

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

001 FUND TO ADDRESS PFAS CONTAMINATION

Chapter 405: REAL ESTATE PURCHASES

SUMMARY: The 130th Legislature authorized a Fund to Address PFAS Contamination (7 M.R.S.A., Chapter 10-D). Permissible uses include buying and selling agricultural land found to be contaminated by PFAS. Consistent with the legislatively mandated PFAS Fund Implementation Plan, these rules establish the eligibility and prioritization criteria and administrative procedures for DACF to purchase contaminated agricultural land from commercial farms that choose to sell their property.

§ 1. OVERVIEW

The Department of Agriculture, Conservation and Forestry (DACF) may purchase agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances (PFAS) from commercial farms, along with appurtenant buildings, structures, and fixtures. DACF may purchase all or some of an eligible landowner's real estate.

§ 2. CONSISTENT WITH STATUTE

All terms used in this Chapter shall be defined as indicated in Title 7 M.R.S.A, Chapter 10-B unless specifically provided herein.

§ 3. DEFINITIONS

1. "Agricultural land" means any land in Maine which is used or capable of use without substantial modification for production of agriculturally related products including, but not limited to, crops, livestock, poultry, dairy products and sod.
2. "Building" means any structure having a roof, or partial roof, supported by columns or walls, that is used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.
3. "Commercial farm" means a farm that produces any farm product with the intent that the farm product be sold or otherwise disposed of to generate income.
4. "Fixture" means any object permanently attached to a property by way of bolts, screws, nails, glue, cement, or other means.
5. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.
6. "Structure" means anything constructed or erected with a fixed location or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, retaining walls, billboards, signs, piers, and floats.

§ 4. FUNDING

The Fund to Address PFAS Contamination (PFAS Fund) is funded by an appropriation from State general funds as provided by Maine Public Laws, 2021, Chapter 635, and any subsequent appropriations, and, whenever possible, any additional funding that may be available from other sources.

§ 5. ELIGIBILITY

The PFAS Fund is restricted to purchasing properties that meet the statutory definition of a commercial farm or agricultural land (see 7 M.R.S.A. §§ 320-K(4)(C-D)). DACF may purchase real estate from a commercial farm if:

1. The commercial farm has DACF-confirmed unsafe levels of PFAS contamination, defined as
 - a. groundwater test results exceeding Maine's enforceable interim drinking water standard for PFAS until superseded by either Maine's Maximum Contaminant Level (MCL) for PFAS or a federal MCL for PFAS, whichever is lowest, for wells servicing the farm or fields; and/or
 - b. soil test results exceeding any current Maine CDC crop-specific screening level; and
2. The commercial farm has partnered with DACF to investigate the scope of contamination at the farm and has granted ongoing access such that DACF staff are able to develop an understanding of the farm, its PFAS contamination, and potentially a strategy for recovery; and
3. The subject real estate was owned by the current landowner(s) prior to the discovery of PFAS contamination on the commercial farm, with two exceptions:
 - a. The current owner acquired the subject real estate as the beneficiary of an estate of a landowner who owned the subject real estate prior to the discovery of PFAS contamination; or
 - b. The subject property was purchased by a Maine-based nonprofit with knowledge of the PFAS contamination on site and with the intention of providing emergency aid to a commercial farm.

If either exception applies, DACF may purchase the subject property using the same criteria described in Sections 6-8.

§ 6. APPRAISALS

1. The purchase price for any given property will be based on an appraisal of the highest and best use of the property as if there was no PFAS contamination.
2. Appraisals must be conducted by a certified general real property appraiser with agricultural experience in Maine, selected by DACF.
3. All appraisals must be in the form of an appraisal report that complies with the most recent edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

§ 7. ALLOCATION OF RESPONSIBILITIES AND COSTS

1. DACF will develop and publicize a process for soliciting and evaluating offers by eligible farms to sell eligible property to DACF.

2. DACF will be responsible for due diligence (i.e., ordering and paying for one appraisal per property, as well as title searches, boundary surveys, and environmental site assessments, as needed).
3. DACF will coordinate with Maine DEP's Voluntary Response Action Program (VRAP) to characterize each property and draft a restrictive covenant to be recorded in the registry of deeds in the county where the real estate is located.
4. DACF will pay the agreed upon purchase price, due diligence costs, VRAP fees if applicable, and recording fees.
5. Sellers will pay to cure any title defects, liens on the property, and taxes. A seller who wants a second appraisal may order one from an appraiser approved by DACF at the seller's expense.
6. Once DACF holds title to the real estate, DACF may pay an in lieu of tax (PILOT) fee to the municipality.

§ 8. ADVISORY PANEL

1. The Commissioner of DACF will establish a land acquisition and management advisory panel. The advisory panel will consist of:
 - a. The Commissioner or the Commissioner's designee;
 - b. The Commissioner of Environmental Protection or the Commissioner's designee;
 - c. The Commissioner of Inland Fisheries and Wildlife or the Commissioner's designee;
 - d. Two members of the public representing the agricultural sector, at least one of whom is an active commercial farmer;
 - e. One member of the public representing expertise in land use transactions (e.g., lawyer or realtor); and
 - f. One member of the public with expertise in land use planning.
2. The Commissioner will make a good faith attempt to fill one of the public seats with a person representing Indigenous communities in Maine.
3. The members of the public appointed by the Commissioner serve on the land acquisition and management advisory panel for terms of 3 years. Notwithstanding the previous sentence, the Commissioner shall appoint initial public members to the land acquisition and management advisory panel as follows: 1 member of the public for a 2-year term, 2 members of the public for 3-year terms, and 1 member of the public for a 4-year term.
4. Public members of the land acquisition and management advisory panel will be entitled to reimbursement of expenses in accordance with 5 M.R.S.A. § 12002-D when funding is available and prior approval is received from the PFAS Fund director.
5. The role of the advisory panel is to help prioritize which properties to purchase and to recommend management strategies for properties acquired by DACF. Final decision-making authority rests with the Commissioner.
6. Prioritization criteria for land purchases may include but are not limited to:
 - a. Degree and extent of PFAS contamination of soil and/or groundwater (highest priority will be given to commercial farms with greater PFAS contamination);

- b. Percentage of soils classified by the United States Department of Agriculture (USDA) (and confirmed with onsite soil-testing) as prime farmland, unique farmland, farmland of statewide importance, and farmland of local importance (highest priority will be given to commercial farms with more soils classified by the USDA as prime farmland, unique farmland, farmland of statewide importance, and farmland of local importance);
 - c. Magnitude of financial loss resulting from PFAS contamination (higher priority will be given to commercial farms that have experienced greater financial loss);
 - d. Economic viability of the working farmland property in terms of current and potential future commercial agricultural activities in local, regional and statewide markets (higher priority will be given to commercial farms with greater potential for future commercial agricultural activities);
 - e. Natural resources values associated with the farmland property, including open space land, forested land, wetlands, riparian buffers, and wildlife habitat (higher priority will be given to commercial farms with higher natural resource values); and
 - f. Costs associated with maintaining the property (higher priority will be given to commercial farms with lower maintenance costs).
7. DACF reserves the right to cap the amount of funding for all requests based on available resources.

§ 9. RIGHT TO APPEAL

1. If an offer to sell land to DACF is rejected, DACF must send the landowner a written notice of its decision. Such notice must include an explanation of why the offer was rejected.
2. Upon receipt of such notice, the landowner may appeal to DACF. The notice of appeal must be in writing, signed by the applicant, and received by DACF within 45 days of receipt of the rejection notice.
3. Within 90 days of the receipt of a written request for appeal, DACF will either grant the appeal or schedule a hearing.
4. Appeal hearings will be held before a DACF hearing officer who has been designated by the Commissioner of the DACF. The hearing officer will make a recommended decision. Final decisions on the appeal will be made by the Commissioner after a review of the record.
5. Appeal hearings will be held in accordance with the adjudicatory proceedings provisions of the Maine Administrative Procedures Act, 5 M.R.S.A. §§ 9051-64.
6. Final decisions will be in writing and contain notice of a right to petition the Superior Court for judicial review.

§ 10. WAIVER

Upon the request of any person subject to this Chapter or upon its own motion, the PFAS Fund may, for good cause, request waiver of any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 7, Chapter 10-D. The Commissioner of DACF may grant the waiver in extenuating circumstances.