits the entities that may hold the easement. 33 M.R.S. § 476.2. Traditional conservation easement holders may not be interested in holding a term easement. A deed restriction can expressly give the Department enforcement authority and include other terms that the Department believes are necessary to ensure appropriate protection of the mitigation parcel, without requiring an authorized third party to hold the easement.

I appreciate the Department's work to address many of the concerns raised by members of the public. While I remain concerned about the potential adverse impact of this rule on renewable energy development, I believe this revised draft achieves a better balance of protecting certain habitat types without unduly penalizing renewable energy development.

Sincerely,

Juliet T. Browne

cc: Rob Wood (via email)

Dirigo Solar
Commercial Street, Suite 101
Portland, ME 04101

September 9, 2024

Naomi Kirk-Lawlor
Department of Environmental Protection
17 State House Station
August, ME 04333

Dear Ms. Kirk-Lawlor,

Dirigo Solar appreciates the opportunity to provide public comments on the Maine Department of Environmental Protection's ("DEP") proposed rulemaking related to Chapter 375 "No Adverse Environmental Effect Standards of the Site Location of Development Act."

Maine-based Dirigo Solar, and our partners at BNRG Renewables (together "BNRG Dirigo"), have developed and financed energy projects worth over $150 million in our State. Seven projects (in Milo, Oxford, Fairfield, Augusta, Hancock, Palmyra, and Winslow) are operational and delivering power to CMP and Versant at 3.4 cents per kWh. In 2021 alone, these projects saved Maine ratepayers more than $3.5M, according to utility filings with the Maine Public Utilities Commission. Increased standard offer power prices and additional projects coming online likely delivered even higher savings in 2022 and 2023. Additionally, BNRG Dirigo has a large pipeline of projects under development that will contribute to Maine's achievement of its ambitious climate and clean energy goals.

As a local developer, we believe in responsible siting, development, and construction of solar energy systems in Maine. While we agree with, and appreciate, DEP's efforts in protecting Maine's most valuable habitat areas in the state, we remain deeply concerned that this rulemaking will bring solar energy development and the state's progress towards its critical clean energy goals to a standstill. Solar development is an essential resource to curb the adverse impacts climate change will have on Maine's natural environments. Therefore, BNRG Dirigo urges the DEP to consider and incorporate the feedback from the development community to adopt rules that protect Maine's most valuable habitats, while also ensuring sustainable solar development over the coming years.

BNRG Dirigo appreciates the DEP's adjustments to the rulemaking and the reduced compensation rates following the Bureau of Environmental Protection's public hearing held earlier this year. However, we remain concerned about the unintended consequences this rulemaking will have on utility-scale solar development. In our earlier comments submitted to DEP, BNRG Dirigo expressed concern with the inclusion of compensation fee requirements for impacts to undeveloped habitat blocks in this rulemaking. Despite the compensation ratio reduction proposed by the DEP in the updated rule proposal, we still expect this aspect of the rulemaking to be prohibitive to utility-scale solar projects.

Maine's fragile transmission system and limited interconnection capacity leaves developers with little flexibility on where utility-scale projects can be sited. Further, market forces over the past four years have added significant costs to the interconnection and construction of solar projects. This requires the development and construction of larger solar projects in order to benefit from economies of scale and

absorb these higher costs. We therefore expect most new utility-scale projects in the state to be sized above the undeveloped habitat block impact acreage thresholds that trigger compensation in the rulemaking. Since the undeveloped habitat block compensation fees are likely prohibitive to solar projects, developers will be left having to identify land outside of undeveloped habitat blocks. As noted in BNRG Dirigo's initial written comments on this rulemaking, we expect these new protected areas to amount to 14.5 million acres and 79% of the forested land in Maine. Ultimately, identifying feasible sites near remaining interconnection capacity that do not impact these areas will be very challenging, if not impossible.

When we account for the compounding effect of the Department of Agriculture, Conservation and Forestry's ("DACF") parallel rulemaking, it is hard to see a future for utility-scale solar in Maine.[1] These agency rulemaking constraints contradict Maine's adoption of ambitious clean energy targets. BNRG Dirigo therefore strongly urges the DEP to reassess the rulemaking process to incorporate a wholistic approach that considers the impact of both the DEP and DACF rulemakings and their impacts on the state's critical clean energy transition. Further, as noted in our initial comments, BNRG Dirigo urges the DEP to reconsider the undeveloped habitat blocks compensation requirements. This universal restriction on undeveloped habitat is not in accord with the legislative intent underlying LD 1881, and we urge the DEP to instead reconsider a rule that principally accounts for the habitat value of land when administering use restrictions and compensation fees.

Finally, BNRG Dirigo supports the Maine Renewable Energy Association's recommendation that the DEP work collaboratively with the DACF and the Governor's Energy Office to align the DEP and DACF rulemakings to ensure the combined and independent effect of the rulemakings do not interfere with Maine's clean energy goals. We further support the use of more resources to assist this collaboration, including a third-party facilitator and GIS analysis. The unintended consequences of the current draft rulemaking on utility scale solar in Maine will be severe so a wholistic and thoughtful approach to the rulemaking is critical.

Thank you for the opportunity to comment and your consideration. Please don't hesitate to reach out to us at nsampson@bnrg.ie if you have questions or for further background on this feedback.

Sincerely,

Robert Cleaves
Dirigo Solar

[1] DACF has issued draft rules related to Chapter 575 "Solar Energy Development on High-Value Agricultural Land." Pursuant to P.L. 2023, Ch. 448, the DACF was directed to adopt routine technical rules regarding solar energy permitting definitions, administration, standards, delegation of authority, and enforcement. These rules create a permitting structure for solar energy developments building on high-value agricultural land in an effort to protect productive agricultural land and encourage responsible solar siting.

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Naomi Kirk-Lawlor
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

September 9, 2024

Re: Chapter 375 No Adverse Environmental Effect Standards of the Site Location of Development Act, Reposted Rulemaking

Dear Ms. Kirk-Lawlor:

Thank you for the opportunity to provide comments on the Maine Department of Environmental Protection's proposed Chapter 375 "No Adverse Environmental Effect Standards of the Site Location of Development Act" rulemaking. The Coalition for Community Solar Access (CCSA) is a national coalition of businesses and nonprofits working to expand customer choice and access to solar for all American households and businesses through community solar. We work with customers, utilities, local stakeholders, and policymakers to enable policies that unlock the full potential of distributed energy resources.

We are writing in strong support of the comments submitted by the Maine Renewable Energy Association (MREA). MREA's comments reflect shared concerns and recommendations of CCSA's members, who are actively developing and operating community solar projects in Maine. These projects provide meaningful benefits to Maine ratepayers, including: significant cost savings for subscribers; electric system cost reductions for all ratepayers; significant climate and environmental benefits from displacing fossil fuel use; locally sourced, reliable energy; revenue for struggling farmers and landowners; and continual job creation and economic impacts to local communities.

CCSA is especially concerned about further challenges to developing solar as it has gotten more and more difficult to build shared clean energy in Maine, given unprecedented costs and delays on interconnecting projects, lack of certainty on program qualification and participation, and new regulatory requirements. These challenges put upward pressure on the costs of the very type of energy Maine needs most: local, shared benefit, carbon-free community solar. We urge the Department to take a balanced approach to this rulemaking that will continue to support the development of renewable energy, which addresses the most severe threat to Maine's habitats and ecosystems: climate change. It is also important these regulations do not restrict the ability to construct community solar projects that can take part in Maine's receipt of federal Solar for All funds, which will ensure that benefits from these projects are directed towards low income customers.

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CCSA particularly echoes MREA's recommendation to exempt projects that have already achieved major project milestones - namely, that have secured site control - from the new Ch. 375 requirements. We encourage the Department to adopt final rules that do not impact commitments already made by solar companies to landowners, which will likely occur if the proposed Ch. 375 rules are applied to projects with an existing lease, lease option, or land agreement. We also support MREA's call for consistency with Maine Land Use Planning Commission policy and additional transparency and clarity in mitigation requirements. Finally, we encourage a narrow application of mitigation and compensation requirements to avoid overly burdensome impacts on small solar projects, which on net, provide more benefits to wildlife by reducing our reliance on fossil fuel-based energy.

Thank you for your time and consideration. Please reach out with any additional questions.

Sincerely,

Kate Daniel
Northeast Regional Director
Coalition for Community Solar Access

MAINE WOODLAND OWNERS

COMMUNITY ♦ ADVOCACY ♦ KNOWLEDGE ♦ LEGACY

September 9, 2024

Maine Department of Environmental Protection
c/o Naomi Kirk-Lawlor
17 State House Station
Augusta, ME 04333-0017
-via email to naomi.kirk-lawlor@maine.gov-

Re: Rulemaking Comments re: Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Dear Ms. Kirk-Lawlor,

Maine Woodland Owners is submitting these comments in response to the reposting of rule changes for Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act. We submit these comments to emphasize our ongoing concern with the draft rule.

From the outset, this rule should be rejected because during its development it was never shared with landowners for comments and feedback. In the rulemaking fact sheet that accompanies this reposting, the Department of Environmental Protection ("the Department") indicates that in drafting the rule it considered the input of other state agencies including the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation, and Forestry and the Governor's Energy Office. It also considered feedback from renewable energy developers and their advocates, conservation organizations, and sportsmen. At no time were large or small landowners included in these discussions. Had landowners been included we would have raised our concerns regarding the proposed definition of large undeveloped habitat blocks while the rule was being developed and had an opportunity to help shape the rule from the beginning.

We submitted comments and testified at the public hearing in opposition to the original draft rule and requested that the rule be sent back to the Department for development of a stakeholder process to include large and small landowners. The Department has rejected this request stating that the rulemaking process allows parties to weigh in on the proposal and that it "does not believe that a separate stakeholder process is necessary." We disagree.

While Maine Woodland Owners appreciates the opportunity we had to submit our initial comments and to testify at the public hearing, this is no substitute for a robust stakeholder engagement process that could have been used in developing the rule. Over 90% of Maine's woodlands are held by private landowners. The decision to leave landowners out of the conversation in the development of a rule that will have such significant impact on their lands is hard to understand.

It is also disappointing that there is no public hearing scheduled to receive these comments to the revised rule and that only written comments are being received. This further disenfranchises landowners from this rulemaking process.

We reiterate the same concerns we raised with the original rule. As drafted, the revised rule continues to presume that every large block of forest land now needs special protection simply by being undeveloped forestland. It bases that decision on how large the block is or how far away it is from a road. It does not use any biological justification for such special treatment. The definition of large undeveloped habitat block in the rule simply uses size and distance from a road as the measure of importance without any other defining criteria. We urge that there should be some site-specific criteria included in the definition to support the finding that an adverse impact to a large undeveloped habitat block requires mitigation or compensation. Considering the actual wildlife and habitat needs of a parcel of land before it is determined to be in need of protection just makes common sense.

It should also be noted that a large undeveloped habitat block of 250 or 500 acres is not always a block of single ownership. In other words, in many cases there will be multiple landowners grouped together to make up the 250 or 500 acre blocks that constitute the large undeveloped habitat blocks. The number of landowners this rule could impact across Maine is unknown but will likely be in the thousands.

The difference in treatment in the rule between the Southern, Central Interior and Midcoast ecoregions and the rest of the state is hard to understand. The acreage requirement applies to the Southern ecoregion and the Central Interior and Midcoast ecoregion. The rule does not contain a similar acreage requirement for "other ecoregions." Rather, the rule creates a large undeveloped habitat block in "other ecoregions" when an area of core habitat is farther than one-half mile, measured horizontally, from a road. This means that *all* land considered core habitat, regardless of acreage, in an ecoregion other than the Southern ecoregion or the Central Interior and Midcoast ecoregion is now considered a large undeveloped habitat block if it is farther than one-half mile from a road. Creating a large undeveloped habitat block solely on the basis of how far a parcel of land is from a road—without any additional requirements—is a sweeping use of regulatory authority that we cannot support.

Other concerns with the rule include the lack of a definition of "road" as used in the definition of large undeveloped habitat blocks. There are many kinds of roads in Maine, particularly in the areas of Maine referred to in the large undeveloped habitat block definition as "other ecoregions." Presumably by removing in this draft the phrase "paved public" before "road" in the definition, the intent was to include more types of roads. But the extent of the impact of that change is unknown. Would a private road now trigger the definition of large undeveloped

habitat block? What about an ATV trail, is that a road? Or a winter road only accessed when the ground is frozen. Does that count?

An additional concern is the lack of a definition of "rare" as used, for example, in the phrase "habitat of rare, threatened or endangered species." If the Department wanted to provide guidance regarding the word "rare," it may wish to consider citing to the Department of Inland Fisheries and Wildlife Rule Chapter 29.03 for that Department's criteria for designation of certain species as "rare species of special concern."

While this rule only applies to solar and wind energy development and high impact transmission lines, it creates a new framework for regulating large blocks of land that could easily be replicated and used in other regulatory settings. There were comments to this effect during the original hearing on the rule. Some organizations believe this rule should be applied and used in other areas of statewide regulation—housing development was raised as one specific example. Expansion of this rule into other regulatory arenas is a dangerous and slippery slope. Adoption of this rule without any changes would only serve to encourage that expansion.

Further, the rule as drafted creates a disincentive for landowners to maintain large undeveloped blocks of land. The definition of large undeveloped habitat blocks, as discussed earlier, adds a layer of regulation over certain blocks of land based simply on how large the parcel is or how far away it is from a road. This added regulation, without additional justification, will cause landowners to shy away from owning large blocks of land because they don't want to be burdened by the additional regulation that comes along with being categorized as a large undeveloped habitat block.

If the preservation of large undeveloped habitat blocks is so important, instead of utilizing such a sweeping regulatory approach up front, the Department could have prioritized or required projects of a certain size to mitigate any impact on the environment by actually preserving a large undeveloped habitat block. Instead, the rule now allows financial compensation as mitigation, which does not ensure any of these funds will be used to conserve large undeveloped habitat blocks.

We do understand the importance of mitigation for projects that have a significant impact on the environment. However, we cannot support the rule as drafted. For all of the reasons outlined herein, this rule should be sent back to the Department for additional consideration through a robust stakeholder process involving large and small landowners.

Thank you for the opportunity to submit these comments in opposition to the rule.

Sincerely,

Thomas Doak
Executive Director

Maine Renewable Energy Association

Naomi Kirk-Lawlor
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

September 9, 2024

Re: Chapter 375 No Adverse Environmental Effect Standards of the Site Location of Development Act, Reposted Rulemaking

Dear Ms. Kirk Lawlor:

Thank you for your consideration of comments from the Maine Renewable Energy Association (MREA) regarding the Maine Department of Environmental Protection's (Department, DEP) proposed, reposted Chapter 375 "No Adverse Environmental Effect Standards of the Site Location of Development Act" rulemaking. MREA is a Maine-based non-profit association of renewable energy developers and producers, suppliers of goods and services to those developers and producers, and other supporters of the industry.

MREA is grateful for this additional opportunity to share feedback on the rules, as well as changes in the reposted rules that reflect some of the feedback received by the Department and the Board of Environmental Protection. That said, MREA continues to have significant concerns about the impact this rulemaking will have on Maine's ability to meet its clean energy goals and to do its part to stave off the worst impacts to climate change. Even with the changes to the originally proposed compensation ratios, these rules will impose high costs that will deter development in wide swaths of Maine. It remains unknown whether there remains "room" on the landscape to locate renewable energy development at a publicly and politically acceptable price point.

The Department of Agriculture, Conservation and Forestry's (DACF) recently posted rules restricting solar development across even more Maine land introduced yet another unknown. The DACF's proposed rules would require 8:1 compensation for solar projects located on "prime farmland", as well as compensation at lower ratios for currently loosely defined, but expansive farmland areas. Not only does this further constrain project development, but the

DACF's proposed rules may have the effect of putting pressure on the resources DEP seeks to protect. For example, while the DACF's proposed compensation ratio for impacts to prime farmland is the same as the DEP's proposed compensation ratio for rare, threatened, and endangered species ("rare species") impacts, impacts to rare species are typically small (<1 acre) and the land areas DACF seeks to protect are much larger. Thus, locating projects in rare species habitat could be seen as more cost effective than locating in the areas sought to be conserved by DACF, not to mention wetlands and other high-value natural resource areas with lower compensation ratios. This is surely not the intent of either Department.

Above all other recommendations, given the high potential for unintended consequences, MREA strongly urges the DEP and the DACF to align their rulemaking timelines and to work collaboratively with the Governor's Energy Office and the Department of Inland, Fisheries, and Wildlife to assure that each rulemaking does not interfere with any agency or office's goals, including Maine's clean energy goals. To support collaboration and to fully vet each rulemaking, we recommend that the DEP and DACF solicit more resources to support, for example, a third party facilitator and GIS analysis.[1] This can not be understated. MREA is not confident that these rulemakings have been assessed comprehensively. Advancing rules that have not been fully vetted risks further erosion of renewable energy developer's confidence in their ability to work in Maine and, in turn, Maine's ability to meet its clean energy goals.

In addition to that overarching recommendation, we offer the following specific recommendations:

- **Exempt projects that have achieved significant project milestones.** DACF's proposed rules exempt projects that have secured site control. Site control is an indication that a project has advanced such that incorporating additional project costs, such as those in the proposed rules, would disrupt project economics and otherwise interfere with the ability of a project to reach completion. We recommend that the DEP also exempt projects with site control from this rulemaking.

- **Reduce wildlife travel corridors to 500 feet.** *See 15-A(B).* 500 feet aligns with the Land Use Planning Commission's standards for commercial development. *See LUPC Ch. 10.27, C.*

- **Incorporate habitat quality and clarify the impact of mitigation strategies on compensation ratios by utilizing a "Tier System" and Table.** Critiques of the DACF's rules withstanding, their proposed rulemaking includes a table and corresponding point system that incorporates land values (including whether the land is farmed or if it is located in an area with increased development pressure, for example) and mitigation

[1] Collaborative GIS analysis would not only aid understanding of how the respective rules interact with each other, but would also help to understand how the rules overlap with existing constraints on renewable energy development, including proximity to transmission and grid capacity, municipal and Land Use Planning Commission zoning limitations, existing conservation lands, and other development constraints.

strategies (such as dual-use crop production and planting pollinator habitat, for example). The values are assigned points which, when added together, correspond to a compensation ratio. This structure is fairly easy to understand compared to the mitigation strategies listed in 15-A(B) and the compensation amounts listed in 15-A(B)(3), which continue to confuse MREA members. We recommend that DEP adopt a similar scheme that incorporates habitat quality (as opposed to simply habitat quantity and shape), as well as mitigation strategies. Not only would such a scheme be more clear to applicants, it also could be more consistently applied by Department staff.

- **Include deed restrictions as compensation option.** MREA is grateful that the Department included term easements as a compensation option. We recommend that the Department also include deed restrictions, including restrictions on new development. *See 15-A(B)(2)(e).*

- **Define "large undeveloped habitat blocks" in Western, Northern, and Downeast Maine as areas *at least* 1 mile from a road.** *See 15(A)(8).* This is consistent with Maine Land Use Planning Commission policy that encourages commercial and industrial development within their "Primary Areas", which include "land . . . within one mile of a public road". *See LUPC Ch. 10.08-A,C,1,b.* Arguably, however, the Department should consider at least *3 miles* from a road, which is consistent with the LUPC's definition for "Secondary Areas". *See LUPC Ch. 10.08-A,C,2,a.* The Commission's rules are grounded in efforts to reduce public costs. *See LUPC Ch. 10.08-A,a.* Three miles represents the Commission's comfort with locating new development away from public services, of which renewable energy infrastructure typically relies very little.

- **Allow for compensation requirements to be achieved in-part with fees and in-part by off-site conservation and on-site mitigation.** This would allow project developers and the Department to implement cost-effective compensation measures that are responsive to opportunities presented by individual projects.

Finally, we ask that as the Department revisits and reviews the rules, they do so with an eye toward balancing the proposed "solution" with the actual problem. There is no data, to date, showing the actual footprint of renewable energy infrastructure in Maine. We can estimate, as an example, that ground-mounted solar occupies 4,500 acres of Maine land – .0002% of Maine land.[2] In contrast, Maine's Climate Action Plan estimates that 10,000 acres *each year* of forest are being lost to development and may accelerate to 15,000 acres per year by 2030. A fraction of that is due to renewable energy development. Balancing renewable energy development with habitat conservation is important, however, these rules risk course correcting to such a degree that the Department risks putting up insurmountable barriers to renewable energy development - barriers that residential and other commercial development is not subject to and that may interfere with Maine's ability to do its part to avoid the worst impacts of climate change.

[2] The Governor's Energy Office's "Maine Solar Dashboard" estimates that there are 906 MW of existing, ground-mounted solar in Maine. Typically, 1 MW of ground-mounted solar occupies 5 acres.

Thank you for the opportunity to share our comments. We welcome the opportunity to answer any questions or otherwise continue this important conversation.

Sincerely,

Eliza Donoghue
Executive Director

TEICHOSENERGY

September 9, 2024

Via E-mail to: naomi.kirk-lawlor@maine.gov

Maine Board of Environmental Protection
C/O Naomi Kirk-Lawlor
17 State House Station
Augusta, ME 04333-0022

Public Input: Ch. 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Dear Chair Lessard and Members of the Board of Environmental Protection:

Thank you for another opportunity to comment on MDEP's proposed revision to Chapter 375.

Teichos commends the Maine Department of Environmental Protection (MDEP) for considering feedback provided during the initial comment period and for refining the proposed rules under Section 15-A. We appreciate these efforts to create a more adaptive regulatory framework and hope to continue collaborating toward shared goals of clean energy growth and ecological protection.

While Teichos recognizes the thoughtful adjustments made, it remains crucial to retain flexibility within the existing permitting framework. Renewable energy projects in Maine already undergo rigorous permitting processes, including comprehensive site assessments, environmental impact studies, and public participation. These processes ensure that projects align with Maine's energy goals without compromising ecological integrity. The MDEP has the authority to require mitigation for any adverse impacts to high-value habitats based on site-specific conditions. A targeted approach incentivizes developers to select low-impact sites and ensures that mitigation aligns with actual environmental impacts rather than a predetermined formula. Moving away from this tailored approach risks imposing fixed costs based on assumed harms, which may not accurately reflect site-specific realities.

Recommendations for Further Enhancements:

- **Continue Collaborative and Aligned Rulemaking:** We encourage the MDEP to maintain its collaborative approach and align rulemaking timelines with the DACF, Governor's Energy Office, and the Department of Inland Fisheries and Wildlife. Bringing all relevant stakeholders together and utilizing resources such as third-party facilitators and comprehensive GIS analysis will help ensure that rules are consistent, effective, and supportive of both renewable energy goals and conservation objectives.
- **Adopt a Tiered, Science-Based Compensation Framework:** We recommend adopting a tiered point system that considers habitat quality and mitigation strategies. This would provide clearer guidance to developers and enable the Department to make more accurate,

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TEICHOSENERGY

site-specific determinations, enhancing transparency and ensuring compensation requirements are proportionate to actual impacts.

- **Expand Flexibility in Compensation Options:** We appreciate the inclusion of term easements as a compensation option and suggest further expanding the range to include deed restrictions and combinations of on-site and off-site mitigation strategies. This would offer greater flexibility for developers and enable the Department to implement cost-effective, ecologically beneficial compensation measures tailored to individual projects. Moreover, the ecological value of a site should take precedence over its size. This should also apply to properties offered as compensation.
- **Reduce Wildlife Travel Corridor Width:** In line with existing commercial development standards, we suggest reducing the width requirement for wildlife travel corridors from 1,000 to 500 feet. This adjustment would still provide adequate protection for wildlife while minimizing project fragmentation and reducing the overall impacted area.
- **Review Long-Term Benefits of Solar Farms:** Over its lifetime, a solar farm can enhance sustainable land management practices. By incorporating native vegetation and minimizing soil disturbance, these sites can promote long-term land health and ecological stability. Vegetation growing beneath solar panels contributes organic matter to the soil, improving its structure and fertility over time, especially on lands previously used for intensive agriculture. Solar farms can also be designed to support pollinators by planting native wildflowers and grasses, creating habitats often lost due to agricultural practices or urban development, thereby maintaining biodiversity and supporting local ecosystems.

We appreciate the Department's commitment to incorporating stakeholder feedback and refining the proposed rules. To further strengthen Maine's leadership in renewable energy and environmental protection, we urge continued revisions that balance conservation goals with the state's renewable energy ambitions. By maintaining a flexible, science-based approach and fostering collaboration among stakeholders, Maine can achieve its clean energy targets while preserving its natural heritage.

Sincerely,

Vincent Hansen
Director of Development

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Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

September 9, 2024

RE: Public Comment on Chapter 375: *No Adverse Environmental Effect Standards of the Site Location of Development Act* Rulemaking

Chair Lessard, Commissioner Loyzim, and members of the Board of Environmental Protection:

Thank you for the opportunity to provide additional comments on the changes made to Chapter 375: *No Adverse Environmental Effect Standards of the Site Location of Development Act* reposted after the June 2024 deliberative session.

Maine Audubon, Maine Coast Heritage Trust (MCHT), Sportsman's Alliance of Maine (SAM), and The Nature Conservancy (TNC) offer the following feedback and considerations on behalf of our organizations. Together, we worked closely on crafting and passing LD 1881, and we submitted joint comments on the first draft of the Department of Environmental Protection's (DEP) rules. As conservation advocates, our organizations have collaborated on a variety of efforts to review decision-making tools for renewable energy siting and development in Maine. We understand the urgency of transitioning to renewable energy and are committed to doing so thoughtfully and effectively from the outset, with careful consideration for communities, conservation, and climate.

When we worked collaboratively with the renewable energy community to draft LD 1881, we heard two messages: 1) build more predictability in the mitigation process and 2) develop a system that is affordable. The current version of the rules, which includes our suggestions to reduce the original compensation ratios, addresses both items. As presently written, the rules are more predictable than the status quo, in that they now 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.

Despite opposition to the rules as initially drafted, it is important to remember that prior to LD 1881's enactment, the DEP already had the authority under the Site Location of Development (Site Law) to

require mitigation for wildlife habitat impacts for any type of development project. LD 1881 did not add this requirement to the law for solar, wind, and transmission projects, as was demonstrated throughout applications for NECEC and Three Corners Solar, for example. Instead, LD 1881 authorized a unique way for solar, wind, and transmission developers to meet this obligation with the *option* of paying a compensation fee. This option does not create a new mitigation requirement. Instead, it provides a new way of meeting the law's requirements, an option that is currently only available to solar, wind, and transmission developers.

Our organizations appreciate the careful work that went into developing these new rules. The Legislature charged both the DEP and the Department of Agriculture, Conservation and Forestry (DACF) with separate rulemaking processes to accomplish the coordinated goal of balancing renewable energy development with preserving the farms, forests, and natural resources that characterize our state and are the backbone of its economy. This effort requires careful coordination and alignment between the two agencies and their distinct areas of focus to ensure that one set of valued lands and resources is not inadvertently placed in disproportionate conflict with one another. **After careful review of both DACF's recently proposed rules for Chapter 575 and the DEP's reposted draft rule for Chapter 375, there are some areas of potential overlap, conflict, and confusion.** Given pending changes to these rules, we encourage DEP to continue inter-agency coordination efforts by synchronizing the agency's next steps with the DACF's upcoming actions on this joint rulemaking process.

Ultimately, the proposed rules follow the intention of the Legislature and meet the goals that the initial group of convened stakeholders set out to achieve. The added flexibility gives developers two options for how to mitigate any impacts they cannot avoid or minimize – either the traditional, permittee-responsible method of requiring acres conserved or the new straightforward in-lieu fee option.

Emphasizing the importance of explicit coordination between both agencies' rulemaking processes, we offer the following feedback on specific areas of the draft rule:

Term Easements

Our organizations strongly support the requirement for permanent conservation that was included in the original proposed rules and do not support the use of term easements. By allowing term easements as an option, the most recent version of the draft rules would effectively eliminate the mitigation requirement for solar and wind projects. As written, these rules would incentivize applicants to agree to term easements with terms prohibiting development on lands with landowners who likely have neither a market for nor an interest in development. Similarly, if the terms of the easement prohibit timber harvesting, these temporary easements could be placed on land that a landowner has no intention of harvesting anyway due to regular harvesting rotations, but then could harvest as soon as the easement expires. If the final rules include the option of term easements this would run counter to the intent of the legislation.

Temporary or term easements do not provide adequate mitigation for the impacts from these projects. It is very likely that these development sites will be reused for another development purpose at the end of their lives, and if the mitigation is then terminated, there has been a net loss of core habitat and the benefits of the mitigation have been eliminated.

The proposed rules do allow for the use of working forest conservation easements as a compensation option for developments located on working forest. Our organizations support this option and see it as a preferred alternative to a term easement. Working forest conservation easements will help "keep forests as forests" by mitigating impacts to working forest land through adding protected working forest acres elsewhere within the region.

Large Undeveloped Habitat Blocks

We understand the concerns voiced at the public hearing on March 7 that these rules did not address varying habitat quality within large undeveloped habitat blocks. However, 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 thus mitigation is not required in those areas. Requiring a habitat quality assessment within these rules would be overly prescriptive and difficult to achieve a system that would be agreed upon by all parties.

Additionally, the definition of a large undeveloped block in areas outside the Southern Maine and Central Interior and Midcoast ecoregions poses a challenge due to the limitations of existing spatial road data. This issue is highlighted by the illustrative map shared by DEP (Habitat Connectivity [For Illustration Only – arcgis.com]) as guidance for this rulemaking, which incorporated both DOT and E911 road buffers. We appreciate the Department's removal, from the Definitions in section A(8), of "paved public" to describe the roads that act as fragmenting features. There are many non-paved, public roads in the state that are fragmenting features, and there are many high traffic private roads that are fragmenting features. We recommend using the E911 road layer for identifying fragmenting roadways in this part of the state and we recommend utilizing the same criteria to identify core and edge habitat as in the other ecoregions (see section 15-A [1]-[3]) and utilizing the size criteria of larger than 500 acres to be consistent with all other ecoregions except the Southern ecoregion. We have offered specific language suggestions in a section below.

Fee Designation Framework

We appreciate that the DEP will apply the highest applicable compensation ratio when an altered area qualifies for more than one compensation category, however, we are concerned that this standard is not explicit enough. Multiple values and mitigation tiers can and *will* overlap and interact with each

other. To add to this complexity, high-value agricultural land (HVAL) – as defined by DACF's Ch. 575 rulemaking process – is based on soil characteristics and not on the current use of the land. As written, the prevalence of HVAL could unintentionally tip the scales toward protecting farmland soils above all other natural resource values. These scenarios will occur regularly and require additional consideration.

An option for addressing this issue is allowing for the dispersal of one fee to more than one of the designated funds in cases where HVAL *and* multiple wildlife and fisheries habitats are impacted. Creating a fee dispersal framework that equitably and meaningfully (i.e., considering current use, acreage, ratios, etc.) distributes compensation fees to funds that will help to conserve losses to specific habitats and HVAL is essential. Subsequent conservation efforts, fueled by compensation fees, should be tied to specific habitat and HVAL losses associated with altered areas. This concept is core to LD 1881's intent.

Migratory Bird Pathways

Including "migratory bird pathway" as one of the wildlife and fisheries habitat compensation types is challenging, and we recognize the reasoning behind their removal from these rules. There are four large-scale migratory "flyways" in the US, all of which are hundreds of miles wide. Birds migrate broadly within those flyways. While there are a handful of exceptions, by and large when birds migrate over Maine, they migrate over the entire state, and do not confine themselves to narrower bands or paths, although there may be localized areas of concentration. Since there is a lack of available data to identify and delineate all the areas of concentration, and the known flyways are too broad, we cannot develop maps of "migratory bird pathways," making this a term of limited use for these rules. Despite their omission as a compensation type within this rule, migratory birds are still well-covered by Site Law. Applicable renewable energy projects will still be required to monitor birds over their site, just not under the inexact guide of "migratory bird pathways."

Mitigation Strategies

We support DEP's inclusion of "wildlife travel corridors" as a mitigation strategy option that can reduce mitigation compensation. With proper guidance, human-made travel corridors can allow wildlife to move between different habitats safely and efficiently. These corridors are critical for species survival, enabling wildlife to access food, water, shelter, and breeding grounds. It is important to note that, as recently drafted, DACF' Ch. 575 rules are currently required to be met as a permit condition for solar energy development, and "wildlife corridors" may require additional mitigation under Ch. 575 which may be inconsistent with DEP's designation.

We recognize that the Department made many of the initial changes that we recommended. We appreciate the attention to these changes and want to highlight additional suggestions that remain important to us in the final rule. New suggested text is <u>underlined</u> and highlighted:

- A.8. The definitions of large undeveloped habitat blocks should be consistent across the state, except for the size criteria used in the Southern ecoregion. We suggest editing the definition of large undeveloped habitat block to read:
    - "Large undeveloped habitat block. A contiguous area of core habitat and edge habitat that contains a contiguous area of core habitat large enough to fit in an inscribed circle larger than 250 acres in the Southern ecoregion or larger than 500 acres in all other ecoregions. ~~the Central Interior and Midcoast ecoregion. In other ecoregions, an area of core habitat that is further than one-half mile, measured horizontally, from a road~~."

- B.4. The proposed fee structure only accounts for land value and stewardship fees. A typical in lieu fee program would set a fee that includes *all* potential project costs, so that when the funds are utilized on the compensation side, there is enough funding to pay for any additional associated project costs (e.g., appraisals, survey, environmental assessments, closing costs, etc.). We suggest that an additional 1% of the land value be added to the fee to account for these costs and ensure the program is successful.

The work of balancing our state's many critical climate objectives—bolstering local food production, protecting natural and working lands, sequestering carbon, enhancing climate resilience, amongst others—is no small task. This multi-agency effort highlights the complexity of addressing these intersecting goals and overlapping resources. We applaud DEP for their leadership in designing this new program and welcome further opportunities to engage with both energy and natural resource agencies in efforts to assess permitting scenarios, review maps, etc. as we near the final stages of the parallel rulemaking processes.

We appreciate your consideration of items within these draft rules that we opposed, supported, and shared revisions for and thank DEP and members of the Board of Environmental Protection for their work here and beyond. Our organizations believe these rules are well on their way to appropriately addressing the goals of the enabling legislation and support their implementation. Thank you for the opportunity to comment.

Sincerely,

Kaitlyn Nuzzo
Director of Government Relations
The Nature Conservancy in Maine

Francesca Gundrum
Director of Advocacy
Maine Audubon

David Trahan
Executive Director
Sportsman's Alliance of Maine

Jeff Romano
Senior Public Policy Manager
Maine Coast Heritage Trust

WALDEN
RENEWABLES

September 9, 2024

Maine Board of Environmental Protection
Attn: Naomi Kirk-Lawlor
17 State House Station Road
Augusta, ME 04333-0017
rulecomments.dep@maine.gov

Public Input: Ch. 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Dear Naomi,

As requested by the Maine Board of Department of Environmental Protection (MDEP) I am writing to provide stakeholder input on the MDEP's Major Substantive Rulemaking process to Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act under P.L. 2023, Chapter 448 in response to passage of 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*.

I am registered in Maine as a Licensed Soil Scientist and Licensed Site Evaluator and am Nationally Accredited as a Professional Wetland Scientist, Certified Professional in Erosion and Sediment Control, and Internationally as a Certified Environmental Professional. I was born and raised in Maine and have spent more than 25 years as an environmental professional working in the State of Maine. I hold advanced degrees from the University of Maine, Southern New Hampshire University, and the University of New England. Currently, I serve as the Head of Development in New England for Walden Renewables, a renewable energy company who has been developing, constructing and operating solar projects in Maine since 2013.

We appreciate the time, effort and consideration the department has clearly given to public comments previously submitted, as we all recognize that ultimately renewable energy provides an opportunity for broad environmental benefits on a global scale. This must be balanced with siting that avoids and minimized environmental impacts within the footprint of a proposed project facility and demonstrate consideration for species habitat on a site-specific scale.

We would encourage the Department to bring the proposed definition of "large undeveloped habitat blocks" outside of the Southern and Central Interior and Midcoast ecoregions in line with the Maine Land Use Planning Commissions policy that defines "Primary Areas" a minimum of 1 mile from a public road. Given the management in some of these areas, the Department may with to consider the use of the 3-mile setback from a public road to facilitate development of more renewable energy adjacent to existing development where practicable.

An additional request would be to provide a reduction in required compensation if projects comply with the Maine Department of Inland Fisheries and Wildlife best management practices to reduce impacts to wildlife. Some of these measures could include use of wildlife friendly fencing, habitat enhancements, reduction or seasonal restrictions on mowing, creation of edge habitats, planting of wildlife friendly wildflower seed mixes. These solar arrays post construction provide for a diverse range of species to access and utilize throughout the operational life of the facility. From turkeys to frogs, with the exception of larger game species, these facilities are very accessible to, and utilized by an incredible diversity of opportunistic wildlife. Reducing the compensation ratios for projects following MDIFW guidelines would incentivize developers to minimize impacts and ease the burden of the compensation fees which could have significant impacts to a project's economic viability.

We appreciate the inclusion of term easements as a compensation option. We would also request the Department also include deed restriction as a means of meeting the requirement for compensation, this could be achieved by limiting development on portions of a project property that would not be occupied by an energy facility that would preserve undeveloped land in and around a proposed facility.

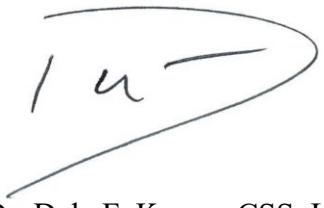
In keeping with accepted practices for other compensation projects, we would also request the rules be updated to allow for a department approved package that could contain partial payment and partial conservation project to accomplish the required mitigation. We would like to also suggest that habitat enhancement projects could provide required compensation, if an applicant identifies an appropriate opportunity within the county where the project is located.

We also request that the Department provide an on-ramp to allow for projects that are already contracted and going through interconnection or permitting the opportunity to successfully reach completion. The Chapter 575 rules recently published by the Department of Agriculture, Conservation, and Forestry proposed to exempt all projects that have obtained site control from their rules. We would request the Department also exempt projects with site control from this rulemaking.

In closing, we would once again like to request the Board postpone the enactment of these rules and send it back to the Department, so a thorough stakeholder engagement can occur prior to implementation. The best science should be employed to develop reasonable and predictable standards with clear definitions resulting in rules that allow for the development of necessary renewable energy facilities to be permitted and constructed, while balancing the needs of the wildlife and habitats present within the footprint of a proposed project. We cannot simply assume that conversion of forest land for the purpose of renewable energy production has an adverse impact without evaluating benefits and adverse impacts a specific project would create. To simply assume that these projects present an adverse impact does not follow the analytical process that resulted in the robust and appropriate environmental protections embedded in the

Site Location of Development and the Natural Resources Protection Act. Research has demonstrated that the correct mitigation hierarchy is avoidance, minimization, and compensation (Arnett and May 2016), or restoration (Kiesecker et al 2010). While there may be no perfect avoidance of mitigation strategy when evaluating the construction and operation of a renewable energy facility, except total avoidance by not building a renewable energy project, which is a choice in and of itself, that represents an adverse impact on the entirety of the ecosystem. It is easy to understand that all energy sources may come with a cost to some wildlife, and each mitigation technique and strategy should be species-biased and site-specific to be effective (Moore-O'Leary et al 2017). Offsite compensatory mitigation should be considered a 'last resort' strategy that includes land acquisition, preservation, and restoration of offsite habitats (Hartmann and White 2019). Regulations need to be specific and calculated, not arbitrary and based on popular opinion, more work needs to be done so these decisions can be made on the analysis of sound science.

Thank you for your time,



Dr. Dale F. Knapp, CSS, LSE, PWS, CEP, CPESC
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Maine Association of Wetland Scientists
www.MAWS.me

September 9, 2024

Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04333

Via email to Naomi Kirk-Lawlor at naomi.kirk-lawlor@maine.gov

Public Comment: Ch. 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Overview and History

The Maine Association of Wetland Scientists (MAWS) was established in 1990 as a group of environmental professionals, scientists, and students who work, live, and learn in and around the State of Maine. Our objectives are to translate changes in the regulatory climate, to offer expertise on wetland regulations, and to further the appreciation and study of Maine's wetlands and wetland ecology. Over the past 30 years MAWS has enjoyed a long history of positive collaboration with the Maine Department of Environmental Protection (MDEP).

Objectives

MAWS has received feedback and scientific perspective from its membership in response to the Chapter 375 15-A rule changes proposed by the MDEP regarding regulation of undeveloped habitat blocks. The objective of this submission is to summarize and highlight the points relevant from the MAWS perspective as practicing wetland scientists in the State of Maine. In general, it is the opinion of MAWS that the Chapter 375 15-A rule update has addressed many questions that resulted from the public review process. The draft could benefit from further consideration on a couple points.

Ensuring predictability to the greatest extent will make the planning and review process easier and level the playing field between projects and across the State, specifically definitions.

We appreciate the MDEP creating rules around protection of undeveloped habitat blocks and wildlife corridors in the face of development, however, we have one overarching comment to these specific rules. We understand the legislature asked MDEP to create these rules around renewable energy and transmission, however it is counterintuitive to apply these rules to specific energy projects and not other development such as residential subdivisions, commercial and transportation projects as these projects can have the same or greater impact to undeveloped habitat blocks.

To Consider

- *The definition of large undeveloped habitat blocks in Western, Northern and Downeast Maine (outside of the Southern and Central Interior and Midcoast ecoregions).* The recent draft rule has removed paved public road from the definition of undeveloped habitat block. One missing definition is that of a road. There is an opportunity for confusion, and we suggest that the definition of road is provided. We see that the maps have been updated for the removal of paved public road, mapping resources in northern Maine are still missing from the Habitat

Maine Association of Wetland Scientists
www.MAWS.me

Connectivity Mapping: Habitat Connectivity (For Illustration Only) (arcgis.com). It is imperative to have mapping for all communities.

  - Does a road break up a habitat block? If so, "road" needs to be further defined. We recommend using the LUPC definitions of road and land management road. Obviously, scale/frequency of use also has relevance wherein an interstate or railroad line would need to be treated differently than a road to seasonal camps.

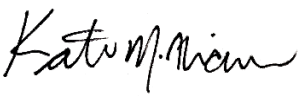
- *The appropriateness of the proposed compensation ratios*. The compensation ratios were cut in half in the recent draft rule update providing 1:1 compensation for fenced and 0.5:1 for non-fenced; was there a scientific basis for these ratios?
  - We appreciate the clarification on the allocation of funds from compensation fees. We support the use of these funds to be used for land preservation including programs such as Land for Maines Future.
  - Functional assessments are a common tool and standard to evaluate and establish extent of wetland impacts and need for compensatory mitigation. Might similar assessment of impact(s) to the subject habitat block, or post construction monitoring, be considered clarify need for compensation and ratio?
- *The potential for the use of term easements or deed restrictions as a form of compensation*. Will there be flexibility to use either easement or deed restrictions as a form of compensation? Will there be flexibility on restoration to pre-construction conditions upon or within 10 years of decommissioning?

MAWS would be happy to be part of a stakeholder group to work collectively to support changes to the proposed rule. We have an active membership of environmental experts who regularly work to bridge the gap between policy and resource protection in Maine. Thank you for your consideration.

Sincerely,

Maine Association of Wetland Scientists - Legislative Committee

Katelin Nickerson
President, MAWS



katelin@flycatcherllc.com

Glenvale SOLAR

September 9, 2024

Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

Attention: Ms. Kirk Lawlor
Subject: Comments on Chapter 375, No Adverse Environmental Effect Standards of the Site Location of Development Act, Reposted Rulemaking

Dear Ms. Lawlor,

Glenvale Solar appreciates this opportunity to provide feedback on the reposted Chapter 375 "No Adverse Environmental Effect Standards of the Site Location of Development Act" rulemaking.

Glenvale develops utility-scale solar in Maine with projects in Buxton, Baldwin, Turner, Topsham, and Warren. These projects will power nearly 40,000 homes, create 200 construction jobs, and provide $60M in in-state spending. Each project has a power purchase agreement ("PPA") with Central Maine Power ("CMP") and will generate ratepayer savings with rates below 4 cents per kilowatt-hour. Our first projects are scheduled to begin construction this year.

Glenvale is concerned that the proposed rules will excessively restrict solar energy development across Maine, even after considering the changes to the originally proposed compensation ratios. Further, these rules may affect projects that either have secured all their municipal, state and federal permits or are sufficiently advanced in their permitting process. Glenvale's projects are deep into the development process and have substantial financial investments at stake. These projects are especially sensitive to any increase in costs since they have set energy rates by their executed Power Purchase Agreements ("PPAs").

Glenvale has the following comments regarding the proposed rules.

1. Glenvale's siting decisions consider many factors such as wildlife habitat, wetlands, proximity to transmission lines, alternative land uses, conservation, community impacts such as viewshed and economic benefits. The proposed rule changes apply fees largely determined by a project's size without due consideration for many of these site-specific merits or values. We believe this focus on a development's size biases development and is at odds with well-balanced, broader siting strategies for renewable energy projects.
2. Glenvale carefully develops projects that avoid sensitive natural resources, allow for the passage of small animals, establish a meadow condition of native pollinators, and reduce carbon emissions. New Chapter 575 rules to be implemented by the Department of Agriculture will increase constraints on land use and if deploy broad-stroke rules would also limit Maine's ability to succeed in reaching its clean energy goals. Glenvale's solar projects are a less intensive land use than many types of commercial and industrial developments which are not affected by the proposed rulemaking. This differential treatment of renewable energy projects is unfair in our view.
3. The proposed rule changes create an economic burden for renewable energy projects. For projects already contracted to sell their energy in-state, this burden

could result in the inability to secure financing resulting in a loss of jobs, local spending, ratepayer savings, and generation of emission free energy. And for projects which haven't yet contracted to sell their energy, this burden will result in higher energy costs borne by ratepayers. To enable the state to meet its long-term renewable energy goals, Glenvale requests that the Department establish reasonable milestones for the new rules to take effect. Additionally, information on what development milestones and conditions a project can attain to avoid triggering the impact fees would be supportive to developers wading through all the other constraints. Ultimately, clear, fair and prudent rules while supporting Maine's clean energy goals will stand to be the most successful.

4. Glenvale requests that the Department exempt from the rule change projects that have already achieved significant development milestones. Our projects are well into the development process, having secured the necessary municipal, state, and federal permits, and represent substantial financial commitments. Introducing new fees or regulatory requirements at this stage could disrupt these projects as they are already contracted with fixed rates under PPAs. Such an exemption would align with the Department's goal of promoting renewable energy development while avoiding unintended financial burdens that could derail these projects and slow Maine's progress towards reaching clean energy goals.
5. Glenvale proposes that if the Department is to move forward with these fees, they should be paid out in a concept analogous to environmental rent. Further, solar projects are analogous to a long-term property rental and therefore temporary. The projects are responsible for posting decommissioning surety to return the sites to their original state prior to construction. This is unique in the world of development. Housing, strip malls, etc. do not have a condition by law where once the use is finished, they are returned to the natural habitat. The fees levied should consider the impermanence of the land use as well as allow for an annual payment structure, operational expense versus upfront which would financially help projects.

An annualized payment to the state to spend on wildlife and habitat management would be better aligned with the environmental impacts than an excessive upfront fee used to dissuade responsible development.

6. Glenvale would like to better understand a process that may be conducted to determine the habitat and species qualifications specific to the detail of the property line of a site. For instance, the mapping for certain species ranges or deer wintering grounds could cover a site but may not actually fall directly within the bounds of the project. In all cases this detail matters and Glenvale feels that there needs to be a process beyond generic mapping to define these areas and the ability to not be qualified under certain definitions of Chapter 375.
7. There is no definition of habitat for these blocks other than land area. The areas could be prime candidates for reclamation and eradication of invasive species and would still be considered as habitat. A solar energy project on a site such as this could improve the condition and perhaps what is written in the decommissioning plan could be revegetation of native species rather than a large sum paid up front.

On behalf of everyone at Glenvale, we sincerely appreciate your consideration of our input. Thank you.

Sincerely,

s/s
Lisa Raffin, Senior Director of Corporate Development
Glenvale, LLC

Maine Forest Products Council

The voice of Maine's forest economy

September 9, 2024

Maine Department of Environmental Protection
c/o Naomi Kirk-Lawlor
17 State House Station
Augusta, ME 04333-0017

Re: Rulemaking Comments re: Chapter 375: No Adverse Environmental Effect Standards of the Site Location of Development Act

Dear Ms. Kirk-Lawlor,

The Council believes the policy in the revised version of the rules equating all roads, be it a winter road used every 20 years or I-95, as having the same impact on habitat fragmentation is unscientific. It is an inaccurate factor for evaluating habitat fragmentation on over one half of the forested acres in Maine. For that reason and others, we do not favor the approach that has been taken in the redrafting of these rules.

A much neater way to achieve the goal of reducing the impact of this proposed rule on the unorganized territory, where fragmentation by renewable energy poses no threat to wildlife habitat connectivity, would be to remove the region from the rule all together. This approach is supported by the US Office of Energy Efficiency & Renewable Energy's Large-Scale Solar Siting Resources[1] which states, "…factors to consider are the elevation of the land (the flatter, the better) and proximity to transmission lines and the point of electricity consumption (the closer, the better)." As clearly shown by the grid map included below the UT lacks proximity to transmission lines and to the points of consumption that would put it at risk of this type of development.

Further, the DEP and ACF seem to be developing rules to implement LD 1881 in silos, and the resulting rules, if accepted in current forms, will send a confusing message to developers. For example, when the DEP and ACF rules are considered together, the rigid regulatory structures proposed by each department may adversely affect the habitat that Chapter 375 is looking to protect. Chapter 575 rules currently include a mitigation ratio for the development of forested lands with HVALs that is significantly greater than the mitigation ratio this rule assigns to LUHBs. Forested lands with HVALS have also been assigned a higher mitigation ration than moderate and high value deer wintering areas. In effect, this dynamic will make LUHBs more economical to develop than forested lands with HVALS, even if they have never supported agriculture.

[1] https://www.energy.gov/eere/solar/large-scale-solar-siting-resources

When these new rules are taken together with existing protections, there may be severe constraints on siting transmission lines and grid scale energy development that is necessary to meet the State's renewable energy goals.

Below you will find an evaluation of some of our issues with Ch. 375 in current form.

Siting energy infrastructure in northern and eastern Maine

MFPC landowners have reviewed the E911 roads database produced by the DEP and have identified many inconsistencies. The challenge is in the variable usage of roads in this region based on factors of harvest needs, ground conditions and major haul road changes (i.e., the Golden Road use is significantly less than when the Millinocket mills were operational).

Regardless of the accuracy of the road data, the fundamental premise that these roads fragment habitat is not accurate and illustrates a major flaw in the policy design of these rules. Remote forest roads are not restrictive of movement for mammals or bird species. Maine Audubon published "Conserving Wildlife on and Around Maine's Roads"[2] and cited a study of traffic and wildlife that showed no small mammals moved across roads with an average annual traffic volume of over 11,000 vehicles per ***day*** - comparable to a busy two-lane highway in central Maine.

The North Maine Woods gate system reports[3] 2023 road use in peak season of 21,437 visiting parties for the ***month*** of October within the 3.5 million acres of controlled access land. Commercial traffic in and out of the region is estimated at[4] 15,000 trips per month. At a peak of 9,200 trips per day in a region estimated to have 9,000 miles of roads of various conditions (all season, winter, remote), it is clear fragmentation of habitat due to traffic barriers is extremely limited.

In many cases, roads provide wildlife connectivity in these remote regions. [5]

[2] WWW.beginning with habitat. Conserving Wildlife on and Around Maine's Roads.

[3] NMW Usage by month chart

[4] 8 million acres supplies 60% of 15M tons of wood X 3.5MAc/8 MAc= 4M Tons Wood/yr divided by 30 tons/ Trip divided by 9 months = 14,815 Trips per month.

[5] https://www.earthtouchnews.com/natural-world/animal-behaviour/backroad-traffic-in-maine-canada-lynx-in-noisy-face-off/

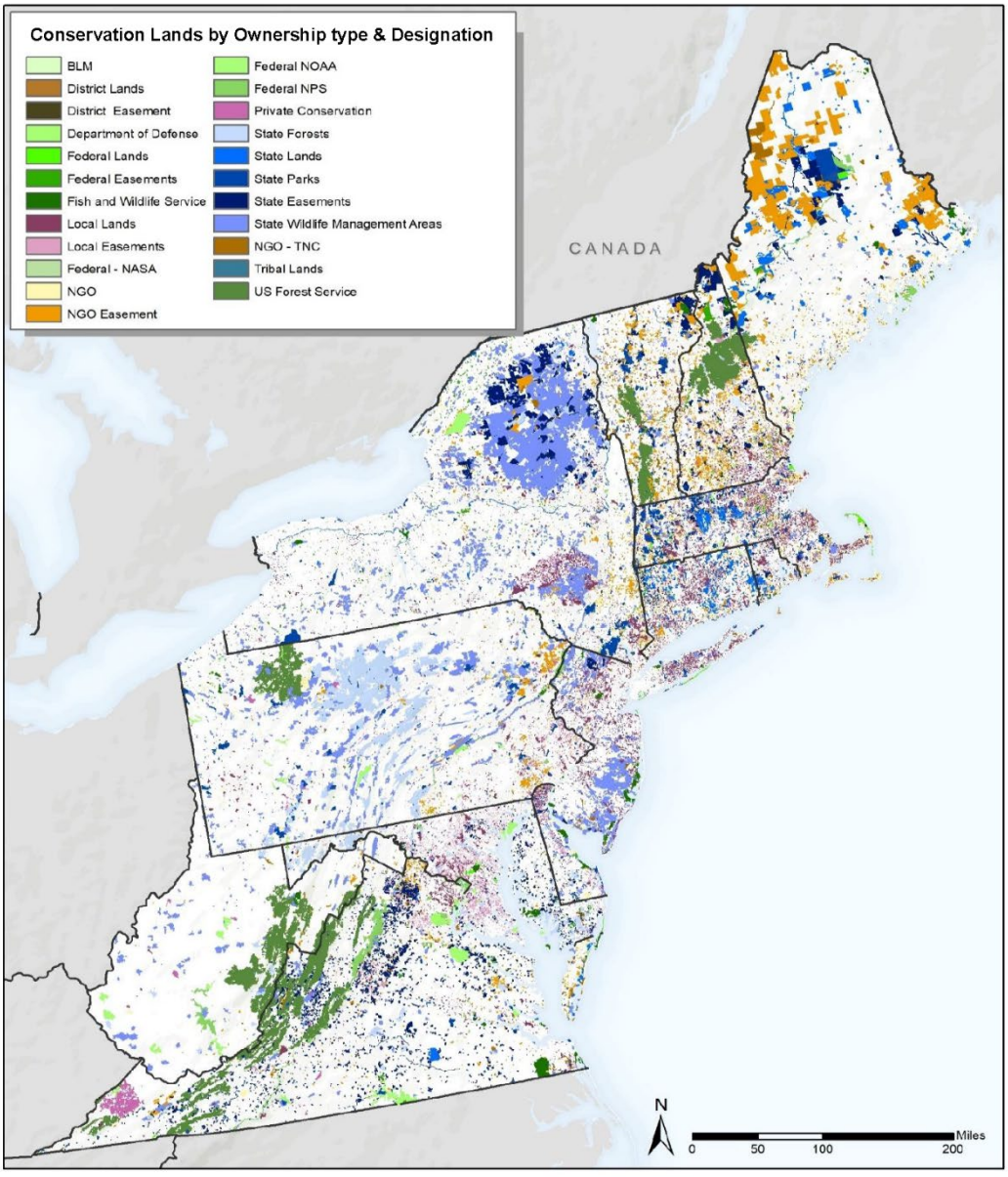
Areas in northern and eastern Maine should not be included in this rule for the following reasons:

The areas in northern and eastern Maine are largely forest lands dedicated to the production of timber. This working forest provides millions of acres of wildlife habitat. Forestry uses do not restrict wildlife movement, and often enhance wildlife habitat by providing a mix of forest succession types. Energy development in these areas would not threaten the viability of wildlife, as there is an abundance of habitat for wildlife to use. This region is already subject to NRPA, a regulatory program that protects millions of acres of land that surround water and wetlands, which provide habitat and corridors for wildlife movement. It is also largely enrolled in the Tree Growth Tax Program, which promotes long-term forest management and successfully discourages conversion to other uses.

In addition, conservation land and working forest easements protect millions of acres for wildlife habitat in the region (Figure 2.3 The distribution of Conservation Easements [6]). The state and land trusts have acquired title and easements throughout this region to retain the working forest and protect wildlife habitat for public benefit.

[6] Anderson, M. G., Clark, M., & Olivero, A. P. (2023). Conservation status of natural habitats in the Northeast. https://northeastwildlifediversity.org/project/conservation-status-natural-habitats-northeast (The Department consulted these studies in its analysis of public comments and they are thereby included in the rulemaking record.)

Figure 2.3. The distribution of conservation easements. This chart shows the distribution of easements among types of interest holders. By area, most easements are held by private non-profit entities and state government. Local government has the largest number of individual tracts, followed by Private Non-Profit organizations.



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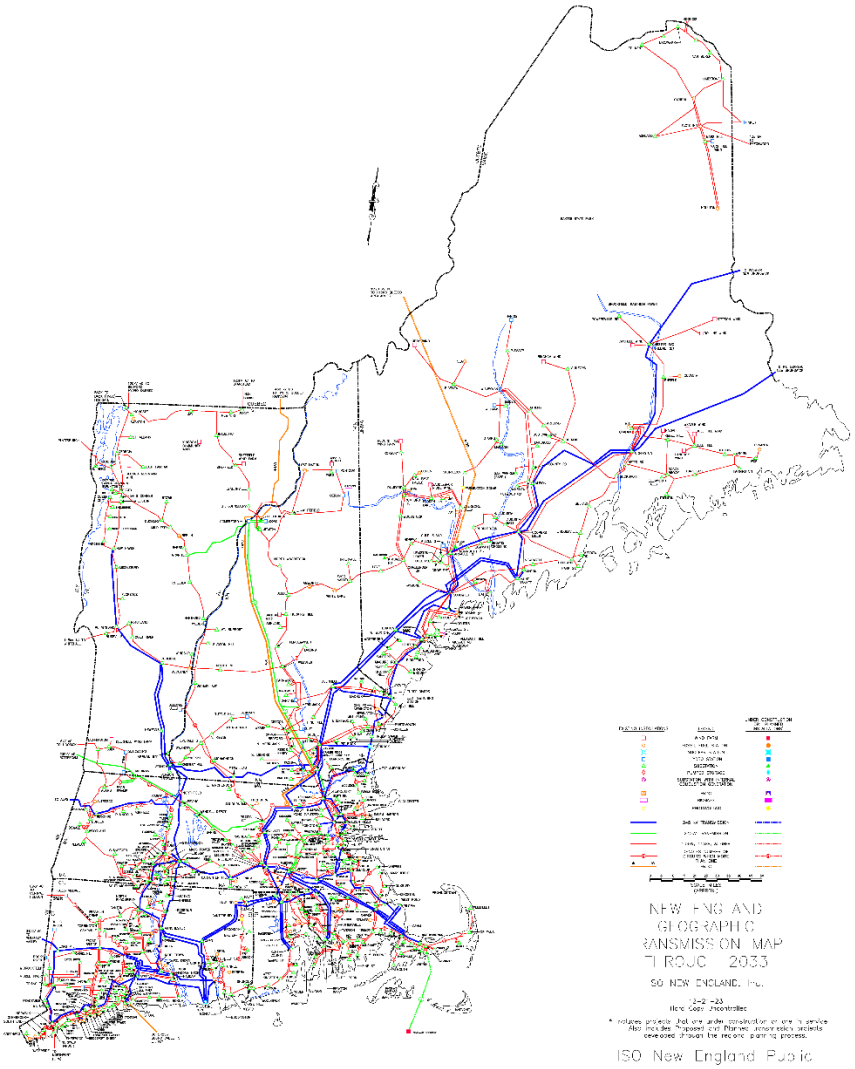
We also suggest that the Department provide an overlay of the state's transmission infrastructure to better visualize the pattern of potential solar development throughout Maine (see figure 1). In general, we understand solar facilities need to be within one half mile of major grid connections to be economical. The gaps in state coverage clearly outline the boundaries of the unorganized territory, making the conflict between solar development and habitat interactions minimal.



This regulation is not needed to protect wildlife habitat in this region. Planning and zoning can be used to locate best the places for energy infrastructure (i.e. near consumers or transmission), and the Site Law has standards to protect high value habitat on the site.

Siting energy infrastructure in southern and central Maine

In the Department basis statement, the publication Conserving Wildlife in Maine's Developing Landscape is specifically cited as a core reference. However, Audubon clearly states:

"These recommendations are based on the best available information from an evolving body of scientific literature. **They are meant to be guidelines and not prescriptive in nature.**"

The Council believes it is important to recognize that habitat connectivity and species dynamics are evolving scientific principles, as indicated in the additional DEP references. For example, the above publication lists mammals requiring large areas such as black bear, fisher, river otter, bobcat, and moose. These species have healthy populations throughout their current ranges in regions that are fragmented by development.

Planning is needed for siting energy infrastructure, especially transmission lines, to balance energy development against wildlife habitat protection and HVALs. The State needs to identify the best areas to locate transmission corridors that will provide grid access for new clean energy development. This rule, in conjuncture with Ch. 575, can then implement that plan by encouraging development in the selected corridor.

In determining LUHBs, this rule only uses acreage or distance from a road of any size to define a protected wildlife habitat. The trigger is not based on wildlife needs, and the rule proposes different sizes areas in different parts of the state even though the specific needs for each species do not change with geographic location. As such, **the rule is overbroad, arbitrary and not reasonably based on wildlife protection needs.**

The rule must focus on protecting site-specific wildlife needs, with consideration of the surrounding area, to ensure that indigenous wildlife populations can thrive. The rule needs to recognize that there are places where wildlife is threatened due to loss of habitat, and thus require more protection, and other places that have adequate space for wildlife to exist because there are legally protected areas and conservation lands that serve this purpose already.

Accordingly, the compensation requirements in the rule should be designed to discourage development that will impact specific wildlife habitats that are needed for the survival of wildlife in the region and are at risk from development (i.e. not protected by current law or conservation). The rule should not have a blanket compensation requirement that requires every square foot of development to pay a fee, regardless of the actual impact on wildlife.

If habitat mitigation is designed to generate funding for LMF-type programs, then the integrity of the Site Location law is in jeopardy. This policy design, if enacted, worries the landowner community because it signals a sweeping use of regulatory control for future land use opportunities.

Thank you for the opportunity to submit these comments in opposition to the rule and we would be glad to answer any additional questions you may have.

Sincerely,

Patrick Strauch
Executive Director

Comments on Chapter 375 Rule Revision by Maine Department of Environmental Protection.
David von Seggern, Westbrook, ME (vonseg1@sbcglobal.net, 775-303-8461)

General:

I have four main objections to the language of this proposed rule change:

1) The new part of Rule 375 is directed narrowly to renewable energy facilities and to high-impact transmission lines needed to electrify everything. It should be directed at ALL development because all types of development have similar impacts.

2) Developer-managed mitigation projects open the intent of this rule to abuse, distortion, and ineffectiveness. A properly formed and managed compensation fund can provide larger benefits than scattered and poorly executed mitigation projects.

3) Easements and deed restrictions are not a means of mitigation or compensation for habitat loss. Any loss must be balanced with a measurable gain elsewhere.

4) Compensation ratios have been reduced by the MBEP relative to those proposed by MDEP. This is not acceptable.

Specific:

15-A(A) — MDEP Rule 375 is directed at all proposed development regulated under the Site Location Law (38 MRSA §484(3)). However, the proposed rule changes meant to satisfy P.L. 2023 ch. 448 are directed only to renewable energy generation sources (solar, wind, etc.) and high-impact transmission lines associated with the distribution of electricity from such facilities. This is made clear in the title line of Section 15-A: *Compensation for Adverse Effects of Renewable Energy Development on Wildlife and Fisheries Habitats*. The overriding question is why renewable energy generation is being singled out amongst all types of development. Surely the considerations for the health of our environment and protection of wildlife habitat pertain to all development impacts.

15-A(B)(1) attempts to define when compensation is required for impacts. This language overlooks the fact that nearly any undeveloped land is wildlife habitat and a sink for carbon. By trying to set thresholds, conditions, and requirements, we make the decisions surrounding compensation too troublesome and too open to challenges by developers. We suggest removal of this language entirely and simply requiring compensation for ANY taking of core or edge habitat as defined in 15-A(A).

15-A(B)(2) allows the developer to propose an impact-compensation program (also known as mitigation) that they will be responsible for. There is a large body of literature which shows that such an approach is flawed for one or more reasons: 1) developers do not carry through with the projects; 2) developers disappear in the sense that no entity

remains that can be held responsible, 3) oversight agencies lack the resources to properly monitor the suitability and success of such programs, and 4) agencies simply lose track of programs within the often long timeframes in which the mitigation should happen. We recommend that compensation fees be the only option here. By requiring contribution to a general compensation-fee fund, the state can plan and execute worthy projects of larger acreage that would over-compensate for the totality of smaller blocks under developer proposals. This consolidation will enable projects involving contiguous land to be undertaken or projects involving identified prime habitat to be undertaken. In this way, gains can outweigh the losses.

15-A(B)(2) allows “working forest conservation easements” and “term easements”. Easements do not accomplish the goal of replacing lost habitat, due to projects, with new habitat suitable to compensate for that loss. Easements do not create new habitat, but only protect current habitat. The rationale for putting this into the rule seems to be that the area put under easement would have been harvested or developed — this is not necessarily true. We recommend removing easements as an option for compensation.

15-A(B)(3), as reposted, shows significant reductions (one-half in cases (a) to (c)) in the compensation ratios originally proposed by MDEP. Such reductions cannot be helpful to any state policy (ref?) that seeks to maintain wildlife habitat at a given level or seeks to increase it. We can only surmise that these reductions were made on the behalf of developers. Given the importance of maintaining habitat acreage in the state both for wildlife and for carbon sequestration, we strongly recommend returning to the original MDEP compensation ratios.

15-A(B)(4) requires a sliding overhead amount for administration of projects under the compensation fund. What is the basis of “An additional fee of 5 percent of the compensation fee amount for the first $200,000 in compensation fees and 2 percent of the compensation fee amount for the portion of compensation fees over $200,000 will be assessed for long-term stewardship of habitat improved or preserved with compensation fees.” MDEP must set the amount of the fee needed for administration to be indeed large enough to ensure long-term success of the compensation projects. This amount may be difficult to assess, but is it based objectively on past experiences? Without becoming onerous to developers, it seems this overhead amount could be increased.

15-A{C) requires that “A permittee responsible compensation project must be executed before commercial operation of the development.” In all cases, the execution of a compensation project is not tantamount to success of a compensation project. More importantly, almost no compensation project could be judged to be successful within the business timeline for start of a project. Mitigation projects may take several years to be fully judged on success and adequacy. Thus we have further reasons not to allow permittee-responsible compensation projects.