**Chapter 379:** **COMPENSATION FOR IMPACTS TO HIGH-VALUE AGRICULTURAL LAND FROM SOLAR ENERGY DEVELOPMENT**

 **SUMMARY:** This rule implements 38 M.R.S.§ 484-C, Solar energy compensation fee for impact to high-value agricultural land, of the Site Location of Development Law. This rule regulates compensation requirements and establishes an in-lieu fee compensation program for impacts to high-value agricultural land, as defined by 38 M.R.S. § 3201(1) and the Department of Agriculture, Conservation and Forestry (DACF) Chapter 575 rule [01-001 C.M.R. ch. 575].

1. **Applicability**

This rule applies to solar energy developments, as defined by 38 M.R.S. § 3201(2), that are developments of state or regional significance that may substantially affect the environment, as defined by 38 M.R.S. § 482(2), and require compensation for impacts to high-value agricultural land (HVAL) in accordance with DACF Chapter 575 rule [01-001 C.M.R. ch. 575].

If an altered area requires compensation for impacts to HVAL under this Chapter and would also require compensation for impacts to wildlife and fisheries habitat under Department of Environmental Protection (Department) Chapter 375(15-A), compensation will be governed by the rule that requires the highest applicable compensation ratio for the altered area if the in-lieu fee option were to be used. If a higher compensation ratio is required for impacts to HVAL, then this Chapter will apply. If a higher compensation ratio is required for impacts to wildlife and fisheries habitat, then Chapter 375(15-A) applies and this Chapter does not apply. If the compensation ratios are equal, then Chapter 375(15-A) applies and this Chapter does not apply.

A single solar energy development project may have some altered areas that are governed by this Chapter and other altered areas that are governed by Chapter 375(15-A). No single altered area will be governed by both this Chapter and Chapter 375(15-A).

1. **Definitions**

For purposes of this Chapter, the following terms have the following meanings.

**Blueberry barren.** Blueberry barren has the same meaning as in DACF Chapter 575(2).

**Farmland.** Farmland has the same meaning as in DACF Chapter 575(2).

**Farmland of statewide importance.** Farmland of statewide importance has the same meaning as in DACF Chapter 575(2).

**High-value agricultural land.** High-value agricultural land has the same meaning as in DACF Chapter 575(2).

**Prime farmland.** Prime farmland has the same meaning as in DACF Chapter 575(2).

**Solar energy development**. Solar energy development has the same meaning as in 38 M.R.S. § 3201(2) and DACF Chapter 575(2).

1. **When Compensation is Required for Impacts to HVAL**

Compensation is required when impacts to HVAL meet the DACF Chapter 575 criteria for compensation tiers 1, 2, 3, or 4. No compensation is required for impacts to HVAL that meets the DACF Chapter 575 criteria for compensation tier 0.

1. **Compensation for Impacts to HVAL**
2. **In-lieu fee compensation option**

If an applicant chooses to pay a compensation fee in lieu of proposing a permittee-responsible compensation project, the compensation fee amount will be calculated by multiplying the following three values: 1) the square footage of HVAL impacted, 2) the compensation ratio for the applicable compensation tier according to DACF Chapter 575, and 3) the amount paid per square foot for recent purchases of comparable land or working farm conservation easements on comparable land in the vicinity of the proposed development, as determined by the Department based on an appraisal conducted by a licensed appraiser or certified real estate professional.

If the solar energy development is required to compensate for impacts to HVAL of more than one compensation tier, the compensation fee for each sub-area will be calculated separately and the total compensation required will be the sum of the compensation required for each sub-area.

If DACF determines that the applicant should owe an increased compensation fee of up to 110% of the calculated compensation fee in accordance with DACF Chapter 575, then the total compensation required will be the amount determined by DACF.

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 HVAL conserved with compensation fees.

In accordance with 38 M.R.S. § 484-C(5), a conservation project funded by an in-lieu compensation fee must be located in the same region as the solar energy development and must consist of soils comparable to those in the impacted area unless otherwise approved by the Department.

1. **Permittee-responsible compensation project option**

If the applicant chooses to complete a permittee-responsible compensation project, in accordance with 38 M.R.S. § 484-C(4), the conserved land must be subject to a perpetual agricultural conservation easement or fee ownership by a public, quasi-public, or municipal organization or a private, nonprofit organization that ensures the land remains available for agricultural production in perpetuity. The square footage of land conserved by the compensation project must be equal to or greater than the square footage of HVAL impacted by the solar energy development.

Unless otherwise approved by the Department, the compensation project:

1. Must be located in the same county as the solar energy development;
2. Must conserve an equal or greater number of square feet of HVAL as square feet of HVAL impacted by the solar energy development; and
3. The HVAL included in the compensation project must include:
4. An equal or greater number of square feet of prime farmland as square feet of prime farmland impacted by the solar energy development;
5. An equal or greater number of square feet of farmland of statewide importance as square feet of farmland of statewide importance impacted by the solar energy development;
6. An equal or greater number of square feet of blueberry barrens as square feet of blueberry barrens impacted by the solar energy development; and
7. An equal or greater number of square feet of farmland as square feet of farmland impacted by the solar energy development.
8. **Compensation Timing**

If the Department approves a permit for the development, prior to the start of construction the permittee must either provide the compensation fee or complete the permittee-responsible fee purchase or agricultural conservation easement for permittees using the permittee-responsible conservation option.

1. **Submissions**

Applications for permits under the Site Location of Development Law that are subject to this Chapter must include the following:

1. A copy of the solar energy development permit application submitted to or permit issued by DACF, or a delegated permitting authority, pursuant to 38 M.R.S. § 3202. A copy of the application submitted to DACF or a delegated permitting authority is sufficient to find an application complete for processing under this Chapter. Before a Site Law permit can be issued under this Chapter, the applicant must provide the solar energy development permit issued by DACF or a delegated permitting authority, pursuant to 38 M.R.S.§3202; and
2. For projects using the in-lieu fee compensation option, an appraisal conducted by a licensed appraiser or certified real estate professional identifying the amount paid per square foot for recent purchases of comparable land or working farm conservation easements on comparable land in the vicinity of the proposed development; or
3. For projects using permittee-responsible compensation, information describing the proposed compensation project, including:
4. Legal description of land proposed to be conserved;
5. Statement of the entity or entities that have agreed to hold the agricultural conservation easement or the fee ownership and a copy of the proposed legal agreement; and
6. Information sufficient to determine the square footage of HVAL within the proposed compensation project area that meets the definition of: 1) prime farmland, 2) farmland of statewide importance, 3) blueberry barrens, and 4) farmland. This may include a field-based survey conducted by a licensed soil scientist in accordance with DACF guidance, as described in DACF Chapter 575. This also may include information on the active farming history of the proposed compensation project area.

STATUTORY AUTHORITY: 38 M.R.S. § 484-C(7) and P.L. 2023 ch. 448

APAO ACCESSIBILITY CHECK: August 18, 2025

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