

Draft Rule Language for Solar Energy Development on High-Value Agricultural Land
2024-11-20

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01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BUREAU OF AGRICULTURE, FOOD, AND RURAL RESOURCES

Chapter 575: PERMITTING SOLAR ENERGY DEVELOPMENTS ON HIGH-VALUE AGRICULTURAL LAND

SUMMARY: “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” was enacted by the first regular session of the 131st legislature ([P.L. 2023, ch.448](#)). The P.L. establishes roles in the permitting and compensation processes for the Department of Agriculture, Conservation, and Forestry (DACF) and for the Department of Environmental Protection (DEP), as well as delegated roles for the Land Use Planning Commission (LUPC) and municipalities. The rules within this chapter establish the procedures for administering [P.L. 2023, Ch. 448](#), including:

- Defining “high-value agricultural land” (HVAL);
- Establishing tiers of HVAL with variable compensation amounts for each tier;
- Defining “dual-use agricultural and solar production”;
- Implementing a permitting program for solar energy development on high-value agricultural land, including provisions for delegating permitting authority to the Land Use Planning Commission (LUPC) and municipalities; and
- Implementing other administrative procedures not specified in the legislation, including enforcement.

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Chapter 575: PERMITTING SOLAR ENERGY DEVELOPMENTS ON HIGH-VALUE AGRICULTURAL LAND

SECTION 1. PREAMBLE

The benefits of farms and farmland to our state and its people are numerous, spanning economic, cultural, environmental, and educational benefits, as well as providing a foundation for local and regional food security. However, farmland is under immense development pressure in Maine. Productive agricultural soils are a finite resource that, once developed or disturbed, may take decades to restore, and in some cases, restoration may not even be possible. They are key to Maine's current and future agricultural productivity, biodiversity, climate resiliency, and food security. At the same time, renewable energy is central to achieving the state's climate goals and farmers may wish to enhance the economic viability of their operations with thoughtful siting of renewable energy infrastructure.

The purpose of this rule is to regulate the permitting of solar energy developments that occupy five (5) acres or more and are at least partially sited on High-Value Agricultural Land (HVAL) as set forth in [38 M.R.S. §§ 3201-02](#), Protection of Agricultural Soils from Solar Energy Developments. When a solar energy development is between five (5) and twenty (20) acres, the applicant can proceed with applying for a permit by rule (PBR) in an expedited process. When a commercial-scale solar operation is twenty (20) acres or more, applicants must apply for an individual permit, and a compensation fee may be required of the solar energy developer. Compensation fees will be calculated by and paid to the Department of Environmental Protection (DEP), which will deposit the funds into an account for the Department of Agriculture, Conservation, and Forestry (DACF) to be used for farmland conservation or solar mitigation projects.

The rules allow solar energy development while also protecting HVAL to the extent practicable. The rules provide opportunities to reduce the compensation fee if mitigation strategies are employed at the site.

SECTION 2. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. **AGGRIEVED PERSON.** A person who has suffered or may suffer an actual or imminent injury resulting from the licensing or permitting by DACF of a solar energy development. For the purposes of this definition, "injury" means a decision by DACF that adversely and directly affects or will adversely and directly affect an aggrieved person's property, pecuniary, or personal rights. The aggrieved person may also be referred to as a "petitioner" in this rule chapter.
2. **AGRICULTURAL PRODUCTIVITY.** The successful production or cultivation of agricultural products.
3. **AGRICULTURAL PRODUCTS.** Plants, animals, and their products that are useful to humans and include, but are not limited to:
 - A. forages and sod crops;
 - B. grains and feed crops;
 - C. dairy and dairy products;
 - D. poultry and poultry products;
 - E. bees and bees' products;
 - F. livestock and livestock products;
 - G. manure and compost;
 - H. fruits, berries, vegetables, flowers, seeds, grasses, and other similar products;
 - I. maple syrup and maple products;
 - J. ornamental trees and Christmas trees;
 - K. annual and perennial ornamental plants; or
 - L. any other plants or animals, or plant or animal products, that supply humans with food, feed, fiber, or fur.

"Agricultural products" does not include trees grown and harvested for forest products.

4. **ALTERNATIVES ANALYSIS.** A one (1) to three (3) page report that analyzes whether a less damaging practicable alternative to the proposed impact to HVAL exists, which still meets the project purpose. The alternatives analysis should also evaluate if, to the extent practicable, the project is located on the least agriculturally productive portions of the parcel[s]. Determining whether a practicable alternative exists includes:

- A. Utilizing, managing, or expanding one or more other portions of the property for the solar energy development that would avoid or reduce the impact to HVAL;
- B. Reducing the size, scope, or configuration of the project, thereby avoiding or reducing the impact to HVAL;
- C. Developing alternative project designs that avoid or reduce the impact to HVAL; and
- D. Demonstrating the need, whether public or private, for the proposed solar energy development.

Attaching figures to the alternatives analysis is encouraged and does not count towards the page limit.

- 5. **APPLICANT.** An individual, firm, association, organization, partnership, trust, company, limited liability company, corporation, state agency, or other legal entity applying for a permit to construct a solar energy development on HVAL.
- 6. **BLUEBERRY BARRENS (BB).** Blueberry barrens (BB) is land that has been in commercial production of wild blueberries for one (1) of the two (2) or three (3) of the five (5) calendar years preceding the date of permit application. BB do not meet the criteria for “prime farmland” or “farmland of statewide importance.” BB must amount to at least (1) one contiguous acre.
- 7. **COMMISSIONER.** The Commissioner of the Department of Agriculture, Conservation and Forestry.
- 8. **CONTAMINATED LAND.** Land with environmental contamination that makes it unfit for agricultural purposes. Factors making land unfit for agricultural purposes include but are not limited to:
 - A. Federal and/or state restrictions on the use of land as a result of the presence of hazardous substances; and
 - B. Records of soil sampling, groundwater sampling, or Phase II Environmental Site Assessments that identify the presence of hazardous substances in the soil or groundwater.

“Contaminated land” does not include “PFAS-impacted HVAL,” which is defined separately in § 2(29).

- 9. **CONVERSION PRESSURE.** Conversion pressure is the strain on counties caused by the prevalence of development that reduces the amount of natural land available. It is determined by calculating the percent acreage of terrestrial land use categories within a county that have been developed into impervious surfaces as determined by DACF. DACF will post a list on its website of the top six (6) counties in Maine facing the highest conversion pressure. DACF will calculate conversion pressure using the most recent publicly available land cover data set from a federal or state

of Maine agency, such as the National Oceanic and Atmospheric Administration, the U.S. Geological Society, the Maine Office of GIS, or another similar agency.

10. CROP PRODUCTION. The cultivation and harvesting of plants for the production of food, fiber, biofuels, animal feed, or pharmaceuticals.
11. DACF. Department of Agriculture, Conservation and Forestry.
12. DUAL-USE AGRICULTURAL AND SOLAR PRODUCTION (DUAL-USE). Dual-use agricultural/agriculture and solar production (dual-use) means the co-location of agricultural activities with a solar energy development, the combination of which:
 - A. Result in the production of agricultural products to retain the land's agricultural productivity; and
 - B. Are conducted according to a management plan, which is updated annually.

To be considered dual-use, agricultural activities must occur under, between, or around solar panels and within the fenced-in area of a solar energy development.

13. FARM OPERATION. All land that meets the definition of "farmland" that is owned by a single landowner and is used to produce agricultural products for a single farm business.
14. FARMLAND. Any tract or tracts of land, on which farming or agricultural activities have contributed to a gross annual farming income of at least \$2,000 per year from the sales value of agricultural products in one (1) of the two (2), or three (3) of the five (5), calendar years preceding the date of permit application. The income derived from the agricultural activity may be achieved by either the owner or a lessee of the land. Gross income, as used in this subsection, includes the value of commodities produced for consumption by the farm household.
15. FARMLAND OF STATEWIDE IMPORTANCE. Soils defined by the USDA Natural Resources Conservation Services as "farmland of statewide importance" and as verified by a field-based survey conducted by a licensed soil scientist in accordance with the DACF guidance document [*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](#).
16. FIELD-BASED SURVEY.
 - A. An on-site survey of the project land area that includes the following components:
 - (1) A high-level assessment of current or past site uses (i.e., identification of on-site residential, commercial, or industrial uses that substantially reduce agricultural potential).

- (2) A high-level inventory of on-site structures (excluding farm-related infrastructure or energy generation and transmission structures that accommodate co-located agricultural activities).
 - (3) An inventory by a licensed soil scientist of soil resources that is based on a systematic field examination, description, and classification of soils in an area in accordance with the DACF guidance documents *Identifying High-Value Agricultural Land* and *Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*.
 - B. Only subsection (3) above must be conducted by a licensed soil scientist. Subsections (1) and (2) may be conducted by an environmental scientist, engineer, consultant, site evaluator, or an individual who is qualified to fulfill the requirements of these subsections.
 - C. If any one of the subsections (1) through (3) above disqualifies the land area from being considered HVAL, then the survey components of the other two subsections are not required to be completed. (e.g., if a licensed soil scientist finds that the land area surveyed does not meet the qualifications to be categorized as HVAL, then an additional survey of site uses, and an inventory of on-site structures is not required).
- 17. **FORESTLAND.** Land used primarily for the growth of trees, which is suitable for producing a forest product, or for harvesting trees for commercial use even if it is not currently being harvested for forest products or trees.
 - 18. **FOREST PRODUCTS.** Logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass fuel wood, fuel wood, bark, or other products commonly known as forest products. ‘Forest products’ do not include Christmas trees, orchard products, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones, or other seed crops.
 - 19. **HAZARDOUS SUBSTANCE.** The meaning of “hazardous substance” within this chapter is the same as that defined by the Maine DEP in [38 M.R.S.A. § 1362\(1\)](#).
 - 20. **HEARING OFFICER.** An individual appointed by the Commissioner who must not have a direct or indirect personal, professional, or financial conflict of interest in the appeal and cannot be an employee of the bureau or division overseeing the permitting program.
 - 21. **HIGH-VALUE AGRICULTURAL LAND (HVAL).** High-value agricultural land is land that has physical properties that indicate high suitability for agriculture. This includes land that amounts to one (1) or more contiguous acres and meets the definition of:

- (1) "Prime farmland," "farmland of statewide importance," or a combination of the two, as verified by a field-based survey conducted by a licensed soil scientist in accordance with the DACF guidance document *Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*; or
- (2) "Blueberry barrens," as verified by a field-based survey conducted by a licensed soil scientist; or
- (3) "PFAS-impacted HVAL."

To be considered HVAL, a field-based survey is required to confirm that the land:

- (1) Is not occupied by residential, commercial, or industrial uses that substantially reduce agricultural potential; and
- (2) Has no structures except for i) farm-related infrastructure, or ii) energy generation and transmission structures that accommodate co-located agricultural activities.

The definition of HVAL does not include the following:

- (1) Land that meets the definition of "contaminated land."
- (2) Land that meets the definition of "forestland."
- (3) Land with existing conditions such as impervious surfaces, gravel roads, asphalt roads, land that has been stripped of the topsoil, land that has soil exposure due to surface mining activities, and/or other alterations that make it unfit for agricultural purposes. For the purposes of this subsection, "existing" means at the time of permit application submittal to DACF.

22. LAND AREA. All occupied land necessary for the operation and maintenance of the solar energy development, including, but not limited to:
 - A. All areas within the perimeter fence, including the solar energy generation system components (e.g., panels, inverters, battery energy storage, and perimeter fence).
 - B. Areas occupied by new construction or installation of collector lines, a generator lead line, above-ground utility poles, or buried utilities and the associated rights of way.

- C. Areas occupied by new construction of a collector substation, operations and maintenance building, access road, parking area, or other associated facilities.
 - D. Any areas of vegetation clearing, including shade management areas.
 - E. Wildlife corridors that are included in the project plans or are required as a permit condition.
 - F. Any new disturbance that results in soil exposure at any time during site preparation for or construction of a project. For the purposes of this subsection, “disturbance” includes, but is not limited to, stripping, grading, grubbing, bulldozing, or removing or displacing soil, sand, vegetation, or other materials.
 - G. Temporarily impacted areas, including but not limited to equipment staging areas, laydown areas, or temporary access roads.
- (1) The “land area” does not include land with existing conditions such as impervious surfaces, gravel roads, asphalt roads, land that has been stripped of the topsoil, land that has soil exposure due to surface mining activities, and/or other alterations that make it unfit for agricultural purposes. For the purposes of this subsection, “existing” means at the time of permit application submittal to DACF.
23. LICENSED SOIL SCIENTIST. A person with a current/active license from the “Maine State Board of Licensure for Geologists and Soil Scientists” to practice soil science in the state of Maine. A license is required to practice soil science in the state of Maine per 32 M.R.S. § 4903.
24. LIVESTOCK GRAZING. Allowing domestic livestock (cattle; sheep; goats; swine; equines; poultry; domesticated cervids; ratites; members of the genera lama or bison; and other animals raised for food or fiber) to forage on grasses, legumes, and/or forbs for the purpose of creating products such as meat, milk, wool, and other livestock products.
25. MANAGEMENT PLAN. A plan that describes how dual-use agriculture and solar production will be conducted to ensure the continued agricultural productivity of the land in dual-use throughout the operational life of the solar energy development. The plan should include the following:
- A. Dual-use data, including but not limited to:
 - (1) For dual-use crop production: type of crop(s) being grown, including grazing crops, total gross acres of land in crop production, and type of agricultural product(s) to be produced. If planting more than one crop, provide total gross acres per crop type.
 - (2) For dual-use livestock grazing: type of animal(s) to be grazed, stocking rate, paddock size, seed mix or forage plants (including

- percentages of each species in mix), type of agricultural product(s) to be produced, and, if applicable, rotational grazing plans.
- (3) For dual-use pollinator habitat: type of agricultural product(s) to be produced and seed mix of pollinator plants (including percentages of each species in mix). If housing beehives, include the number of hives/colonies and type of bee(s) products produced.
 - (4) Projected volume, weight, or other standardized unit of measure of agricultural products to be produced.
26. MINOR CHANGE. An action to modify a permit previously issued by DACF where the revision is a result of:
- A. Correcting clerical errors;
 - B. Clarifying DACF's decision, in which clarification is consistent with the intent of DACF's decision and does not materially change any findings of fact or conclusions of law;
 - C. Correcting the dimensions of structures, approving minor variations to the dimensions of structures previously approved, or approving changes affecting less than 10 percent of a structure or project; or
 - D. Renewing a permit to extend the deadline for the start of construction or substantial completion by up to two years.
27. PERMIT. An HVAL permit issued by DACF will hereto be referred to as a "permit" unless the context indicates otherwise.
28. PFAS. Per- and polyfluoroalkyl substances.
29. PFAS-IMPACTED HVAL. Land that would otherwise be qualified as HVAL as defined in § 2(21), were it not for the presence of per- and polyfluoroalkyl substances (PFAS) in concentrations that currently make it unsuitable for agricultural purposes as determined by DACF *Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J* and in accordance with applicable state and federal food safety standards.
30. POLLINATOR HABITAT. An area of land with a variety of flowering trees, shrubs, grasses, and/or wildflowers at a suitable density to provide food, water, shelter, and/or breeding habitat for native pollinators, including but not limited to butterflies, beetles, bees, moths, and flower flies. Pollinator habitat is only considered dual-use agriculture and solar production if it produces an agricultural product such as bees and bees' products, flowers, ornamental plants, etc.
31. PRACTICABLE. Available and feasible considering cost, existing technology, and logistics based on the project's overall purpose.
32. PRIME FARMLAND. Soils defined by the USDA Natural Resources Conservation Services as "prime farmland" and as verified by a field-based survey conducted by

a licensed soil scientist in accordance with the DACF guidance document *Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*.

33. SOLAR ENERGY DEVELOPMENT. As defined in 38 M.R.S. § 3201, “solar energy development” means a development that:
- A. Uses ground-mounted solar arrays and installations to convert solar energy to electrical energy;
 - B. Occupies 5 acres or more; and
 - C. Is wholly or partially located on HVAL.
34. START OF CONSTRUCTION. Any site modification activities such as tree or vegetation clearing, grading, excavation, or equipment installation (e.g., security fence, pile foundation, concrete foundation, etc.) constitutes the start of construction. Additionally, for the purposes of this rule, “start of construction” also includes securing site control on or before September 1, 2024. For the purposes of this rule, “Site Control” means:
- A. Ownership of, a leasehold interest in, or a right to develop a site or portion of a site for the purpose of constructing a solar energy development;
 - B. An option to purchase or acquire an easement, a license, or a leasehold interest in the site or portion of the site for the purpose of constructing a solar energy development as long as any required DEP applications are filed and deemed complete for processing no later than September 1, 2026;
 - C. An exclusivity or other business relationship between the solar energy developer and the entity having the right to sell, lease, or grant the solar energy developer the right to possess or occupy a site or portion of a site for the purpose of constructing the solar energy development; or
 - D. Filed applications for required permits to site the solar energy development on federal or state property.

Site Control shall not include letters of intent or, with the exception of (D) above, other arrangements that are not binding on the entity having the right to sell, lease, or grant the solar energy developer the right to possess or occupy a site or portion of a site for the purpose of constructing the solar energy development.

35. SUBSTANTIAL COMPLETION. “Substantial completion” includes projects where:
- A. Approved construction has been completed to the point where normal functioning or use of the solar energy development can occur without concern for the general health, safety, and welfare of the general public; and

- B. The project has completed and fulfilled compliance with all permit conditions, except those requiring ongoing compliance during the life of the project, such as dual-use activities and submittal of a management plan.

SECTION 3. APPLICABILITY

- 1. Except as otherwise provided herein or by other applicable provisions of law, these rules are applicable to solar energy developments that meet all the following conditions:
 - A. MEETS THE DEFINITION OF “SOLAR ENERGY DEVELOPMENT” as defined in [§ 2\(33\)](#) and [38 M.R.S. § 3201](#).
 - B. START OF CONSTRUCTION DATE. Per [P.L. 2023, ch .448](#), a permit is required for a solar energy development whose construction begins after September 1, 2024. However, this rule will not apply to any solar energy developments whose construction begins prior to the effective date of this rule.

SECTION 4. PERMIT STANDARDS

- 1. The following standards apply to all projects as described in Section 3.
 - A. APPROVAL IS NOT CONTINGENT UPON OTHER APPROVALS. Under this chapter, approval of an application and thus issuing a permit is not contingent upon the applicant having obtained, prior to filing, all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities.
 - B. PROVISIONAL PERMIT. Notwithstanding [§ 4\(1\)\(A\)](#), a permit issued under this chapter is considered provisional until the applicant:
 - (1) Obtains all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities prior to starting construction; and
 - (2) If applicable, fulfills any compensation requirements. DEP administers compensation requirements per [38 M.R.S. § 484-C](#). Compensation fees must be paid prior to starting construction.

SECTION 5. PERMIT PROCESS

If a developer proposes to build a solar energy development and meets the applicability requirements described in [§ 3](#), they must apply for a permit to DACF. Applicants may seek a permit by rule (PBR) if they meet the conditions described in [§ 5\(2\)\(A\)](#) or seek an individual permit if they do not meet the conditions described in [§ 5\(2\)\(A\)](#).

1. APPLICATION REQUIREMENTS. Regardless of whether an applicant is applying for a PBR or an individual permit, the applicant must submit the following to DACF as part of their application:
 - A. The results from a field-based survey of all land that does not meet the definition of “contaminated land” or “forestland” within the solar energy development land area.
 - B. Documentation, if applicable, to prove that any portion of the land area in question meets the definition of “contaminated land,” “PFAS-impacted HVAL,” or “forestland.”
 - C. All applicable permit application forms are listed on DACF’s website.
 - D. Project design drawings, including the mounting system type (fixed or tracking), panel tilt, panel row spacing, and panel mounting height.
 - A. A signed agreement that the applicant plans to meet the BMPs described in the DACF guidance document titled “Best Management Practices for Solar Energy Development on Farmland.” If any of the BMPs described in the best management practices guidance document do not apply to the project, then the applicant must provide a list of said BMPs and a short explanation of why they are not applicable to the project.
2. PERMIT BY RULE (PBR)
 - A. APPLICABILITY. An applicant may qualify for a PBR if either:
 - (1) The solar energy development contains fewer than 20 acres; or
 - (2) The only HVAL the solar energy development land area occupies is land that meets the definition of “PFAS-impacted HVAL.”
 - B. PBR-SPECIFIC APPLICATION REQUIREMENTS. In addition to the application requirements described in § 5(1), an applicant applying for a PBR must submit the following to DACF as part of their application:
 - (1) A statement describing how impacts to HVAL have been avoided or minimized to the extent practicable with the current project siting and design. A statement describing how the solar energy development is proposed to be constructed on the least agriculturally productive portions of the parcel[s] to the extent practicable with the current project siting and design (Statements are not to exceed two (2) pages).
 - C. PROCEDURES.
 - (1) The applicant submits their application materials to DACF.

- (2) DACF makes a written determination either approving or denying the application or DACF requests additional information before issuing a determination.
 - (a) **APPROVED.** If the application is approved, the applicant may proceed to carry out the activity once they have obtained all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities.
 - (b) **APPROVED WITH CONDITIONS.** If the application is approved with conditions, the conditions must be met for the permit to be valid. The applicant may proceed to carry out the activity once they have obtained all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities. If DACF finds the conditions have not been met, DACF may seek revocation of the permit in accordance with the Maine Administrative Procedure Act.
 - (c) **NO RESPONSE.** If DACF does not communicate with the applicant regarding the PBR through any means, including verbal, written, or electronic communications, within thirty (30) calendar days after DACF receives the PBR application, the application is automatically granted. Once the applicant has obtained all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities in addition to DACF approval, the applicant may proceed to carry out the activity as if the application has been approved.
 - (d) **REQUEST FOR INFORMATION.** If DACF requests more information, DACF must act on an application within thirty (30) calendar days after receiving the requested information; otherwise, the application is automatically granted.
 - (e) **DENIED.** If DACF denies a PBR, the applicant may apply for an individual permit.

D. **CONDITIONS FOR PBR DENIAL.** A PBR application will be denied if it meets any of the following conditions:

- (1) Any of the required application materials are absent from the application.
- (2) DACF requests more information that DACF deems necessary for it to make findings required by applicable review criteria and the

applicant fails to provide the additional information requested within thirty (30) days of the request.

- (3) DACF determines based on the summary described in § 5(2)(B)(1) that impacts to HVAL have not been avoided or minimized to the extent practicable or the solar energy development is not proposed to be constructed on the least agriculturally productive portions of the parcel[s] to the extent practicable with the current project siting and design.

3. INDIVIDUAL PERMIT

- A. **APPLICABILITY.** An applicant that meets the criteria of applicability as described in § 3 and does not qualify for a PBR may apply for an individual permit.
- B. **INDIVIDUAL PERMIT-SPECIFIC APPLICATION REQUIREMENTS.** In addition to the application requirements described in § 5(1), an applicant applying for an individual permit must submit an “alternatives analysis” as described in § 2(4) and § 5(3)(C) to DACF as part of their application.
- C. **AVOIDANCE AND MINIMIZATION.** Construction and operation of the solar energy development will be considered to result in a severe adverse impact if it will cause a loss in the agricultural productivity of HVAL and there is a practicable alternative that would be less damaging to HVAL. The applicant for an individual permit shall provide an “alternatives analysis” to determine if a practicable alternative exists and if, to the extent practicable, the project is located on the least agriculturally productive portions of the parcel[s].
- D. **PROCEDURES.**
 - (1) The applicant submits their application materials to DACF.
 - (2) DACF will notify the applicant to confirm receipt of the application and deem it complete for processing. If the application is deemed incomplete, DACF will notify the applicant of any deficiency within a reasonable time after it becomes aware of the deficiency.
 - (3) DACF may request additional information before issuing a determination.
 - (4) DACF may approve, approve with conditions, or deny the application for a permit.
 - (a) **APPROVED.** If the application is approved, DEP will calculate the compensation fee, if applicable. Once the applicant fulfills the compensation requirements (whether a compensation fee or conservation option as described in 38

M.R.S. §484-C(4)), has obtained DACF approval, and has obtained all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities, the applicant may then proceed to carry out the activity.

- (b) **APPROVED WITH CONDITIONS.** If the application is approved with conditions, the conditions must be met for the permit to be valid. If applicable, DEP will calculate the compensation fee. Once the applicant fulfills the compensation requirements (whether a compensation fee or conservation option as described in 38 M.R.S. §484-C(4)), has obtained DACF approval, and has obtained all other appropriate approvals, licenses, permits, certifications, or other such similar approvals that are required by other state agencies, federal agencies, or municipalities, the applicant may then proceed to carry out the activity. If DACF finds the conditions have not been met, DACF may seek revocation of the permit in accordance with the Maine Administrative Procedure Act.
- (c) **DENIED.** If the application is denied, DACF will promptly notify the applicant of the reasons for the rejection. The applicant may appeal the decision as described in § 12.

E. **CONDITIONS FOR INDIVIDUAL PERMIT DENIAL.** An individual permit application will be denied if it meets any of the following conditions:

- (1) Any of the required application materials are absent from the application.
- (2) DACF requests more information that DACF deems necessary for it to make findings required by applicable review criteria and the applicant fails to provide the additional information requested.
- (3) DACF determines based on the alternatives analysis that impacts to HVAL have not been avoided or minimized to the extent practicable or the solar energy development is not proposed to be constructed on the least agriculturally productive portions of the parcel[s] to the extent practicable with the current project siting and design.

F. **INCREASED COMPENSATION.** In lieu of permit denial for subsection 5(3)(E)(3) above, DACF may approve the permit application and recommend to DEP that an applicant should owe an increased compensation fee of up to 110% of their calculated compensation fee.

G. **PROCESSING TIME.**

- (1) DACF will establish and post reasonable, estimated permit application processing times on its website.
- (2) The processing time DACF estimates will be required to make a determination on an application shall not begin until DACF determines that the application is complete. If DACF requests additional information, the application will only be considered complete once DACF receives it.

SECTION 6. DUAL-USE AGRICULTURE AND SOLAR PRODUCTION

1. **APPLICABILITY.** Except as otherwise provided herein or by other applicable provisions of law, these rules apply to solar energy developments that plan to engage in dual-use activities. The project must meet the definitions of “solar energy development” and “dual-use agricultural and solar development.”
2. **MANAGEMENT PLAN.** Dual-use projects must be conducted according to a management plan that ensures the continued agricultural productivity of the land in dual-use throughout the operational life of the solar energy development.

A. DRAFT MANAGEMENT PLAN.

- (1) Applicants who plan to engage in dual-use activities must submit a draft management plan to DACF for review with their permit application.
- (2) The draft management plan must be agreed to by all participating parties, including the solar developer, the farmer, and the landowner.
- (3) DACF will review the plan as part of the permit application and provide the applicant with a summary of revisions required for the final management plan to be approved.

B. FINAL MANAGEMENT PLAN.

- (1) If the permit application is approved, the permittee must submit a final management plan to DACF for review prior to beginning construction. The permittee must not start construction without DACF's approval of the final management plan.
- (2) The final management plan must be agreed to by all participating parties, including the solar developer, the farmer, and the landowner (if different from either the solar developer or the farmer).
- (3) DACF will review the plan and respond to the applicant with a determination of approval, approval with conditions, or denial. If the final management plan is denied, DACF will either provide the applicant with a summary of revisions required for the final

management plan to be approved or will provide the applicant with an explanation of why the final management plan was denied.

- (4) If the final management plan is denied, the project may not start construction until either a revised management plan is submitted and approved, or the permit is amended to remove references to dual-use. If the permit is amended to remove references to dual-use, additional compensation may be owed if it results in the solar energy development being moved to a higher compensation tier.
- (5) If a final management plan is approved with conditions, DACF may withdraw management plan approval if DACF finds that the conditions are not being met.

C. ANNUAL UPDATE REQUIREMENTS.

- (1) SUBMITTAL TIME FRAME. After the solar energy development becomes operational, the management plan must be updated and submitted to DACF annually on the anniversary of the date the solar energy development became operational.
- (2) REQUIRED CONTENTS. The annual management plan update shall include, at a minimum, the following:
 - (a) Data on, and descriptions of, the successes or shortcomings of the dual-use project.
 - (b) If applicable, an explanation of decreased yields due to unforeseen circumstances, such as but not limited to weather events, pests, disease, or change in crop.
 - (c) Revised methods, if needed, to improve agricultural productivity.
 - (d) Volume, weight, or other standardized unit of measure of agricultural products produced, if applicable.
- (3) WITHDRAWAL OF MANAGEMENT PLAN APPROVAL. DACF may withdraw management plan approval if:
 - (a) An annual management plan update is not submitted within the required submittal time frame, or the permittee does not contact DACF requesting an extension to submit the annual management plan update prior to the end of the submittal time frame;
 - (b) The annual management plan update does not contain all of the applicable required contents;
 - (c) DACF determines that the permittee is not making a good-faith effort to incorporate the farmer on decisions that

- directly or indirectly affect the success of a dual-use project;
or
- (d) Dual-use activities are being conducted on a smaller percentage of the dual-use land area below the compensation impact tier proposed in the initial application without a reasonable explanation for the reduction of dual-use activities.

If management plan approval is withdrawn, the permittee may submit a revised management plan to DACF for review if they plan to continue agricultural activities. If the permittee no longer plans to pursue agricultural activities, the permit must be amended to remove references to dual-use.

- (4) **ADDITIONAL COMPENSATION OWED.** If DACF withdraws management plan approval or if the permittee no longer plans to pursue agricultural activities, the permittee may owe additional compensation if the change in agricultural activities results in the solar energy development being moved to a higher compensation tier for any of the following circumstances:
- (a) The permittee does not submit a revised management plan for review to DACF or contact DACF requesting an extension to submit the revised management plan within thirty (30) calendar days after DACF notified the permittee of the withdrawal of management plan approval;
 - (b) The permittee submits a revised management plan for review to DACF within thirty (30) calendar days, but DACF determines the plan does not adequately address the concerns DACF raised during the initial notification to withdraw management plan approval; or
 - (c) The permittee notifies DACF that they no longer plan to continue agricultural activities.

Additional compensation would be pro-rated based on the number of years that dual-use activities were conducted and is calculated using the following formulas:

Formula 1: Pro-rated Multiplier Formula

$$\frac{\text{\# of years that dual-use activities were conducted}}{\text{\# of years of total solar lease term}} = \text{dual-use multiplier}$$

Formula 2: Pro-rated Additional Compensation Fee Formula

Original tier comp. fee: The original tier compensation fee is the compensation fee that was calculated to incorporate dual-use activities and paid as part of the original permit application.

Revised tier comp. fee: The revised tier compensation fee is the compensation fee that is calculated without incorporating dual-use activities.

Pro-rated additional compensation fee: The additional compensation fee that would be owed to DEP under the conditions described in this subsection.

$$\left(\left(\text{Revised tier comp. fee} \right) \left(1 - \frac{\text{Dual-use}}{\text{multiplier}} \right) + \left(\text{Original tier comp. fee} \right) \left(\frac{\text{Dual-use}}{\text{multiplier}} \right) \right) - \text{Original tier comp. fee} \\ = \text{Pro-rated additional compensation fee}$$

SECTION 7. COMPENSATION REQUIREMENTS

1. **APPLICABILITY.** Except as otherwise provided herein or by other applicable provisions of law, applicants who are granted an individual permit are subject to compensation requirements, either in the form of a compensation fee, perpetual conservation easement, or fee ownership, pursuant to [38 M.R.S. § 484-C](#).
2. **PURPOSE.** Pursuant to [P.L. 2023, ch. 448](#), this section establishes:
 - A. Variable compensation tiers based on the value of the HVAL affected and the degree of adverse effect caused by the development; and
 - B. Mitigation strategies that may reduce or otherwise alter any compensation fee.

This section does not apply to application fees. Compensation in the form of perpetual conservation easements and/or fee ownership is processed by DEP.

3. **LAND SUBJECT TO COMPENSATION.** Only the acreage of HVAL within the solar energy development land area is subject to compensation. Compensation fees are calculated using the acreage of all new or expanded development within the land area. Existing development is not counted in the fee calculation. For the purposes of this subsection, “existing” means at the time of permit application submittal to DACF. For expanded development, only the additional acreage of new development that triggers permit review is subject to compensation fees and application fees.
4. **COMPENSATION TIERS.**

- A. TIER 0: Land areas that meet one of the following criteria are subject to \$0 of compensation:
- (1) PFAS-IMPACTED HVAL. The HVAL within the project land area meets the definition of “PFAS-impacted HVAL.”
 - (2) DUAL-USE. The solar energy development project engages in dual-use activities on 75% or more of the dual-use land area or greater in the form of crop production or livestock grazing. To be considered dual-use, agricultural activities must occur under, between, or around solar panels and within the fenced-in area of a solar energy development.
- B. TIER 1: Land areas that meet all of the following criteria will owe a compensation ratio of 8.0 to 1.0 per acre of HVAL impacted:
- (1) The HVAL within the project land area meets the definition of “Prime Farmland” or “Farmland of Statewide Importance.”
 - (2) The HVAL within the project land area that meets the definition of “Prime Farmland” or “Farmland of Statewide Importance” is located in one of the top six (6) counties facing high conversion pressure in Maine.
 - (3) The HVAL within the project land area that meets the definition of “Prime Farmland” or “Farmland of Statewide Importance” must also meet the definition of “farmland.”
 - (4) The solar energy development is engaging in little-to-no dual-use (0% to 24% of dual-use land area).
 - (5) The total solar energy development land area occupies more than 20% of farm operation land in which the HVAL exists or does not occupy land that meets the definition of “farm operation.”
- C. CALCULATING TIERS 2 – 4: Land areas that do not meet the criteria for Tier 0 or Tier 1 fall into one of the compensation tiers from 2 to 4. Compensation tiers 2 through 4 are determined by the total number of points earned from four categories divided by 20: Soil Designation, Active Farming History, Dual-Use, and Farm Viability (Table 1). Only one point value can be chosen from each of the four categories. Dual-use values are calculated consistent with the definition of “dual-use agricultural and solar production.” Determine the number of points assigned for each category in Table 1 and divide the total number of points by 20. The final score is used to determine the Tier level and compensation fee below:
- (1) TIER 2: Projects with a score <0.5 will owe a compensation ratio of 0.5 to 1.0 per acre of HVAL impacted.
 - (2) TIER 3: Projects with a score ≥ 0.5 and <1.0 will owe a compensation ratio of 1.0 to 1.0 per acre of HVAL impacted.

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- (3) TIER 4: Projects with a score ≥ 1.0 will owe a compensation ratio of 2.0 to 1.0 per acre of HVAL impacted.
4. LAND AREA THAT ENCOMPASSES MULTIPLE “SUB-AREAS”. Different portions of the solar energy development land area may contain HVAL “sub-areas” with substantially different characteristics (i.e., Prime Farmland vs. Farmland of Statewide Importance) that would result in assigning different point values. Different portions of the solar energy development land area may also fall into different compensation tiers (i.e., 10 acres of Tier 1, 5 acres of Tier 2, and 5 acres of Tier 4) in which different compensation amounts may be owed. In these situations, the compensation for each “sub-area” shall be calculated separately. The total compensation would then be the sum of the compensation due for each “sub-area.”
5. DUAL-USE COMPENSATION DISCOUNT.
- A. The dual-use compensation discount under Category 3 of Table 1 applies to the first 150 megawatts DC of solar energy development, after which DACF will decide whether to continue the dual-use compensation discount for future applicants.
- B. To be considered dual-use, agricultural activities must i) meet the definition of “dual-use agricultural and solar production,” and ii) adhere to the requirements described in § 6.

Table 1: Categories and Points for Calculating Compensation Tiers 2 through 4

Choose One Line Per Category		Points
Category 1: Soil Designation	HVAL that meets the definition of “Prime Farmland”	20
	HVAL that meets the definition of “Farmland of Statewide Importance”	18
	HVAL that meets the definition of “blueberry barrens”	16
Category 2: Active Farming History	HVAL that meets the definition of “farmland”	20
	HVAL that does not meet the definition of “farmland”	0
Category 3: Dual-Use	Little-to-no dual-use (0% to 24.9% of dual-use land area).	0
	Dual-use crop production on 25% to 49.9% of dual-use land area.	-5
	Dual-use crop production on 50% to 74.9% of dual-use land area.	-7
	Dual-use crop production on 75% or more of dual-use land area.	Tier 0*
	Dual-use livestock grazing on 25% to 49.9% of dual-use land area.	-4
	Dual-use livestock grazing on 50% to 74.9% of dual-use land area.	-6
	Dual-use livestock grazing on 75% or more of dual-use land area.	Tier 0*
	Dual-use pollinator habitat on 25% to 49.9% of dual-use land area.	-1
	Dual-use pollinator habitat on 50% to 74.9% of dual-use land area.	-2
	Dual-use pollinator habitat on 75% or more of dual-use land area.	-3
Category 4: Farm Viability	Solar energy development land area occupies 20% or less of the farm operation land in which the HVAL exists.	-7
	Solar energy development land area occupies more than 20% of farm operation land in which the HVAL exists or does not occupy land that meets the definition of “farm operation.”	0

*Projects that engage in dual-use livestock grazing or crop production on 75% or more of the dual-use land area are eligible to meet Tier 0.

SECTION 8. PRE-APPLICATION AND PRE-SUBMISSION MEETINGS

1. **PRE-APPLICATION MEETINGS.** Pre-application meetings between the prospective applicant and DACF staff are an early opportunity to discuss a proposed project or activity. These meetings aim to identify the statutory and regulatory requirements, expected processing times, applicable fees, potential concerns, and the types of information and documentation necessary for DACF to assess the project properly. DACF staff will determine what information the applicant must provide before or during a pre-application meeting.
2. **PRE-SUBMISSION MEETINGS.** A pre-submission meeting between the prospective applicant and DACF staff occurs after the prospective applicant has finished preparing an application for submission but before formally filing the application. The meeting is an opportunity to review the assembled application at a high level to ensure that key information has been included prior to filing the application with DACF.

Pre-application and pre-submission meetings are held for the prospective applicant's benefit and are, therefore, optional for applicants to schedule.

Pre-application and pre-submission meetings do not bind staff or DACF to matters discussed therein nor limit the ability of staff or DACF to raise further issues during the application review process.

3. **SCHEDULING AND ATTENDANCE.** Prospective applicants or DACF staff may request a pre-application or pre-submission meeting. In either case, DACF staff will make a date available for the meeting in a timely manner.

The prospective applicant or an authorized agent must attend the pre-application and pre-submission meetings. The prospective applicant may choose to have consultants and/or contractors also attend.

SECTION 9. ADMINISTRATIVE PROVISIONS

1. **COMPUTATION OF TIME.** In computing any period of time prescribed by statute or regulations of DACF, the day of the act or event, after which the designated period of time begins to run, is not to be included.
2. **BURDEN OF PROOF.** Unless otherwise provided herein or by other applicable provisions of law, the burden of proof is upon the applicant. An applicant must demonstrate by substantial evidence that the criteria of all applicable rules, statutes, and regulations have been met.
3. **APPLICATIONS FOR PERMIT, PERMIT RENEWAL, AND TRANSFER REQUESTS**

- A. DEPARTMENT FORMS. Applications must be submitted using DACF's forms, which may be changed from time to time by DACF. DACF's application forms will require information deemed necessary or desirable by DACF to evaluate the application. A person requesting DACF approval must use the appropriate form but need not complete any portions of a form determined by DACF to be unnecessary for a specific application.
- B. WHO MAY APPLY. An applicant may designate an agent to complete the application and represent the applicant's interests before DACF.
- C. SIGNATURES.
 - (1) Applications for a PBR, individual permit, or transfer request submitted to DACF must include the signature of the applicant or the duly authorized officer or agent. If a form is signed by an agent, it must include evidence of the agency signed by the applicant.
 - (2) DACF will accept, may require, and may utilize digital signatures regarding digital submissions and other official matters. However, at its discretion, DACF may require that a digital signature be supplemented shortly thereafter by a manual signature.
- D. WITHDRAWAL OF APPLICATIONS. Unless otherwise provided herein or by other applicable provisions of law, applicants may withdraw their applications at any time prior to a staff-issued decision. If the applicant chooses to withdraw their application, the application fee will be handled in accordance with § 10(2)(B).
- E. ACCEPTANCE OF APPLICATIONS.
 - (1) COMPLETE FOR PROCESSING. Upon receipt of an application, DACF must determine whether to accept the application as complete for processing based on whether it:
 - (a) Is properly signed;
 - (b) Is accompanied by the proper fee; and
 - (c) Answers all applicable questions in the application, contains all applicable exhibits, and sufficient information for DACF to begin its review.
 - (2) INCOMPLETE APPLICATION. DACF will notify the applicant of any deficiency in the application within a reasonable time after it becomes aware of the deficiency.
 - (3) ADDITIONAL INFORMATION MAY BE REQUIRED. In addition to the threshold information required by § 9(3)(E)(1) above, DACF may request additional information that DACF deems

necessary to evaluate applicable review criteria. Even if an application is accepted as complete for processing, DACF may deny the application if the applicant fails to provide additional information that DACF deems necessary for it to make findings required by applicable review criteria.

- (4) MODIFICATION OF APPLICATION. If DACF determines in its sole discretion that an applicant (i) materially modifies its application such that the modified application requires new or supplemental review by DACF or (ii) submits additional information necessary to enable DACF to make findings under applicable review criteria and the additional information requires new or supplemental review by DACF, then DACF may, with the agreement of the applicant, accept the additional information as a modified application, in which case the time limits for PBR (as described in § 5(2)(C)(2) or estimated processing times for individual permit (as described in § 5(3)(G) restart on the date that DACF determines there is sufficient new information for DACF to begin its review of the modified application.

F. SITE VISITS AND EVALUATION.

- (1) The filing of (i) a permit application for the construction of a solar energy development on HVAL or (ii) a management plan for dual-use activities at a solar energy development on HVAL constitutes the granting of permission by the applicant to allow authorized DACF application reviewers access to the site of the proposed development for a site evaluation to verify the information presented to it. DACF may conduct site visits for informational purposes, (i) as part of, or in preparation for, its review of an application, or (ii) as ongoing compliance monitoring.
- (2) As applicable and appropriate, DACF will make reasonable efforts to contact applicants or property owners before conducting a site evaluation, including access to any lands and structures subject to DACF's statutes and rules. The lack of a site evaluation may result in the denial of a permit application.
- (3) Withdrawal of a permit application by the applicant rescinds DACF's right to access the site of the proposed development for a site evaluation.

- G. NOTICES. DACF will periodically generate a list of all applications received, including but not limited to the following information: the applicant's name, the location, and the nature of the proposed activity. This list will be made available to the public on the DACF's website or upon request.

- H. NOTICE OF APPEAL RIGHTS. Each permit denial must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised.

SECTION 10. APPLICATION FEE SCHEDULE

1. PURPOSE. This section establishes a fee schedule for applications processed by DACF and prescribes fees for general administrative services, including the reproduction of documents. This section does not apply to compensation fees.
2. GENERAL PROVISIONS.
 - A. The application must be accompanied by the proper fee(s). Except as otherwise provided by law, all required application fees must be paid at the time of filing the application. Failure to pay all required application fees will result in the application not being accepted as complete for processing.
 - B. If the applicant chooses to withdraw their application, the application fee will not be refunded. However, the application fee may be applied to a future application, at DACF's discretion, if the applicant chooses to reapply in the next two years after withdrawal of the application. If the applicant does not reapply within two years of the withdrawal date, the application fee is considered forfeited to DACF.
3. FEE SCHEDULE. The following fees are required from the developer to process applications. Unless otherwise indicated, the fees listed below will be assessed only for solar energy developments that require approval from DACF.
 - A. BASE FEES.

(1)	Application fee for PBR	\$200
(2)	Application fee for Individual Permit	\$300
(3)	Application fee for Permit Transfer	\$100
 - B. AFTER-THE-FACT FEES. Notwithstanding other provisions of this chapter, base fees are two times the otherwise applicable fee as established by this section for developments that require a permit under this chapter and have already started construction before receiving permit approval.
4. SPECIAL SERVICE FEES. Fees will not be assessed to view or download materials available on DACF's website or other web-based transfers. The following fees will be assessed to recover expenses incurred by DACF in providing the services listed:

- A. FOR REPRODUCTION OF DOCUMENTS, TRANSCRIPTS, OR OTHER RECORDS: \$1.00 for the first page and \$0.25 per page thereafter, except as provided below.
 - B. FOR PUBLICATIONS OR RULES: No fee will be assessed for the first copy of any publication or rule. Charges will be made for additional copies as follows:
 - (1) Document 1 \$10.00 or actual costs, whichever are greater;
 - (2) Rules and standards \$5.00 or actual costs, whichever are greater;
 - (3) All other publications \$3.00 or actual costs, whichever are greater.
 - C. FOR PHOTOGRAPHS, OVERSIZED DOCUMENTS, OR OTHER ITEMS REQUIRING SPECIAL HANDLING: Actual cost of reproduction, handling, and applicable postage.
 - D. If DACF records documents at a county registry of deeds on behalf of the permittee or owner, DACF may assess only the actual cost charged by the applicable county registry of deeds for recording and for any applicable copy required for DACF's records.
5. EXCEPTIONS.
- A. No fee is assessed for:
 - (1) Minor changes; and/or
 - (2) Notifications that may be required by law or DACF's rules.
 - B. The Commissioner, at the Commissioner's discretion, may reduce or waive fees when the applicant is a governmental agency.

SECTION 11. FINAL ACTION

- 1. STAFF DECISIONS. Unless otherwise indicated as a condition of the permit or certification, a final action issued by DACF staff is effective on the date the signed decision document is provided to the applicant.
- 2. CORRECTIONS.
 - A. Within thirty (30) calendar days following the effective date of a permit, any person aggrieved by the decision of DACF may petition to seek the correction of any misstatement of fact or clerical error contained in the final decision or to challenge any material fact of which DACF took official notice. DACF will determine whether to dismiss the petition as without merit, to correct the error, or to take such other steps as it deems appropriate. Failure to invoke the provisions of this section will not affect an aggrieved party's right of appeal to a court of law.

- B. DACF will review requests for correction within sixty (60) calendar days of receipt of such request.
 - C. At any time, DACF may issue a corrected permit in accordance with this section.
 - D. The filing of a request for, or the issuance of, a correction under this section does not serve to stay the deadlines for any appeal of a DACF decision, and the effective date of any corrected decision must be the same as the original decision.
3. AMENDMENTS. An application for amendment or request for minor change must be submitted to DACF before undertaking any modification not exempted from permitting requirements by statute or rule to solar energy development that is the subject of DACF authorization. Written approval for the modification must be received before the modification is undertaken.
4. EXPIRATION. Except as provided in § 11(6) or as otherwise authorized by DACF in the permit conditions of approval, the permittee must start construction within two (2) years of the effective date of the permit and be substantially completed within five (5) years of the effective date of the permit or the permit will expire.
5. MULTI-PHASED PROJECTS. For multi-phased projects or project expansions that are permitted separately, final DACF approval of each phase or expansion will be treated as a separate permit for the purposes of determining “start of construction” and “substantial completion” for each phase or expansion.
6. RENEWALS. An application to renew a permit must be submitted prior to the expiration of the permit.
- A. If an application to renew a permit is not timely submitted prior to the expiration of the permit or is timely submitted but not accepted as complete for processing in accordance with § 9(3)(E)(I), the permit lapses.
 - B. If the renewal application is submitted in a timely manner prior to the expiration of the permit and accepted as complete for processing, the terms and conditions of the existing permit remain in effect until the final DACF decision on the renewal application.
 - C. DACF may renew a permit and extend it by up to two (2) years for either or both of the deadlines for the start of construction and/or substantial completion.
 - D. Renewal applications to extend the expiration date for projects that have not started construction are subject to the procedural and substantive requirements in effect at the time the renewal application is accepted.
7. TRANSFER.
- A. Transfer of DACF permits is required for all solar energy developments where, at the time of change in ownership, the project has not yet initiated

decommissioning activities. Except as may be required by the Constitution of Maine or statute, all other permits carry forward with the land and, therefore, any change in ownership thereof. No later than two (2) weeks prior to the transfer of ownership of a property subject to DACF permits, the new owner must submit a transfer application for all relevant permits that have not expired.

- B. Pending determination on the application for a transfer, the transferee must abide by all of the conditions of such permit and is jointly or severally liable with the original permittee for any violation of the terms and conditions thereof. The transferee must demonstrate to DACF's satisfaction sufficient technical ability, sufficient financial capacity, and the intent and ability to:

- (1) Comply with all terms and conditions of the applicable permits; and
- (2) Satisfy all applicable statutory and regulatory criteria.

- 8. **SUSPENSION.** Any permittee may propose to suspend activities for a period specified as part of a permit transfer, permit application, or other appropriate situations. The proposal must be made in writing and contain sufficient detail for DACF to understand the purpose and effect of the suspension. If a proposed suspension is approved, then:

- A. DACF must confirm such suspension, and any subsequent release from suspension, in writing; and
- B. The suspension does not pause, extend, or otherwise affect requirements regarding the start of construction or substantial completion.

- 9. **SURRENDER.** Any permittee may request to surrender its permit if the permittee demonstrates to DACF's satisfaction that it has never used the permit for its intended purpose nor begun any of the activities approved under the permit and does not intend to do so in the future. The request must also provide that the permittee waives notice and opportunity for hearing.

DACF may require written and photographic documentation or certified statements, in addition to any other relevant information, to demonstrate that the activities described in the permit have not been undertaken. For any approved permit recorded in a registry of deeds that is later surrendered, DACF will require that evidence of the surrender be filed by the permittee or DACF at the permittee's expense with the same registry of deeds.

When DACF approves the surrender, the permit is deemed null and void as of the date the surrender is approved.

SECTION 12. APPEALS

- 1. **APPEAL REQUEST.**

- A. An aggrieved person (hereinafter the “petitioner”) may request an appeal hearing of DACF’s actions detailed below in (1) through (4) by submitting a request for appeal to the Commissioner, in writing, no later than thirty (30) calendar days from the date of DACF’s action. The written request for appeal must describe the specific nature of the grievance, including the appeal criteria as described in § 12(2)(A).
- (1) Denial of a permit application, PBR request, suspension request, transfer request, draft management plan, or final management plan;
 - (2) Conditional approval of a permit, draft management plan, or final management plan if the applicant finds the conditions unduly burdensome;
 - (3) Withdrawal of management plan approval; or
 - (4) Any other circumstance where DACF’s action or inaction operates prejudicially and directly upon the person’s property, pecuniary or personal rights, and is distinct from any injury experienced by the public at large.
- B. The Commissioner shall grant an appeal hearing unless it is determined that:
- (1) The petitioner is not an aggrieved person; or
 - (2) The written request for appeal was submitted more than thirty (30) calendar days after the date of DACF’s action or more than thirty (30) days from the expiration of the time within which the action should reasonably have occurred for alleged inaction for which the petitioner is appealing.

2. APPEAL HEARINGS.

- A. **APPEAL CRITERIA.** The burden of proof within the hearing of appeal lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following:
- (1) Error of law;
 - (2) Irregularities creating fundamental unfairness; or
 - (3) Arbitrary or capricious action by DACF.

Evidence of any type that cannot be related to these criteria may be ruled inadmissible by the Hearing Officer.

- B. **HEARING OFFICER.** The Hearing Officer shall preside over the hearing and control all aspects of the hearing, rule on points of order, rule on all objections, and may question witnesses.
- C. **COMBINED APPEAL.** In the event multiple appeal hearing requests are granted for a single departmental action, the Commissioner may assign the Hearing Officer to hear all petitioners within the same hearing as a

combined appeal. Notwithstanding a combined appeal process, the Hearing Officer may still decide each petitioner's appeal separately based solely on the evidence presented by each respective petitioner.

- D. NOTIFICATION. Notice of the appeal proceeding shall follow the requirements of [5 M.R.S. § 9051-A\(2\)](#) and be provided to those entities as determined applicable by the Commissioner. The notification must include the date, time, and location of the hearing and the name of the Hearing Officer.
- E. APPEAL HEARING FORMAT. Appeal proceedings may be held in person, virtually, or in a hybrid format at the discretion of the Hearing Officer.
- F. REQUIREMENT TO APPEAR. Failure of the petitioner(s) or their representative to appear for a scheduled hearing may be grounds for default.
- G. PARTICIPANTS. The petitioner may participate alone or be represented by an attorney. DACF may be represented by staff and/or its attorney. Other parties of interest may petition to intervene. Such petition shall be presented in writing to the Hearing Officer, who shall determine and allow or disallow participation in writing within seven (7) calendar days of receipt of the request to intervene. Copies of this notification shall be sent to the petitioner and DACF.
- H. RECORD. A recording of the hearing shall be made by audio tape or other media. All evidence received or considered shall be part of the record. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearing Officer may exclude irrelevant or unduly repetitious evidence. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
- I. PRESENTATION OF EVIDENCE. The petitioner must present evidence to substantiate the specific grievances stated in the appeal. The evidence shall be confined to the record upon which DACF's decision was based. The burden is on the petitioner to prove one or more of the appeal criteria under [§ 12\(2\)\(A\)](#) by clear and convincing evidence. Brief opening statements may be made by the petitioner, DACF, and any intervenors in that order. All testimony shall be under oath.
 - (1) The petitioner shall present evidence first, using exhibits and witnesses who may be cross-examined by DACF and the intervenors. Re-direct questioning related to issues raised during cross-examination may only be done by the petitioner, followed by re-cross-examination by DACF and intervenors.
 - (2) Witnesses may be called who can present factual information related directly to the appeal. All witnesses shall be sworn. The testimony of any witness[es] may be pre-filed in written form. If used, pre-filed testimony must be made available to DACF, the Hearing Officer, and all intervenors a minimum of two (2) business days

prior to the hearing. Every such witness must be present at the hearing and shall be subject to cross-examination.

- (3) EXHIBITS. Exhibits relating to any issue of fact in the proceeding may be presented. Documentary evidence may be incorporated into the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.
- (4) COPIES. A petitioner must furnish copies of all documentary evidence to the Hearing Officer, DACF, and all intervenors, in all cases, no less than two (2) business days prior to the hearing. Any costs associated with this subparagraph are the petitioner's responsibility and shall not be recovered by any judgment of the Commissioner.
- (5) DEPARTMENT/INTERVENOR EVIDENCE. DACF and all intervenors shall have the opportunity to submit evidence relevant to the hearing through witnesses and exhibits. The procedures for presenting this evidence are the same as those for the petitioner.
 - (a) The order of examination and cross-examination when DACF presents evidence is as follows: DACF, all intervenors, and the petitioner.
 - (b) The order of the examination and cross-examination when an intervenor presents evidence shall be as follows: remaining intervenors (if any), DACF, and the petitioner.

- J. APPEAL DECISION. The Hearing Officer shall make the final decision after consideration of the evidence in the record. The Hearing Officer shall look for clear and convincing evidence that one or more of the standards set forth in § 12(2)(A) of these rules has been proven by the petitioner.
- K. NOTIFICATION OF FINAL AGENCY ACTION. The Hearing Officer must issue a timely written decision and the reasons that support the decision. Such notification shall include the decision, an explanation of the reasons for the decision, and an explanation of the petitioner's right to judicial review of final agency action. This notification is considered final agency action.

SECTION 13. VIOLATIONS AND ENFORCEMENT

- 1. INITIATE ENFORCEMENT ACTION. Whenever it appears to the Commissioner, after investigation, that there is or has been a violation of this chapter or the terms or conditions of a permit issued by DACF, the Commissioner may initiate an enforcement action by taking one or more of the following steps:

- A. **REVOCATION.** The Commissioner may seek revocation of permits granted by DACF in accordance with applicable provisions of the Maine Administrative Procedure Act if the Commissioner finds that:
- (1) The permittee has violated any condition of the permit;
 - (2) The permittee has obtained a permit by misrepresenting or failing to disclose fully all relevant facts;
 - (3) The permit fails to include any standard or limitation legally required on the date of issuance;
 - (4) There has been a change in any condition or circumstance that requires a corrective action or revocation of a permit;
 - (5) There has been a change in any condition or circumstance that requires a temporary or permanent modification of the terms of the permit; or
 - (6) The permittee has violated any law administered by DACF.
2. **NOTICE OF VIOLATION.** Before initiating an enforcement action under this section, the Commissioner shall issue a notice of violation to the person or persons the Commissioner considers likely to be responsible for the alleged violation(s). The notice of violation must:
- A. Describe the alleged violation(s), to the extent then known by the Commissioner;
 - B. Cite the applicable law, rule, and term or condition of the permit alleged to have been violated; and
 - C. Provide time periods for the alleged violator to take necessary corrective action and respond to the notice.
- For violations the Commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances.
3. **STARTING CONSTRUCTION WITHOUT A PERMIT.** Any person who begins construction of a solar energy development after the adoption of this rule chapter without obtaining a permit from DACF is in violation of [38 M.R.S. § 3202](#) and this rule chapter. Any violation of these rules is subject to the enforcement authority located in [Title 38](#).

SECTION 14. DELEGATION OF AUTHORITY

1. **PURPOSE.** Pursuant to [38 M.R.S. § 3202](#), this section establishes the standards and conditions for the delegation of authority to a municipality or the Maine Land Use Planning Commission to issue permits for solar energy development.

2. DELEGATION OF PERMIT-GRANTING AUTHORITY TO MAINE LAND USE PLANNING COMMISSION. The Maine Land Use Planning Commission (LUPC) may apply to DACF for authority to issue permits, process permit exemptions, or process permit transfer applications under this chapter involving activities within LUPC's jurisdiction. DACF shall grant such authority if it finds that LUPC has:

A. Made provision by ordinance or rule for:

- (1) Prompt notice to DACF of all applications received;
- (2) Prompt notice to the public upon issuance of a permit;
- (3) Written notification to the applicant and DACF of the issuance or denial of a permit stating the reasons for issuance or denial; and
- (4) Adopting an application form and rules that are substantially the same as those provided by DACF.

If permitting authority is delegated to LUPC, then the applicable application base fees would be paid to LUPC. However, compensation fees, if owed, would still be calculated by and paid to DEP.

3. DELEGATION OF PERMIT-GRANTING AUTHORITY TO MUNICIPALITIES. A municipality may apply to DACF for authority to issue permits, process permit exemptions, or process permit transfer applications under this chapter involving activities within the municipality's jurisdiction. DACF shall grant such authority if it finds that the municipality has:

- A. Established a planning board and a board of appeals;
- B. The financial, technical, and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements;
- C. Made provision by ordinance or rule for:
 - (1) Prompt notice to DACF of all applications received;
 - (2) Prompt notice to the public upon issuance of a permit; and
 - (3) Written notification to the applicant and DACF of the issuance or denial of a permit stating the reasons for issuance or denial.
- D. Adopted an application form and rules that are substantially the same as those provided by DACF; and
- E. Appointed a code enforcement officer, certified pursuant to [Title 30-A, section 4451](#).

If permitting authority is delegated to the municipality, then the applicable application base fees would be paid to the municipality. However, compensation fees, if owed, would still be calculated by and paid to DEP.

4. DEFERRAL OF PERMITTING AUTHORITY TO DACF. Municipalities and LUPC may also choose to defer permitting authority to DACF regarding any solar energy developments proposed to be constructed on HVAL.
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STATUTORY AUTHORITY:

[38 M.R.S. §§ 3201-3202](#)

EFFECTIVE DATE:

<date>