**Basis Statement, Impact on Small Business Statement, & Response to Comments**

01-001 C.M.R. Chapter 575: Permitting Solar Energy

Developments on High-Value Agricultural Land

### Background

“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 ([Public Law 2023, Ch. 448](https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1206&item=9&snum=131)). The public law (P.L.) establishes roles in the permitting and compensation processes for the Department of Agriculture, Conservation, and Forestry (DACF) and 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 the P.L., 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 developments on HVAL, including provisions for delegating permitting authority to the LUPC & municipalities.
* Implementing other administrative procedures not specified in the legislation, including enforcement.

DEP’s role is to establish an administrative system for calculating, receiving, and transferring the compensation fees for projects permitted under the Site Location of Development Act. The P.L. directs DACF to establish a regulatory program in consultation with DEP and the Governor’s Energy Office (GEO).

### Administrative Rulemaking History

In addition to consulting with DEP and the GEO, DACF took public comment in advance of drafting the proposed rule and carefully considered all the information provided. DACF proposed draft rules that fulfill the requirements of the P.L., then elicited public comment during a comment period and public hearing. DACF revised the draft rules in response to the comments, released the second draft, and opened a second comment period. A timeline of the pre-rulemaking and rulemaking comment periods can be found in **Table 1**. DACF received 58 timely-filed comments during the first comment period and public hearing, and 13 timely-filed comments during the second comment period[[1]](#footnote-1). A list of commenters can be found below starting on page 2.

### Abridged Comments, Department Responses, & Rule Revisions

Per 5 M.R.S. §8052(5)(B), “A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule.” DACF has determined that the final adopted rules (V3) are consistent with the draft published for the second public comment period (V2), except to the extent that revisions were necessary to address concerns raised in comments received during the second comment period. DACF has determined that any revisions that were not the result of responding to public comments were necessary to improve clarity and understanding of the rules.

The comments and DACF’s responses can be found in **Table 2.** DACF abridged all timely-received comments below to remove introductory and closing statements that do not incorporate comments specific to the rule language. DACF’s responses state whether each comment was addressed by modifications to the rule after either the first or second comment period, or whether the Department determined that no changes were necessary in response to the comment. DACF will refer to the version of the proposed rules posted for the first comment period as V1, the version of the proposed rules posted for the second comment period as V2, and the adopted version of the rules as V3.

### Impact on Small Business Statement

No significant impact is expected on small businesses.

### Table 1: Procedural Timeline

|  |  |
| --- | --- |
| DATE | STEP |
| 07/26/23 | P.L. 2023, Ch. 448, titled “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, giving DACF authority to initiate rulemaking. |
| 10/06/23 | DACF’s request for stakeholder input and recommendations on upcoming rulemaking posted on DACF website. |
| 11/10/23 | End of pre-comment period for stakeholder input and recommendations for upcoming rulemaking. |
| 07/31/24 | Notice of hearing date published in newspapers, posted on DACF website, and sent to interested parties. Draft rules (V1) posted on DACF website. First official public comment period commences. |
| 08/19/24 | Public hearing held on draft rules. |
| 08/29/24 | End of first comment period on draft rules. |
| 11/27/24 | Notice of second comment period published in newspapers, posted on DACF website, and sent to interested parties. Second draft of rules (V2) posted on DACF website. Second public comment period commences. |
| 12/26/24 | End of second comment period on draft rules. |

### Testimony Received at Public Hearing on August 19, 2024[[2]](#footnote-2)

[Bergeron, Mark – TRC Environmental (TRC)](#Mark_Bergeron)

[Bourgoine, Lindsay – Revision Energy (Revision)](#Lindsay_Bourgoine_1)

[Byers, Chris – Branch Renewable Energy (Branch)](#Chris_Byers)

[Cole, Dale – Cole Farm](#Dale_Cole)

[Daniel, Kate – Coalition for Community Solar Access (CCSA)](#Kate_Daniel_1)

[Donoghue, Eliza – Maine Renewable Energy Association (MREA)](#Eliza_Donoghue_1)

[Gundrum, Francesca – Maine Audubon (Audubon)](#Francesca_Gundrum_1)

[Holmquist, Tyler - Glenvale Solar (Glenvale)](#Tyler_Holmquist)

[Kelshaw, Rodney – Maine Association of Professional Soil Scientists (MAPSS)](#Rodney_Kelshaw_1)

[Knapp, Dale – Walden Renewables (Walden)](#Dale_Knapp_1)

[Megquier, Shelley – Maine Farmland Trust (MFT)](#Shelley_Megquier_1)

[Nuzzo, Kaitlyn – The Nature Conservancy (TNC)](#Kaitlyn_Nuzzo_1)

[Pluecker, William D. – State House of Representatives (SHR)](#Bill_Pluecker_1)

[Smith, Julie Ann – Maine Farmers Coalition (MFC)](#Julie_Ann_Smith_1)

[Spalding, Heather – Maine Organic Farmer & Gardeners Association (MOFGA)](#Heather_Spalding_1)

[Springer, Jake – Nexamp](#Jake_Springer)

[Strauch, Patrick – Maine Forest Products Council (MFPC)](#Patrick_Strauch_1)

### Written Comments Received During the First Public Comment Period[[3]](#footnote-3)

[Atlee, Dick](#Dick_Atlee)

[Barnett, Joseph](#Joseph_Barnett)

[Bennett, Steve](#Steve_Bennett)

[Bourgoine, Lindsay – Revision Energy (Revision)](#Lindsay_Bourgoine_2)

[Browne, Juliet T. – Verrill Dana LLP](#Juliet_Browne)

[Cleaves, Robert – BNRG Dirigo Solar (BNRG)](#Robert_Cleaves)

[Daniel, Kate – Coalition for Community Solar Access (CCSA)](#Kate_Daniel_2)

[Doak, Thomas – Maine Woodland Owners](#Thomas_Doak)

[Donoghue, Eliza – Maine Renewable Energy Association (MREA)](#Eliza_Donoghue_2)

[Farnham, Lia](#Lia_Farnham)

[Farrin, Brad – State Senator](#Timberlake_Farrin)

[Fife, Christopher – Weyehaeuser](#Chris_Fife)

[Fish, Gary – DACF, State Horticulturist (DACF)](#Gary_Fish)

[Gazillo, Chelsea – American Farmland Trust (AFT)](#Chelsea_Gazillo)

[Golden, Jared – U.S. House of Representatives (USHR)](#Jared_Golden)

[Grogan, Althea](#Althea_Grogan)

[Gundrum, Francesca – Maine Audubon (Audubon)](#Nuzzo_Gundrum)

[Hansen, Vincent – Teichos Energy (Teichos)](#Vincent_Hansen)

[Hermann, Kathleen](#Kathleen_Hermann)

[Kalloch, Norman](#Norman_Kalloch)

[Kelshaw, Rodney – Maine Association of Professional Soil Scientists (MAPSS)](#Rodney_Kelshaw_2)

[Kenney, Maxwell](#Max_Kenney)

[Kepner, Dennis & Susan](#Dennis_Susan_Kepner)

[Knapp, Dale – Walden Renewables (Walden)](#Dale_Knapp_2)

[Koons, Jean & Peter – Kennebec Cheesery at Koons Farm (Koons Farm)](#Jean_Peter_Koons)

[Lambert, Tim](#Tim_Lambert)

[Libby, James D. – State Senator](#James_Libby)

[Marshall, John](#John_Marshall)

[McEvoy, George](#George_McEvoy)

[McFarland, Amy – Independence Farm](#Amy_McFarland)

[McKnight, Robert](#Robert_McKnight)

[Megquier, Shelley – Maine Farmland Trust (MFT)](#Shelley_Megquier_2)

[Nuzzo, Kaitlyn – The Nature Conservancy (TNC)](#Nuzzo_Gundrum)

[Phillips, Niki](#Niki_Phillips)

[Pike, Frederick](#Frederick_Pike)

[Pluecker, William D. – State House of Representatives (SHR)](#Bill_Pluecker_2)

[Raffin, Lisa – Glenvale Solar (Glenvale)](#Lisa_Raffin)

[Rowen, Margo](#Margo_Rowen)

[Sassaman, Ezra – Maine Climate Action Now (MCAN)](#Ezra_Sassaman)

[Seel, George](#George_Seel)

[Sewell, Nathaniel P.](#Nathaniel_Sewell)

[Sheridan, Paul](#Paul_Sheridan)

[Smith, Andrew – Maine Organic Milk Producers (MOMP)](#Andrew_Smith)

[Smith, Julie Ann – Maine Farmers Coalition (MFC)](#Julie_Ann_Smith_2)

[Spalding, Heather – Maine Organic Farmer & Gardeners Association (MOFGA)](#Heather_Spalding_2)

[Springer, Jake – Nexamp](#Jake_Springer_2)

[Strauch, Patrick – Maine Forest Products Council (MFPC)](#Patrick_Strauch_2)

[Sutherburg, Dellarese](#Dellarese_Sutherburg)

[Svedlow, Aaron – North Light Energy, LLC (NLE)](#Aaron_Svedlow)

[Tempel, Scott – SolAmerica Energy (SolAmerica)](#Scott_Tempel)

[Tillson, Jasmin](#Jasmin_Tillson)

[Timberlake, Jeff – State Senator](#Timberlake_Farrin)

[VonSeggern, David](#David_VonSeggern)

[Watson, Annie – Maine Dairy Industry Association (MDIA)](#Annie_Watson)

[Welch, Bernie & Jody – Full Circle Farm (FC Farm)](#Bernie_Jody_Welch)

[Wright, John – Sparkplug Farm](#John_Wright)

### Written Comments Received During the Second Public Comment Period[[4]](#footnote-4)

[Bourgoine, Lindsay – Revision Energy (Revision)](#Lindsay_Bourgoine)

[Donoghue, Eliza – Maine Renewable Energy Association (MREA)](#Eliza_Donoghue)

[Gundrum, Francesca – Maine Audubon (Audubon)](#Nuzzo_Gundrum)

[Kelshaw, Rodney – Maine Association of Professional Soil Scientists (MAPSS)](#Rodney_Kelshaw)

[Knapp, Dale – Walden Renewables (Walden)](#Dale_Knapp)

[Levy, Samantha – American Farmland Trust (AFT)](#AFT)

[Lyons, Sherry](#Sherry_Lyons)

[Megquier, Shelley – Maine Farmland Trust (MFT)](#Shelley_Megquier)

[Nuzzo, Kaitlyn – The Nature Conservancy (TNC)](#Nuzzo_Gundrum)

[Paterson, Eliza – American Farmland Trust (AFT)](#AFT)

[Smith, Rowan](#Rowan_Smith)

[Stubbs, Edmund](#Edmund_Stubbs)

[Swackhamer, Linda](#Linda_Swackhamer)

[Toothacker, Andrew](#Andrew_Toothacker)

[Wilcox, Carl](#Carl_Wilcox)

### Acronyms and Abbreviations

AC alternating current

CFR Code of Federal Regulations

Ch. Chapter

CMR Code of Maine Rules

DACF Maine Department of Agriculture, Conservation & Forestry

DEP Maine Department of Environmental Protection

EPA United States Environmental Protection Agency

FOSI farmland of statewide importance

GEO Maine Governor’s Energy Office

GIS Geographic Information System

HVAL high-value agricultural land

LUPC Maine Land Use Planning Commission

MRSA Maine Revised Statutes Annotated

MRS Maine Revised Statutes

MW megawatt

NCSS National Cooperative Soil Survey

NOAA National Oceanic and Atmospheric Administration

NRCS Natural Resources Conservation Service

PBR permit by rule

PF prime farmland

PFAS per- and polyfluoroalkyl substances

PFOS perfluorooctane sulfonate

the P.L. P.L. 2023, Ch. 448, “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”

the rules 01-001 C.M.R. Chapter 575: Permitting Solar Energy Developments on High-Value Agricultural Land

USDA United States Department of Agriculture

V1 the version of the proposed Chapter 575 rules posted for the first comment period

V2 the version of the proposed Chapter 575 rules posted for the second comment period

V3 the final adopted version of the Chapter 575 rules

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Table 2: Comments in Order of Date Received\* and DACF Responses*(\*Except for comments of those who commented more than once during the first comment period, which are grouped)* | | | | | | | | | | | | | | | | | | | | | | | | | |
| Seel, George City/Town: Belgrade Date Received: 07/31/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** My comments below are from the perspective of a municipal planning board member from a municipality (Belgrade) with an ordinance that regulates commercial solar development projects that relies on prior definitions of high value farmland, farmland and others in your agency’s policies or State statute.  Proposed definitions in Chapter 575 may require towns that do likewise to consider revisions to their local ordinances and therefore need to be able understand and implement those definitions. Of course, Chapter 575’s definitions need to be sufficiently specific so as to be clear to the regulated community and the public. NOTE:  These are my personal views and comments and not those of the Town of Belgrade or the Belgrade Planning Board. My comments are limited to Section 1.  Definitions:  7.  Contaminated Lands.  A.  The meaning of “potentially harmful substances” should be defined in this rule, or a citation to an existing definition in statute or rules should be included in this subsection.  Given that paragraph 7B captures hazardous substances, the implication of the current language is that “potentially harmful substances” are environmental contaminants other than U.S. EPA (CERCLA) and Maine DEP defined hazard substances. I am unable to determine from the definition what those could be?  pH from the land application of papermill ash on agricultural land?  The presence of bacteria or viruses in the soil used for septage spreading?  Other?  B.  The term “statewide standards” is too vague and will cause confusion.  The specific standards referenced by this part of the definition of Contaminated Lands should be either be included in the rule, possibly as an appendix, or included by citation and reference.  For example, does “statewide standards” refer to MDEP’s soil remediation guidelines for hazardous substances or oil? If so, specifically state so in the definition.  If another set of widely accepted and technically sound standards, include those by reference. | | | | | | | **DACF Response to Comment**: Thank you for your comment.  After careful consideration, DACF agrees that further clarification on the definition of “contaminated lands” is needed. DACF incorporated the following changes into V2:   * The definition has been revised to remove the phrase “potentially harmful substances” and replaced it with “hazardous substances.” * The phrase “statewide standards” has been removed, and a new definition for “hazardous substances” has been created that directs the reader to the DEP policy. | | | | | | | | | | | | | | | | | | |
| Bennett, Steve City/Town: -- Date Received: 08/13/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** As someone who believes in preserving farmland, someone who is responsible for placing 500 acres of mine and my daughter’s land in your hands, someone who has done the research regarding the PFAS and carcinogenic chemicals that exist in solar panels, I am frankly disgusted that you people that claim to represent the interests of those like me who trusted you to do what was right, who placed their land in your hands in order to preserve farmland forever, are now going to make our land available to poisonous solar arrays. Shame on you! | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Atlee, Dick City/Town: Southwest Harbor Date Received: 08/14/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I was reading through the new proposed rules for solar use of farmland, preparatory to offering comment on them, and came upon the following, which seems at least superficially internally contradictory (i.e., approval not contingent on obtaining other approvals-et-al, while at the same time requiring such approvals-et-al. I’d appreciate help in understanding what I’m missing here.  SECTION 3. PERMIT STANDARDS...  3. 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.  4. PERMIT VALIDITY REQUIREMENTS. Notwithstanding § 3(0), for a permit issued under this chapter to be valid, the applicant must:  A. Obtain 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 B. If applicable, fulfill any compensation requirements as described in § 6 prior to starting construction. The Department of Environmental Protection administers compensation requirements per 38 M.R.S. § 484-C. | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Subsection 3 is intended to mean that DACF may approve a permit for a solar energy development on high-value agricultural land (HVAL) before the applicant has obtained any other necessary permits (such as a stormwater permit, building permit, etc.)  Subsection 4 is intended to mean that even if DACF approves a permit, the permit is only considered valid once the compensation requirements have been fulfilled and the other approvals/permits have been obtained. Permittees are at risk of facing enforcement action or permit revocation if they begin construction activities prior to obtaining all other necessary permits from agencies or municipalities. However, DACF revised the language of subsection 4 to provide additional clarity in V2. | | | | | | | | | | | | | | | | | | |
| Hermann, Kathleen City/Town: Date Received: 08/14/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** In these United States, in the world, climate change, shortage of water, wild fires, natural disasters have ravaged so many communities and farm lands. We here in Maine cannot afford to relinquish our very valuable farm land to solar development. Our hardworking farmers need to have these rich soils to increase our food productivity for our Maine citizens. So much of the “bread basket” of our country is deplete of healthy soil, compromised with pesticides and fertilizers, reduced rain and ground water supplies. Not to mention the draining of natural rivers and streams. I cannot imagine anyone not being aware of these circumstances. Have they been living under a rock? Especially those wanting to establish solar farms on our rich and valuable land. I understand the importance of establishing green energy, and I do support those efforts, but not at the expenses of value farm land. This is a discussion that needs experts in both fields, farming, green energy, coming together to create a plan that benefits both farming and solar energy. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Farnham, Lia City/Town: Date Received: 08/14/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I would like to voice my support for the fee and regulations concerning placement of solar farms on agricultural farm land. Where can I contribute my opinion of support for this great cause? Thanks so much for all that MFT does. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Sutherburg, Dellarese City/Town: Date Received: 08/14/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am not extremely knowledgeable on agricultural land, but I do have some opinions on solar farms. About a year ago, a company installed a solar farm in a cow pasture behind my home. The entire neighborhood fought the project with it being so close to our homes. We did our research which showed the value of property decreasing the closer the solar field was to homes. Our time and effort was ignored by the solar company, the landowner and the city because of the money involved. The solar company received major $ from the government, the land owner receives $80,000/year rent and the city receives $10,000 for allowing it. It seems that the $$ is really all anybody cares about at this point. They are not looking to the future of this land. It’s extremely sad to see this happening all over our beautiful state. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Kepner, Dennis & Susan City/Town: York Date Received: 08/14/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We are big believers in solar energy; in fact our home’s roof is covered in them. That being said we also highly value farm lands!!!  We would hope that in the rule making process you would have strong standards that protect Maine’s valuable farm lands that seem to be disappearing. State government should be doing all it can to keep Maine’s farms intact and under farming use, helping to develop trusts and conservation of that land. Once an array of solar panels is built it would be difficult to go back to farming that property. If and when  a solar “farm” is under a[application for a permit, we would hope that the company that installs  and manages the panels might be from Maine or New England; keeping the $$$ in state or semi-local as much as possible.  Climate Change is affecting us all and 1 way to help mitigate the damage is to keep “green “ things growing that can sequester carbon-farming does that. Again, we want not only to help our land owners, but also to promote Clean energy in a way that secures farm lands as much as possible for the next generation of Maine’s Farmers. | | | | | | | **DACF Response to Comment**: Thank you for your comment.  The P.L. does not give DACF the authority to determine who installs and manages panels. Therefore, that is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Rowen, Margo City/Town: --- Date Received: 08/15/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** This is probably not the forum for my complaint but I feel it to be relevant to the state of Maine and its Revenue and Tourism income. Maine is known to be a beautiful state. People travel from all over the country to see the ocean, parks, small town living and enjoy nature and the water.  I left the state for some years and when I returned some of the most beautiful parts are covered for acres with these solar panels. I no longer see the wild flowers, the deer, and once in a great while a moose. The unseen animals have been pushed away as well. In a very short time this administration, or the future one, will see the wildlife and the animals only in books. This administration takes so much time not to “think” about why we live in Maine and why we value our way of life that they are destroying what Maine is.  Shame on you and what you have done so far. You, also, allowed CMP to devastate the land for another state…..let’s see how you screw this up too. I would love to know what happens to these panels when they become obsolete…is that even an issue??????????? Glad I will not leave long enough to see it. A Mainer at heart missing the “Way it should be”.  PS ….you say you read ALL of the people’s responses to this law…..reply to me if that is true. Better yet hand it to Mills herself…. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| McKnight, Robert City/Town: Orrington Date Received:08/15/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I would like to strongly support any protective measures being placed on agricultural and forest land that would in anyway protect them from future development by solar projects. In the last calendar year, I have lost over 1000 acres of previously publicly accessible forest land open to recreation, including hunting, hiking and snowmobiling which is now mostly gated or fenced and in most cases a mix of agricultural and multigenerational forest habitat was clear cut to install solar farms sprawling 60+ acres. Since when did agricultural property and managed forest become worthless? | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | | | | | | |
| Lambert, Tim City/Town: Scarborough Date Received: 08/15/24 Method of Comment: Email Representing Organization: --- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am a lifelong Maine resident concerned about both the loss of farmland AND the effects of climate change in our state. I believe the state needs to do all it can to reduce barriers that make it difficult for farmers to thrive in this state, perhaps in the form of offering greater property tax exemptions/valuations to land that is farmed. I’m also a proponent of solar power. I have 33 panels on my home, and I think there are plenty of places in Maine where solar panels can be placed without impacting useable farmland. More should be done to encourage rooftop solar, particulary for businesses and landlords who may not currently be incentivized to use their rooftops for such a purpose. I believe both farms and solar can coexist in the same state, and I encourage state agencies to push policies that encourage both industries to thrive without impeding each other. | | | | | | | **DACF Response to Comment**: Thank you for your comment. The P.L. does not give DACF the authority to offer property tax exemptions/valuations to farmed land or incentives for rooftop solar. Therefore, these are outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | |
| Libby, James D. City/Town: District 22 Date Received: 08/16/24 Method of Comment: Email Representing Organization: State Senator | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** My name is James Libby.  I serve as a State Senator for District 22. I have concerns that this rulemaking has gone well beyond “routine technical,” which I believe the legislation authorized.  In particular, the practice of identifying HVAL using the definition developed here is likely to lead to a wide variety of immediate implications to the market value of a parcel of land.  This alone goes beyond the scope of routine technical.  Readers: please carefully consider the implications of soil testing as proposed. | **DACF Response to Comment**: Thank you for your comment. Per 38 M.R.S.A. §3202, “*Notwithstanding Title 5, section 8071, subsection 3, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A*.” Therefore, unless the statute is amended, the rules are considered routine technical. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The Chapter 575 rules do not require soil testing, only a field-based survey. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | | | |
| Barnett, Joseph City/Town: Bucksport Date Received: 08/16/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Our local Environmental Institute said their solar-covered parking lot produced more than they expected or use. Homeowners say the same. I would like solar in parking lots and homes before any more land is covered by solar. Thanks! Joseph Barnett. Owner of forest land in Bucksport, ME. | **DACF Response to Comment**: Thank you for your comment. The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar or solar over parking lots is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | | | |
| Welch, Bernie & Jody City/Town: Vassalboro Date Received: 08/17/24 Method of Comment: Email Representing Organization: FC Farm | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** My wife and I own a small organic farm in Vassalboro.  We are also landlords of a 3 acre solar farm on our land and have been for about 4 years.  The solar farm has greatly benefitted the farm for several reasons.  The soils test for the land the solar farm was on told us we needed to amend that three acres continuously to build up it’s viability as farm land.  We had put tomatoes and pumpkins on it with mixed results and the soils test verified the reason.  We were considering a solar farm for the land because it provides steady income we use on other parts of the farm and it has an annual visit by sheep grazing to keep vegetation down around the panels and supports the dual use of the land that solar provides.  Maine does not produce oil or natural gas but it does have water power, wind power and solar power.  For us this choice of solar keeps local energy production in Maine, provides dual use for grazing and keeps us on our farm in a secure productive way. | **DACF Response to Comment**: Thank you for your comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. | | | | | | | | | | | | | | | | | | | | | | | | |
| Tempel, Scott City/Town: Atlanta, GA Date Received: 08/19/24 Method of Comment: Email Representing Organization: SolAmerica | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** First and foremost, the notion that solar development destroys farmland is false. This is particularly true in the case of community solar, of which is the focus of this letter. The following purpose statement from the accompanying memo contains two major falsehoods.  *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. Therefore, careful consideration regarding appropriate solar project siting is necessary to avoid the permanent loss of productive agricultural lands.*  One falsehood is the inference that solar destroys farmland, possibly to the point of no recovery. Community solar projects are constructed with minimal disturbance to the soil. The utilization of single axis tracker systems allows for minimal to no site grading because the effects of topography are neutralized by installing the posts at varying heights rather than grading the land. The posts are driven into the ground and can easily be pulled out with minimal disturbance to the soil. Any farmer knows that fields benefit greatly from occasional fallowing. Solar projects allow the soil to fallow for over 25 years. This allows re-establishment of soil structure, composition and nutrients. When the array is removed the farmland will be in vastly better condition than fields that have been continuously farmed.  The second falsehood is that solar projects will result in permanent loss of agricultural land. Solar farms are interim land uses. Most community solar projects are leased from the landowner for 25-30 years.  Solar is actually a buffer from future urban development. Urban development is the largest consumer of farmland in Maine. Some 10,000 acres are developed for residential or commercial use each year. THIS is permanent destruction of farmland. Are land developers forced to pay farmland compensation fees to DEP? Land dedication requirements and fees-in-lieu are collected from developers in many cases, but this is to provide parkland and open space, not to protect farmland. This legislation and rulemaking are a prime example of tilting at windmills.  To meet the goals in Maine’s climate plan, solar would occupy around 22,000 acres, or 0.1% of Maine’s land surface. For context, Maine’s public roads cover over 127,000 acres and golf courses occupy an estimated 15,000 acres. Taxpayers currently pay to keep some 5,600 acres of farmland OUT of production. Farmers who participate in the U.S. Department of Agriculture’s Conservation Reserve Program are paid an annual rental fee to remove agricultural land from production and plant it with species that protect wildlife and mitigate climate change.  A common fear is that solar will proliferate and projects be built everywhere. Not only is this unnecessary to meet the state’s energy goals, but it is also unrealistic because solar is very limited as to where it can be developed. The location of solar farms is generally dictated by where: (1) the substation and distribution lines have capacity to accept more power; (2) land is available; (3) there are no sensitive areas/habitat present; and (4) local regulations allow it. It is estimated that 1 in 10 parcels evaluated are found to be suitable for solar. Sites meeting all the criteria are actually very rare.  Finally, I would be remiss if I did not mention the impact for landowners of severely restricting solar. The State seems to forget whose farmland they are trying to “protect.” It is private property, and the State would be TAKING the highest and best use of the land. The legislation defines farmland as agricultural activities producing an income of at least $2,000 per year. The amount of income produced by a solar installation dwarfs that of crop production. Many farmers want to develop part of their land into solar because it provides a strong steady source of income which offsets the unpredictability of farming. In many cases, this income is critical for small farmers to be able to stay solvent. They also recognize the benefits to neighboring farmland of having a large swath of pollinator friendly vegetation.  The State wouldn’t I dream of forcing a landowner to farm nor would It specify what crop they should produce. This is not a communist country with a command-and-control economy. A farmer can choose not to plant a crop on any existing field any time they want, therefore keeping it out of production. Why can they not cease agricultural production on their land for solar that is much more lucrative? Especially when the use is not a permanent destruction of valuable soil and, in fact, increases the health and productive capacity of the soil. They are simply harvesting sunlight through photovoltaics rather than photosynthesis.  Recognizing the legislation has already passed, we would request that:  This rulemaking process recognize that solar does not destroy farmland,   * Minimize the fees payable to DACF, * Eliminate the costly mandatory evaluation of soils, * And simplify the complex tier ranking system accordingly.   The standards and procedures proposed will result in much higher development costs for solar farms and have a chilling effect on the industry in Maine. | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the requirements of the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF recognizes that urban development is a threat to HVAL. However, the P.L. does not give DACF the authority to permit urban development. Therefore, that is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. Additionally, dual-use pollinator habitat is eligible for a lower compensation tier.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, compensation tiers were revised in both V2 and V3.  A field-based survey requires 1) a high-level assessment of current or past site uses, 2) a high-level inventory of on-site structures, and 3) an inventory by a licensed soil scientist of soil resources. Per 32 M.R.S. §4903, “*No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter...,*” therefore, the inventory of soil resources can only be conducted by a Maine-licensed soil scientist. However, per this comment and others, the definition of “field-based survey” was amended in V2 such that a soil scientist is not required to be the entity evaluating on-site structures or current/past site uses since it doesn’t require practicing soil science. Additionally, if the property is disqualified from being considered HVAL due to on-site structures or current/past site uses, then a soil scientist is not required to survey the site. | | | | | | | | | | | | | | | | | | | | | | | | |
| Cole, Dale City/Town: Sidney Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: Cole Farm | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I’m a long-time, now an ex-dairy farmer, and a landowner. And the only person I didn’t hear mentioned in [the rules] was the landowner or the farmer. The problem with farmland is that we need markets, we need to be paid properly, and we need access to market. None of those exist in a perfect world. We need agricultural land – but it almost looks like you’re taxing the landowner to go forward.  So, my comment is that we don’t need the farmland valued; we need it so that the farm can put it where it wants. Some of these solar projects might help keep the rest of the farmland there. I see that quite a lot. And because we need more input. I mean talking about a fee that we don’t know what it is or what it’s gonna accomplish. It doesn’t sound like it’s going back to the farm. So, as I know, the farms still own the farms, and we’d like to keep them that way.  I don’t think this exists for houses, does it? So, if you want to build a house on high-value farmland, and that’s like a condominium or subdivision, that’s not in [the rules]. | **DACF Response to Comment**: Thank you for your comment. The P.L. requires a person who constructs or causes to be constructed a solar energy development located on HVAL to pay a compensation fee or other form of compensation for any portion of the development that is located on HVAL. The landowner does not pay the compensation fee unless the landowner is also the developer. A compensation fee or conservation option is only required for projects that are 20 acres or larger. No changes were made in response to this comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. The compensation fees will go into a compensation fund for farmland conservation and solar mitigation projects. An applicant may also choose to conserve other land for agricultural production instead of a compensation fee.  The P.L. does not give DACF the authority to require compensation for any form of development other than solar energy development. Therefore, that is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | | | |
| Holmquist, Tyler City/Town: Portland Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: Glenvale | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: Glendale develops utility-scale solar projects in Maine with projects in Buckston, Baldwin, Turner, Topsham, and Warren. These projects will power nearly 40,000 homes, create 200 construction jobs, and provide $60 million in state spending. Each project has a power purchase agreement with Central Maine Power that will generate ratepayer savings that are below $0.04 per kWh. And our first project here scheduled, is to begin construction this year. We do commend the department for exempting these projects that are further along in development.  But I do want to take the Warren project as an example [of] what impact these fees would have on projects in the future. I’m conducting some area take-offs. The area of the site that would qualify as farmland of statewide importance amounts to about 171 acres and the amount of prime farmland on the site is roughly 8 acres. Considering a scenario, sort of the worst-case scenario, just where we fell in these categories and then not being able to provide any dual-use agriculture on the 600-700+ acre site. The result of that fee would be around $3.2 million for this project. The result of [a] fee of this significance to make the project viable and kind of meet the other financial milestones that we’re looking to make the project go forward, we would likely have to seek higher PPA rates which would be passed down to energy consumers in the state.  I’d like to also say that we make our siting decisions in the context of wildlife habitats, wetlands, proximity transmission lines, alternative land uses, viewshed, and many other factors. This project is sited out of sight of nearby roadways and homes, and has historically been used for aggregate extraction.  Just given the nature of the site, there are some areas where sloping could foster farming and in other areas it’s so steep that it would be difficult to do a lot of the uses that are being talked about in these rules, specifically crop production, which is the best way to mitigate. | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Lisa Raffin on 08/29/2024 on behalf of Glenvale Solar. | | | | | | | | | | | | | | | | | | | | | | | | |
| Raffin, Lisa City/Town: Portland Date Received: 08/29/24 Method of Comment: Email Representing Organization: Glenvale | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Glenvale commends the Department for exempting projects that are far into their development cycle. Some of the projects listed above are expected to be unaffected by this rule due to their project maturity. Section 1.28 states that projects that have started construction on or before September 1, 2024, are grandfathered from the new rule. However, Glenvale has projects that are significantly advanced with executed power purchase agreements, federal, state and local permits in hand, and interconnection processes far-along that may not start construction by the date certain in the rule. This may present a significant cost impact to these projects that have already committed to selling the energy at an established, contracted rate.  However, Glenvale would like to demonstrate the impact that this rule will have on utility scale solar projects in the future if it is passed by using the Warren project as an example. The following are the impacts to the Warren project if it were to be developed after these rules are passed and some comments regarding the actual on-site conditions.   1. Glenvale makes its siting decisions in the context of wildlife habitat, wetlands, proximity to transmission lines, alternative land uses, viewshed, and many other factors. The Warren project is sited out of view from major roadways and nearby homes. The site has been used for aggregate extraction and, as a result, has many well-developed gravel roads, old quarry sites and large boulders throughout. There is also by nature of the size of the site, steep slopes that would inhibit farming and make it unlikely to ever be used for farming in the future. 2. Upon conducting area takeoffs, the area of the site that would qualify as Farmland of Statewide Importance amounts to 171 acres. The amount of Prime Farmland on the site is roughly 8 acres. Considering a project that is not dual-use—agriculture and solar—the mitigation fees would amount to approximately $3.2 million. In the case of Warren, a fee of this significance would require a 3-5% higher PPA energy rate to make the project viable. The higher PPA rate would be passed on to energy consumers in the state. 3. According to the matrix in the rule of the dual-use agriculture options, crop implementation is the only mitigation effort that would lead to a score of zero resulting in no mitigation fee. However, given the size and characteristics of the Warren project site engaging in dual-use agriculture would be highly impractical. Mitigation efforts such as crop production would require operation at a large scale on projects of this size and would potentially be difficult to implement with modern mechanized farming practices. The solar project’s design would have to allow for access of farming equipment instead of being optimized for only energy production. We have found in several modeling exercises that a change of a foot in spacing between the panel rows can have significant impact on project viability. 4. The definition of dual-use agriculture and solar production, as written, lacks clarity. Key terms such as “agricultural productivity” and “management plan” are not adequately defined. This may lead to ambiguities in how dual-use projects are evaluated. This could result in inconsistent interpretations by permitting authorities, making it difficult for developers to rely on the Chapter 575 rule, leaving no room for interpretation, and thus plan projects. This would ultimately lead to project delays and increasing costs.   Additionally, relying on NRCS soil data to determine if a piece of land qualifies as high-value agricultural land can be challenging because this data may not fully capture the actual conditions on site. The reality on the ground, such as recent land use changes or variations in soil quality, might differ from the broader data provided by NRCS, making it a difficult foundation for setting these rules. For example, the Warren project land has been actively mined for several years and as a result lacks the topography and topsoil conditions suitable to farm. See Exhibit 1 for site photographs. The site is predominantly woodland and active and abandoned quarry areas and would need to be cleared and/or graded to farm, at a minimum.  This rule specifically targets solar projects, which can protect the land from more permanent developments, like housing or industrial projects. Solar installations, with lifespans of up to 70 years, effectively preserve the land for decades, safeguarding it from irreversible change. The state requires solar projects include decommissioning assurance to restore the land to its original state once the project ends. Land such as the Warren parcel, if it were to be a prime use for farming, will return to that potential at the end of the solar project. It is critical to consider the long-term impact of the proposed rule on future developments like the Warren project. The unique characteristics of sites like Warren make dual-use agriculture impractical, and the associated fees would drive up energy costs for Maine ratepayers.  Furthermore, the ambiguity in the rule’s definitions and reliance on broad soil data could lead to inconsistencies and delays, hindering the successful development of future solar projects. We urge careful reconsideration of these rules to ensure they support Maine’s renewable energy goals without imposing unnecessary barriers. | **DACF Response to Comment**: Thank you for your comment. The definition of “start of construction” published in V1 also includes securing site control. Site control includes having the right to develop a site, having a purchase option agreement, ownership of the site, and more, for the purpose of constructing a solar energy development. A power purchase agreement with a landowner on or before September 1, 2024, would constitute meeting the definition of “start of construction.” Projects that “are significantly advanced” and “far-along,” as the commenter describes, would likely already meet the definition of “start of construction” as written in V1 and as revised in V2 and V3 in response to other comments. No changes were made in response to this comment.  Per this comment and others, DACF amended the definitions of “HVAL” and “land area” in V2. Those definitions now exclude “*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.*” Further, a property with characteristics that might inhibit the success of agricultural activities (steep slopes, surface stoniness, etc.) would not likely be categorized as HVAL after a field-based survey is conducted to verify the on-site conditions.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, DACF has incorporated two new paths to achieve tier zero, and thus, zero compensation fee. DACF also incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. If the permittee is not eligible for tier zero, they may choose between a compensation fee or a conservation option. However, the P.L. does not give DACF the authority to dictate how the applicant responds to that cost and whether they carry the cost or pass it on to the energy consumers in the state. Therefore, that is outside the scope of what the Chapter 575 rules can regulate.  In all three versions of the proposed rule posted, both livestock grazing and crop production could achieve tier zero resulting in no compensation fee if conducted on a certain percentage of the dual-use land area. Sheep grazing has been successfully conducted on large-scale solar sites across the United States and in the New England area. Livestock grazing would not require increased row spacing for farming equipment. However, as noted above on page 13, DACF incorporated two additional avenues to achieve tier zero in the final adopted rule. Applicants could conduct a portion of the site as crop production and a portion as livestock grazing to meet the percentage threshold for tier zero. Additionally, applicants could conduct a portion of the site as livestock grazing and a portion as pollinator habitat to meet the percentage threshold for tier zero.  DACF agrees that further clarification regarding the terms “agricultural productivity” and “management plan” is worthwhile. As a result, DACF added definitions for these terms in V2. Further, DACF added more details of what should be included in the management plan to reduce ambiguity. Please note that since the type of dual-use activities can vary widely, so can the management plan. Therefore, some ambiguity is to be expected to ensure the definition is flexible enough to apply to a wide array of possible dual-use projects.  The Chapter 575 rules do not use the Natural Resources Conservation Service (NRCS) soil data of prime farmland (PF) and farmland of statewide importance (FOSI), only the definitions. A soil survey by a Maine-licensed soil scientist is required to identify PF and FOSI, which will follow the most recently updated version of the DACF guidance document “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine.*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf)” No changes were made in response to this comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, permitting housing or industrial projects is outside of the scope of what the Chapter 575 rules can regulate. Additionally, while DACF acknowledges that the state’s solar decommissioning law requires the restoration of farmland after decommissioning, the P.L. directed DACF to establish a permitting program for solar energy developments on high-value agricultural land. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As noted above on page 14, the Chapter 575 rules do not use NRCS soil data. Additionally, per this comment and others, the following term definitions have been revised to help improve specificity and/or clarity in V2 and V3:   |  |  | | --- | --- | | * aggrieved person * agricultural products * alternatives analysis * contaminated land * conversion pressure * dual-use agriculture & solar production * farmland (now active farmland) * farmland of statewide importance * field-based survey * hearing officer * high-value agricultural land | * land area * licensed soil scientist * livestock grazing * minor change * permit * PFAS-impacted HVAL * pollinator habitat * practicable * prime farmland * start of construction * substantial completion |   The following term definitions have been added:   |  |  | | --- | --- | | * agricultural productivity * blueberry barren * dual-use land area * farm operation * forestland | * forest products * hazardous substance * management plan * PFAS |   Finally, the following terms and definitions have been removed, as they were no longer needed:   * agricultural productive capacity * locally valuable farmland | | | | | | | | | | | | | | | | | | | | | | | | |
| Smith, Julie Ann City/Town: Augusta Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MFC | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: Like my friend Mr. Cole, our farmers are really concerned about the lack of involvement of the farmers and the landowners in this process. So, certainly a very important part of agriculture, it is an important part of farming, but it’s only one part.  So, in developing these rules, when you’re exclusively looking at soil, we have concerns about that. We have concerns about if you are testing area ‘A’ for soil, but the farmer knows that area ‘B,’ which is contained within that same acreage of the proposed solar siting, is wet all the time, it doesn’t produce anything, but it’s all encompassed in that area. That’s not being considered. We’re looking at just soil sampling. So, we feel that there is a much broader perspective that needs to be included when you are considering what prime agricultural land looks like. It is much more complex than just the soil itself.  There are a lot of factors that go into it. There’s also market factors. What may be a great crop for 10 years could simply no longer have a market. Especially when considering the dual use and then the ability to go back, just for someone to say, basically, all right, you have this exemption because you this is a dual-use solar site. Something happens. Let’s say that there were sheep grazing under there, and the sheep had a disastrous interaction, were all sick, and had to be culled. Well, now, are you going to go back and charge this solar site fees because of that? How are these things going to be determined? I think the key component to agriculture is being flexible.  We have seen the loss of 7% of our farms in the state of Maine in the last five years alone and most of that is due to a lack of profitability. So, there also needs to be a consideration for if this solar project is going to save this farm versus it becoming housing, that should be included with those calculations. What sort of impact is the solar project going to have on preserving the farm as a whole? So, I think there is a lot more to be considered in the determination of any fees that are implemented, any decisions that are made, and one of the key components is making sure that farmers can talk about how the land is used and what the characteristics of that land is. | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Julie Ann Smith on 08/29/2024 on behalf of the Maine Farmers Coalition. | | | | | | | | | | | | | | | | | | | | | | | | |
| Smith, Julie Ann City/Town: Augusta Date Received: 08/29/24 Method of Comment: Email Representing Organization: MFC | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** The Maine Farmers Coalition strongly advocates for a comprehensive approach to defining and supporting solar energy development. However, we are deeply concerned by the emphasis on soil testing in these proposed rules. Soil testing is a limited perspective of the land. Farmers’ knowledge and experience should be critical in determining future land use. No scientist or specialist can possibly know the land better than the farmer who has worked it to grow food. These rules, as proposed, do not invite nor require farmers’ perspectives in determining whether the land is high-value agricultural land.  Many of Maine’s farms have been closed due to profitability loss, not solar projects. In fact, many farms have been able to continue growing food because of the additional income provided by solar project leases. The rules do not account for the possibility or probability of a farm terminating without the income from a solar lease. Again, we believe farmers should be a primary part of the decision-making process in determining the impact on agriculture a solar project may have.  We urge the Department to reconsider the drafted language, which limits practices and opportunities for farmers. A systemic approach to solar projects, one that considers the ultimate outcome desired and allows each farmer to provide input, is crucial. Principles that are inclusionary rather than exclusive of farmers pave the way for a more prosperous future for farming in Maine.  Graphical user interface, text, application  Description automatically generated  Text  Description automatically generated  Graphical user interface, text, application  Description automatically generated  Text  Description automatically generated  Graphical user interface, text, application  Description automatically generated | **DACF Response to Comment**: Thank you for your comment. Soil testing is not a requirement of the Chapter 575 rules, only a field-based survey. For the field-based survey to serve its intended purpose, it is essential that its methodology be credible, avoid any appearance of bias, and result in predictable and reproducible results. For the above reasons, DACF acknowledges the concerns raised by the commenter, but believes that a neutral third party, such as a soil scientist or site evaluator, should be the one to evaluate site conditions. A neutral third party can be impartial since they have no vested interest in the outcome of the survey. Further, evaluating soil based on quantifiable factors rather than qualitative data will be more predictable, fair, and consistent across project evaluations. Therefore, no changes were made in response to this comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Unrelated to this comment, DACF removed the term and definition of “agricultural productive capacity” and replaced it with “agricultural productivity” in V2.  After careful consideration, the alternatives analysis and definition were not removed from the final rules as a result of this comment. DACF believes an alternatives analysis is important to the Department’s ability to evaluate a project. DACF finds, however, that further clarification as to the requirements of an alternatives analysis is worthwhile. Therefore, the alternatives analysis requirement was made to be more specific to the level of effort required with regard to minimum and maximum page lengths.  Unrelated to this comment, the definition of “farmland” (now titled “active farmland”) was revised in V2 to remove the acreage requirement to create consistency with other Chapter 575 definitions. Since the definition of “HVAL” includes PF, FOSI, or blueberry barrens amounting to one contiguous acre, DACF felt that five contiguous acres was in direct contrast with that definition. Although DACF agrees that creating consistency in definitions across statutes is beneficial, these revisions of the definition of “farmland” were required to achieve consistency within the Chapter 575 rules and with other DACF rules. Additionally, after careful consideration, DACF decided to retain the sentence “*Gross income...by the farm household*” in V2 and V3. This is because 1) it is consistent with other definitions of farmland in statute and 2) regardless of whether agricultural products are sold or used within the household, it doesn’t change the fact that the land on which they were produced is actively functioning as farmland.  The NRCS defines Farmland of Statewide Importance in [7 CFR 657.5](https://www.ecfr.gov/current/title-7/section-657.5). The Chapter 575 rules do not use the NRCS maps of FOSI, only the definition. A soil survey by a Maine-licensed soil scientist is required to identify PF and FOSI, which will follow the most recently updated version of the DACF guidance document “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” After careful consideration, the definition of “farmland of statewide importance” was not revised as a result of this comment  As noted on page 16 above, soil testing is not a requirement of the Chapter 575 rules.  Unrelated to this comment, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL”. The Chapter 575 rules do not prevent landowners from selling their blueberry lands. The rules only require a compensation fee or conservation option if a 20-acre or larger solar energy development is constructed on at least one contiguous acre of land meeting the definition of “blueberry barren.” Further, there are mitigation strategies that a developer can adopt to reduce that compensation fee or eliminate it entirely.  Despite the decrease from 2021, wild blueberry production still amounted to a 55.5-million-dollar value in 2022. Maine produces over 95% of all the wild blueberries in the country, making it the single largest producer of wild blueberries in the United States. In addition to the importance of wild blueberries as a crop in Maine, one must consider the unique environment in which it grows. Wild blueberries are not a planted crop, but one cultivated from existing wild plants. Thus, after careful consideration, DACF decided that this unique farmland should be considered HVAL.  As noted on this page above, the NRCS designation is not being used, only the definitions of PF and FOSI which must be identified by a Maine licensed soil scientist. While DACF agrees that a time limit on field-based surveys is a valid concern, DACF feels this is a qualifier that can be incorporated into a guidance document rather than the rules. Therefore, after careful consideration, no changes were made in response to this comment.  The definition of “solar energy development” was not revised as a result of this comment since it is defined in statute 38 M.R.S. §3201, and amending the definition would contradict the state statute.  The definition of “start of construction” was not revised as a result of this comment; however, it was revised in V2 due to other comments. The September 1, 2024 date referenced within the definition is a requirement of section 5 of the P.L.: “*That section of this Act that enacts the Maine Revised Statutes, Title 38, chapter 35 applies to solar energy developments on which construction begins after September 1, 2024.*” Therefore, the start date within Chapter 575 was not amended to prevent contradicting the state statute.  Please see the response on this page above regarding “start of construction.”  Please see the response on page 17 above regarding “agricultural productive capacity” and “alternatives analysis”.  After careful consideration, DACF decided to keep the “increased compensation” section, but amended it in V2 and V3. After consultation with DEP regarding the potential of increased compensation fees in lieu of permit denial, DACF and DEP determined that the rules should clarify when an increased fee is owed in lieu of permit denial. Additionally, it was determined that there should be a clear maximum to the increased fee to improve predictability for applicants of potential costs. The revised text 1) creates a maximum increased fee amount and 2) only recommends the increased fee in lieu of permit denial instead of for a severe adverse impact on HVAL. This route allows DACF, at DACF’s discretion, to provide a path forward for project construction when an individual permit would otherwise be denied. The P.L. states “*The fee may be increased by the department, in consultation with the Department of Agriculture, Conservation and Forestry, based on the severity of the adverse impacts on the impacted area*.” Therefore, DACF incorporated this section in accordance with the P.L. to provide more clarity to DEP and transparency to applicants. The P.L. does not give DACF the authority to dictate how the applicant responds to those costs and whether they carry the cost or pass it on to the farmer. Therefore, that is outside of the scope of what the Chapter 575 rules can regulate.  Per this comment and others, the alternatives analysis requirement for a PBR was simplified in V2 (see section 5(2)(B)(1)).  After careful consideration, the dual-use annual update requirements provision was not removed as a result of this comment. Projects seeking a lower compensation fee by engaging in dual-use activities must submit an annual management plan update. Chapter 575 rules state that the permittee “*may* owe additional compensation,” allowing DACF to use their discretion to assess each project as needed.  However, per this comment and others, DACF revised V2 regarding the annual management plan update. In section 6(2)(C)(2), DACF clarified that the required contents of the annual management plan update must include “*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.*” If a situation arose that resulted in the need to stop agricultural production, that situation would need to be explained in the annual management plan update. DACF understands that dual-use is relatively new to Maine and will likely take some trial and error to become successful. Even without the complexities of dual-use, farmers, in general, face many challenges, from livestock diseases to crop pests. DACF understands that dual-use activities might not be successful for every year the solar energy development is in operation for reasons beyond their control. DACF will consider that when reviewing annual management plan updates and plans to be flexible if unpreventable challenges arise. However, DACF wants to ensure the permittee is making a good-faith effort to engage in dual-use activities as promised.  Further, as a result of this comment, DACF revised the final sentence of this section to state, “*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.”*  The new pro-rated formulas create a fairer approach for permittees who would owe additional compensation after ceasing dual-use activities or having their management plan approval withdrawn by DACF.  As dual-use agriculture and solar production is still a relatively new practice in Maine, DACF is treating this dual-use compensation discount as a “pilot program.” If data from dual-use projects were to show that dual-use is consistently successful, then the compensation discount would likely continue beyond the first 150 MW. However, if data were to show that dual-use is consistently unsuccessful, then this discount would likely be discontinued within this permitting program. After careful consideration, the dual-use compensation discount provision was not removed as a result of this comment. | | | | | | | | | | | | | | | | | | | | | | | | |
| Donoghue, Eliza City/Town: Augusta Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MREA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I’m really happy for the opportunity today to share our comments on the draft rules and for the department’s responsiveness to some of our early input. Thank you very much for that. Specifically, the inclusion of compensation tiers is really helpful. That makes the rules responsive to what’s on the ground instead of taking a blanket approach and demonstrates fairly plainly how various mitigation strategies can reduce compensation expectations. The option for PBR is also a permit by rule is also helpful. And as, as Mr. Holmquist said before, exempting projects that are also already deep in development has been is really helpful.  However, as you’ve heard from folks before me, we continue to have some significant concerns about the rules and that they will unduly inhibit solar development in Maine – solar that’s necessary for Maine to meet its climate and clean energy goals – and also, as Miss Smith said before me, inhibit the ability of landowners to locate solar on their property and for that solar production to provide a new revenue stream that potentially could help keep the rest of that parcel in production.  So, we’ll offer some very detailed written comments, but today I’m just going to go over some of our top concerns. Our top one being that the definition of high-value ag land remains both broad and vague. There’s a couple different elements that cause me to use the terms ‘broad’ and ‘vague.’ One of them is the inclusion of ‘locally valuable farmland’ in the definition of high-value ag land. That term lives within the definition of high-value ag land and then is also separately defined. But that definition has yet to be described or quantified. While we fully expect the department intends for that definition to be narrow, we can’t know that for sure. And can’t know for sure whether that rule, generally speaking, strikes a reasonable balance.  So, we’re really looking for that in combination with the guidance for licensed soil scientists to conduct locally valuable farmland determinations via a field-based survey, for that to be developed for us to truly understand the impact of the rules. Similarly, the definitions of prime soils and soils of statewide significance. You know, it’s our understanding based on conversations with soil scientists, that that definition continues to not really be black and white. So, it’s hard, you know, from a predictability standpoint and an even application of the rules for us to get a really clear idea of what is going to qualify under those definitions before we can more fully understand the impact.  Then same goes too for PFAS-impacted high-value agricultural land. That definition relies on a yet-to-be-established policy, which means that an important aspect of this rule is not yet actionable. Again, it’s important to our understanding of the scope of those rules, but is also very important to landowners who are really looking to policies related to PFAS contamination to know whether solar is a viable opportunity on their farmland.  As I said, we strongly urge the department to narrow and specify those definitions into develop with an additional opportunity for public comment prior to rule adoption, those specific standards for field surveys. I think others have said very plainly already we urge the department to account for projects that are located on a portion of farmland. I’ll get into that, I think, a little bit more in our written comments, but others have shared that with me before. That’s a very common story amongst MREA members, that they are working collaboratively with landowners to create a new revenue stream and a revenue stream that allows the rest of that parcel of land to remain in active production.  I did say that the permit by rule option is a good one, and we’re grateful for that. That said, the fact that a PBR for projects less than 20 acres and for projects on PFAS-contaminated land require an alternatives analysis and also a field survey, that’s not typical of PBR. That is a higher level of burden than is typical from a PBR process and something that we would like to see relax so that there is this opportunity for making some modifications so that there is a path forward towards development of some projects that is less cumbersome.  Our primary ask is for the department to pause this rulemaking and to allow for additional public comment. Not because this is not a fantastic opportunity and there hasn’t been opportunity to prior to that. But there are yet-to-be-written portions of the rule. There are several policies and best practices documents that are referenced in the rule that have yet to be written. That, again, are really elemental to our understanding of the impact of the rule. I do think we are going to be getting more information soon too, on understanding the impact solar has had to date on high-value ag land. We all know that there isn’t good data right now, and I’m hopeful in knowing that there are some projects in the works that there will be an opportunity for us to gather some of that data and then calibrate rules based on the actual need on the ground.  As was referenced at the top of the hearing too, we know that these are happening at the same time as the DEP rules, and there is a lot of synergy there, but there is also a real risk that if that synergy does not continue, then you risk putting development pressure on areas where there is, for instance, less of the compensation ratio. I know that the DEP rules are continuing to be in development. There have been changes to those compensation ratios and because of the order of operations from rulemaking, it would be too bad to find ourselves in a situation of unintended consequences. Because having a high compensation ratio for one particular land area means that there is an incentive to locate projects in areas with less of a compensation requirement, which again puts some undue development pressure. | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Eliza Donoghue on 08/29/2024 on behalf of the Maine Renewable Energy Association for any comments not addressed here.  The DACF Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J (Effective July 31, 2024. Revised August 22, 2024) can be found on the DACF website here: <https://www.maine.gov/dacf/ard/resources/docs/pfas-solar-contamination-determination-82224.pdf> | | | | | | | | | | | | | | | | | | | | | | | | |
| Donoghue, Eliza City/Town: Augusta Date Received: 08/29/24 Method of Comment: Email Representing Organization: MREA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Our comments seek to assist the Department in its pursuit of rulemaking that honors the myriad values of Maine’s agricultural land, acknowledges the critical role solar energy plays and must continue to play in Maine’s clean energy transition, and that creates a regulatory atmosphere that is predictable and fair.  Favorable Aspects of the Rulemaking   * The inclusion of compensation tiers. *See Table 1.* The rule’s tiers and points systems is responsive to “what’s on the ground”, as opposed to taking a blanket compensation expectation approach. The tiers also demonstrate fairly plainly how various mitigation strategies (such a dual-use and planting pollinator habitat) can reduce compensation expectations. * The option of a permit-by-rule for some projects. “PBRs” typically are predictable, clear, and have a short turnaround time, all of which are favorable characteristics. That said, another portion of our written comments offers additional feedback regarding the proposed PBR. * Exempting projects that are already deep in development. *See definition for “Start of Construction”.* The proposed definition exempts projects that have surpassed meaningful milestones that represent significant financial commitment and project progression. Requiring additional permits or costs for such projects would interfere with project viability. That said, later in our comments we offer additional, specific feedback on this definition, which we believe is in keeping with the Department’s intent.   Top Rulemaking Concerns  The definition of “high value agricultural land” (HVAL) is broad and vague and, as written, does not leave room on the landscape for solar development and is exceptionally challenging for potential permittees to interpret. Specifically:   * As stated in the Department’s memorandum, “prime farmland” and “farmland of statewide importance” occupy 13% of Maine’s total land area the majority of which, given slope, distance from load, existing land use restrictions, and more, is not suitable for solar. Within five miles of transmission, distribution, and substation infrastructure (a rough proxy for where solar tends to be located), that number increases to approximately 40% (*not* taking account of slope, existing land use restrictions, etc. that would restrict solar development). Moreover, these farmland areas are very scattered, meaning it would be exceptionally challenging for projects to avoid them. Veritably excluding solar (because the compensation expectations are cost prohibitive) at this scale is unreasonable and will interfere with Maine’s ability to meet its renewable energy goals. * The proposed definition of HVAL includes “locally valuable farmland” (LVF), which has yet to be adequately defined or quantified. LVF relies on a yet-written list and yet-developed “guidance for licensed soil scientists to conduct LVF determinations via a field-based survey.” *See definition for “Locally Valuable Farmland”.* Without that list and the guidance in hand, stakeholders cannot understand the impact of the rules and, in turn, offer comprehensive comments. * The USDA’s Natural Resources Conservation Service’s definitions of “prime farmland” and “farmland of statewide importance” are not black-and-white, which will make developing field-based “survey protocol by a state soil scientist “challenging. *See definition for “Field-based Survey”.* We implore the Department to develop protocol that is reproducible and predictable, to allow for public comment on that protocol, and to have that protocol in place prior to rule adoption. Without that protocol, much like the definition of LVF, we can not understand the impact of the rules and, in turn, offer comprehensive comments. * HVAL includes forested land. Not only does this contribute to the definition’s undue breadth, but also – due to how the tiers are structured – creates a perverse incentive to clear forestland, which in some cases is contrary to state forest conservation goals. HVAL that is not actively farmed, such a forested HVAL, is subject to a lower compensation expectation. *See Table 1, Category 3.* Developers will naturally seek lands with lower compensation expectations, such as forested land. This dichotomy must be addressed.   The rules do not account for solar as a source of farm or land owner revenue diversification. Leasing land to solar developers can provide a novel revenue stream, one that – should they face economic challenges – may allow landowners to keep other property in active agricultural production. MREA members are frequently approached by landowners who view solar as a reliable, non-obtrusive, low-impact opportunity to derive value from their land – value that may be necessary to keep the rest of their land in active agricultural production. This situation could be accounted for by subtracting 25 points or “zeroing out” the tier/points scheme when more than 50% of the subject parcel meets the “farmland” definition.  Additional project costs will exacerbate project attrition. This rulemaking comes at a time when the Maine solar industry is facing unprecedented challenges. Inflation, interconnection timing and costs, rising borrowing costs, municipal permitting, and more have created delays, uncertainties, costs, and too often, roadblocks to solar development. Ordinarily in renewable energy project development, projects do not reach completion approximately 50% of the time. In Maine, well over 80% of projects fail to advance. MREA members are concerned that this rulemaking may increase Maine’s already unprecedented attrition rate and unduly slow solar energy development in Maine, contrary to the state’s clean energy goals.  The rules are not In sync with the Department of Environmental Protection’s (DEP) parallel rules (in both content and timing), with the possibility of unintended consequences. MREA appreciates that, per the Department’s memo, it wishes to “not unintentionally [encourage solar energy development] on one type of high-value land or another” and that that may be achieved through similar compensation tiers. MREA does not think that this wish is achieved in the proposed rules.  For example, while the compensation ratio for impacts to rare, threatened, and endangered species and prime farmland is the same (8:1), typically “rare” species impacts are small (<1 acre) and impacts to prime farmland (given its proposed definition) are likely much, much greater. Thus, locating projects in rare species habitat (not to mention wetlands and other high-value lands with lower compensation expectations) could be seen as more cost effective than locating on prime farmland.  Similarly, the prime farmland 8:1 compensation ratio is far greater than the ratio for filling a wetland (1:1 or 2:1 if certain sensitive resources are present) and the proposed ratio for impacts to large undeveloped habitat blocks under the proposed DEP rules is 1:1. Development will be inclined to locate in areas with the least compensation expectations. The Department must coordinate with DEP and the Department of Inland, Fisheries, and Wildlife to avoid these unintended consequences.  Also, implementation of the compensation fee portion of the rules is dependent on major substantive rulemaking by DEP, which will not happen for several months at least. We strongly urge the Department to not only coordinate with DEP on rulemaking content, but also coordinate on rulemaking timing, lest the Department’s rule go into effect without the ability to implement them fully, creating confusion.  We recommend that this coordination happen by convening the Department, DEP, the Department of Inland, Fisheries, and Wildlife, and the Governor’s Energy Office to work collaboratively on rulemaking across agencies and offices that does not unduly interfere with any agency’s or office’s goals, including Maine’s clean energy goals. More resources to support, for example, a third party facilitator and GIS analysis, as well as a less compressed and oddly-overlapping timeline should be pursued and will lead to a better result.  Additional Concerns   * The definition of “Farmland” appears to largely mirror the tax law definition of farmland. However, the fact that it is wholly defined in the proposed rule – as opposed to simply referencing the statute – suggests that there is a difference. This is confusing, because landowners, etc. may rely on the tax law definition to understand whether these rules are applicable to them. * It is unclear, under the definition of “Field-based Survey” and otherwise, whether protocols would require delineating the boundary between prime farmland, farmland of statewide importance, and locally valuable farmland. Each of these soil types may be located on a single parcel and because they have varied compensation levels, it is in the developers interest to understand where one begins and the other ends. However, such a detailed delineation is costly and time-consuming. * MREA recommends the following edits to the definition of “Start of Construction”:   Text  Description automatically generated with medium confidence  Site Control shall not include letters of intent or, with the exception of (4)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 a portion of a site for the purpose of constructing the solar energy development.   * Section 3 of the proposed rules states that the Department “may recommend to DEP that a developer should owe an increased compensation fee for projects that the DACF has determined cause a severe adverse impact on HVAL.” We strongly recommend removing this because it is vague, unpredictable, and cannot be evenly applied. * Section 4 details the permit by rule (PBR) process and while we appreciate the inclusion of a PBR, the PBR as proposed is unduly burdensome. Typically, PBRs do not require an alternatives analysis or field-surveys (both of which are required under the proposed rules). These are both burdensome, costly administrative hurdles that are not in keeping with the typical tenor of a PBR and thus are not in line, we believe, with the Department’s intent. * It is unclear the standards upon which an application would be denied. The memorandum’s flow chart asks “Does the project avoid & minimize impacts to HVAL?” but this or related language is not included in the rules. * The rules state the Department “will establish and post reasonable, estimated permit application processing times on its website.” This is too vague. Already, many MREA members are experiencing unreasonable delays at the DEP. Efforts must be undertaken to avoid this at the Department. * Regarding Section 5, “Dual-Use Agriculture and Solar Production”:   + Please have the rules account for the possibility of crop yields and other quantifiable aspects of a dual-use management plan not being met for reasons outside the control of any party to the management plan.   + The proposed Management Plan leaves little flexibility for the farmer. If an update to the final management plan is needed, it is unclear whether the farmer would need to stop working until a revised plan is reviewed and approved.   + The requirement that a landowner sign off on a Management Plan could create delays and uncertainty, particularly if the land owner has no expertise in farming.   Some MREA members have experienced farmers not wanting to participate in dual-use if they feel their decision-making is unduly controlled or if there isn’t sufficient flexibility.   * + Based on member experience in other states, it may be unlikely that a farmer is ready to begin farming at the immediate end of construction. For example, vegetation for grazing may not be established upon project completion. * Section 9 includes ““ACTIVITY FEE. As applicable, the following fees will be added to the base fees identified in section [A – Base Fees]. [*Put fees here for acreage if per-acre fee will be included*]”. *Emphasis added.* Understanding whether there will be activity fees is elemental to stakeholders’ assessment of the rules. The absence of this portion of the rules raises due process concerns. We request an ability to comment on this. Similarly, in Section 5, regarding the contents of annual dual-use management plan updates, states “[may add additional requirements here]”. This is also unacceptable. | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Per this comment and others, in V2, conversion pressure was limited to only tier 4, the 8:1 ratio. Additionally, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near transmission, distribution, and substation infrastructure, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise. Additionally, per this comment and others, compensation tiers were revised in both V2 and V3.  As noted on page 23 above, the term “locally valuable farmland” has been removed. Additionally, DACF already has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*.](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf)” The HVAL identification protocol will not change how PF and FOSI are determined.  As noted on this page above, DACF already has a technical guidance document for identifying PF and FOSI. The HVAL identification protocol will not change how PF and FOSI are determined. The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. No changes were made in response to this comment.  As noted on this page above, the term “forestland” has been removed from the definition of “HVAL.”  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  As noted on page 24 above, compensation tiers have been revised.  Per the P.L., DACF’s rulemaking is routine technical, while DEP’s rulemaking is major substantive. Therefore, both department’s rulemaking processes will not be temporally aligned. As noted on page 24 above, compensation tiers have been revised. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio.  As reported by DEP, impacts to rare, threatened, and endangered species habitat are not always small, in terms of land area. The final adopted Chapter 575 rules only require an 8:1 ratio for projects 1) in a county with high conversion pressure, 2) that don’t meet the case of farm viability, 3) that engage in little-to-no dual-use, 4) that are on PF or FOSI, and 5) that are on active farmland.    As noted on page 24 above, compensation tiers have been revised. However, it's not the case that impacts to HVAL or habitats would trigger larger compensation requirements than impacts to wetlands. The 1:1 wetland compensation ratio is for restoration or creation of wetlands, not preservation. The ratio for preservation of wetlands is 8:1 (or 16:1 for wetlands of special significance). Furthermore, while the [in-lieu fee calculation](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fdep%2Fland%2Fnrpa%2FILF_and_NRCP%2FILF%2Ffs-in-lieu-fee.pdf&data=05%7C02%7CCaitlyn.Cooper%40maine.gov%7C6ea158665471422e196608dcd762f219%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638622067168298703%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=7wTnbr8qXEd7QEt9FwvoSa60jQAxmelgH%2BjurEgmElg%3D&reserved=0) for wetland impacts is calculated at 1:1 or 2:1, this calculation accounts for the cost of wetland restoration, which comprises almost the entirety of the fee calculation. For impacts to habitats and HVAL, the fee calculation would occur at a ratio between 0.5:1 and 8:1, but it would account solely for the cost of land preservation (not restoration) in the form of the appraised land value. Therefore, the fee amount for habitats and HVAL would amount to a tiny fraction of the fee amount required for wetland impacts, on a per-acre basis. Additionally, with the removal of “forestland” from the definition of HVAL, compensation ratios will no longer be at odds between HVAL and large undeveloped habitat blocks.  Were DACF’s rules to go into effect prior to DEP’s rules being implemented, DACF would still process PBR permits. Once DEP’s rules have been implemented, DACF will begin processing individual permits. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As directed by statute, these rules were developed in consultation with DEP, GEO, and other state agencies. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF agrees that this may be confusing. In response to this comment, the definition of “farmland” (now titled “active farmland”) was revised in V2. This revision moves away from the tax law definition to better align with other DACF rules and create consistency within the Chapter 575 rules.  The methodology will be described in further detail in the HVAL identification protocol to be released at a later date. However, delineation of each HVAL type would be required. A field-based survey requires 1) a high-level assessment of current or past site uses, 2) a high-level inventory of on-site structures, and 3) an inventory by a licensed soil scientist of soil resources. Per 32 M.R.S. §4903, “*No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter...,*” therefore, the inventory of soil resources can only be conducted by a Maine-licensed soil scientist. However, per this comment and others, the definition of “field-based survey” was amended in V2 such that a soil scientist is not required to be the entity evaluating on-site structures or current/past site uses since it doesn’t require practicing soil science. Additionally, if the property is disqualified from being considered HVAL due to on-site structures or current/past site uses, then a soil scientist is not required to survey the site.  DACF agrees with the revised definition of “start of construction” and amended the definition accordingly in V2.  After careful consideration, DACF decided to keep the “increased compensation” section, but amended it in V2 and V3. After consultation with DEP regarding the potential of increased compensation fees in lieu of permit denial, DACF and DEP determined that the rules should clarify when an increased fee is owed in lieu of permit denial. Additionally, it was determined there should be a clear maximum to the increased fee to improve predictability for applicants of potential costs. The revised text 1) creates a maximum increased fee amount and 2) only recommends the increased fee in lieu of permit denial instead of for a severe adverse impact on HVAL. This route allows DACF, at DACF’s discretion, to provide a path forward for project construction when an individual permit would otherwise be denied. The P.L. states “*The fee may be increased by the department, in consultation with the Department of Agriculture, Conservation and Forestry, based on the severity of the adverse impacts on the impacted area*.” Therefore, DACF incorporated this section in accordance with the P.L. to provide more clarity to DEP and transparency to applicants.  Per this comment and others, the alternatives analysis requirement for a PBR was simplified in V2 (see section 5(3)(B)(1)). Additionally, please see the response on page 26 above regarding field-based surveys.  DACF agrees that standards for permit denial should be included for transparency and predictability. These standards have been included in section 5(3)(E) for PBRs and section 5(4)(F) for individual permits.  It is standard practice to post permit application processing times and revise them as needed as staffing varies. Further, it would be a large administrative burden to conduct rulemaking every time our processing times might change. No changes were made in response to this comment.  Projects seeking a lower compensation fee by engaging in dual-use activities must submit an annual management plan update. As a result of this comment and others, in V2, DACF clarified that the required contents of the annual management plan update must include “*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*” (see section 6(2)(C)(2)). If a situation arose that resulted in the need to stop agricultural production, that situation would need to be explained in the annual management plan update. DACF understands that dual-use is relatively new to Maine and will likely take some trial and error to become successful. Even without the complexities of dual-use, farmers, in general, face many challenges, from livestock diseases to crop pests. DACF understands that dual-use activities might not be successful for every year the solar energy development is in operation for reasons beyond their control. DACF will consider that when reviewing annual management plan updates and plans to be flexible if unpreventable challenges arise. However, DACF wants to ensure the permittee is making a good-faith effort to engage in dual-use activities as promised.  Per section 6(2)(C)(1), “*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.*” The permittee should assume the management plan must be updated each year. Peak farming season is during the warmer spring, summer, and fall months. DACF recommends that the management plan be re-evaluated at the end of each farming season, which would not require a farmer to stop dual-use activities. No changes were made in response to this comment.  Regardless of whether a landowner has experience in farming, DACF feels they should have a say in what activities occur on their land, especially if it may affect their future plans of using that land. No changes were made in response to this comment.  DACF does not intend to unduly control dual-use activities or decisions. The intention of the dual-use management plan is to ensure the dual-use project is set up for success and fulfills the definition of “dual-use.” It is an opportunity for DACF to notify the permittee if their project, as described, doesn’t meet the qualifications of dual-use. The intention of the annual management plan updates is for DACF to 1) gather data on dual-use activities, 2) ensure that the project still qualifies as dual-use, and 3) have an opportunity to provide guidance if the dual-use project is facing setbacks. DACF wants to see dual-use projects succeed and believes once-a-year oversight is not unduly burdensome. No changes were made in response to this comment.  DACF agrees and understands that preparing for dual-use activities still constitutes dual-use. This may include waiting for forage to grow or conducting soil amendments or testing. While DACF agrees that this is a valid concern, it feels this qualifier can be incorporated into a guidance document rather than the rules. No changes were made in response to this comment.  Per this comment, DACF has removed the “Activity Fee” section in V2.  As noted above on page 28, the requirements for annual dual-use management plan updates were revised. | | | | | | | | | | | | | | | | | | | | | | | | |
| Kelshaw, Rodney City/Town: Yarmouth Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MAPSS | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Since the legislation passed saying that we needed to quantify the amount of HVAL on property, we’d like to point out that it makes sense to not use the NRCS mapping. The scale at which that mapping is developed, it’s not appropriate for this scale of what we’re trying to do. So, an on-site assessment of what type of soil is actually there and where it is makes sense. There could be more HVAL, there might be properties where it’s mapped as prime farmland, but when you go out there it’s too stony or something and maybe none of it will come out as HVAL. So, it’s important to get that on-the-ground survey. That being said, and we’re excited to see that it says that it should be done by soil scientists because in Maine there’s a regulation that you can’t practice pedology unless you’re a licensed soil scientist. So, saying that soil scientists would be doing the work, it goes in line with the existing state rules.  But that being said, I think there are parts of the on-site assessment that wouldn’t necessarily need to be done by a soil scientist. It probably could be done by the applicant or somebody else. So, the parts where it says if it’s covered by industrial land or blueberry land or something like that. I think somebody can go out and tell you if, OK, there’s 20 acres of blueberry land, it’s been in production for 100 years. You don’t need a soil scientist to tell you that. So, anyone can figure that out—the same with contaminated land, or PFAS. Currently there’s a lot of engineers and other people that are doing work with PFAS that aren’t soil scientists. They should be able to keep doing what they’re doing. So, I think maybe going back through and just ironing out that the soils-based part is what soil scientist should be doing. And then let other folks that are qualified deal with the other parts of it. And that can possibly streamline the process a little bit.  The other part that was brought up was the locally valuable. I know it says in the rule that that's there's going to be a list. Let’s make sure that’s really well codified, like definitions, where these things are located, because as somebody that’s going to be out there making these assessments, if that’s not defined really well, you could have two soil scientists go out and come up with different answers because you’re using professional judgment on ‘what did they mean when they wrote this rule or when somebody mapped this.’ So, just making sure that that’s well codified so that we can get predictable results from the mapping that’s going to be important.  And lastly, the association is going to be working with DACF and the state soil scientist to develop what I’ve just started calling the HVAL assessment protocol. Not necessarily calling it mapping because there’s the potential that somebody could go out to do an assessment at the site and tell them it’s too stony or there’s too much slope or something so that you don’t have to create a map to make – to get the answers that something maybe doesn’t fall into this category. So, we’re going to try to keep it predictable and reproducible for the people going out to do the mapping, but at the same time not make it so arduous that the applicant or whoever’s paying the bill is getting information that they don’t need to make that determination. And then in that, we’ll also have it specified how one will go about, if he gets to the point where you do need to do a map, the scale of the mapping that will be done so that the results will be again reproducible and predictable for whomever you hire to do the work, you’ll get something that makes sense. And when the DACF gets it, everything looks the same. So, it’s predictable. So those are our goals and thanks again for letting us come today. | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Rodney Kelshaw on 08/27/2024 on behalf of the Maine Association of Professional Soil Scientists. | | | | | | | | | | |
| Kelshaw, Rodney City/Town: Yarmouth Date Received: 08/27/24 Method of Comment: Email Representing Organization: MAPSS | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** It is our opinion that being specific and intentional with definitions and understanding the intentions of Chapter 575 will be crucial for development of a predicable process for protecting HVAL that can both be fair to applicants and protect Maine’s valuable soil resource.  MAPSS applauds the efforts of those who have worked to address and understand the importance of agricultural soil in Maine and supports the overall intent of Chapter 575. MAPSS’s participation is not to support or refute this document, but rather to discuss the soil specific portions where we believe our opinion can continue to provide value to the process.  First, MAPSS will provide comment on several terms described in the definition section.  *Licensed Soil Scientist (LSS): A person with a current/active license from the “Maine State Board of Licensure for Geologists and Soil Scientists” to practice soil science. A license is required to practice soil science in the state of Maine per 32 M.R.S. § 4903.*  32 M.R.S. § 4903 states, “No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter, unless specifically exempted from the license requirement by this chapter”. We agree that only an LSS should provide the soil specific services described in the Rule; otherwise it would violate current State law.  *FIELD-BASED SURVEY: An on-site survey that includes all land in which the applicant or developer has Title, Right, or Interest within 500 feet of the proposed solar energy development. The field-based survey must include the following:*   * *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);* * *A high-level inventory of on-site structures (excluding farm-related infrastructure or energy generation and transmission structures that accommodate co-located agricultural activities); and* * *An inventory of soil resources that is based on a systematic field examination, description, and classification of soils in an area as described in [Add reference to survey protocol by state soil scientist].*   It is MAPSS opinion that it should not be a requirement for the land use assessment(s) and on-site structure inventory be performed by an LSS, and that the applicant/DACF can determine who is qualified to perform these assessments on a case-by-case basis.  MAPSS supports the requirement for an on-site soil resource examination. The NRCS mapping is not designed for site specific planning; and as such the size and scale would not provide the detail required to make the determination of HVAL soils on five-acre sites with enough specificity to assign compensation value down to the square foot. Using the NRCS mapping it would be possible to have a 5-acre inclusion of dissimilar soil within map unit; meaning there could be a non-HVAL soil covering the entire site. Thus, MAPSS agrees that a field based inventory should be performed to verify soil properties and assess whether an area meets the soil component and size standards as described in the Chapter 575 proposed definitions. Additionally, it is appropriate for the inventory of soil resources, and suitability for agricultural use to only be performed by an LSS.  MAPSS supports the idea that the “*HVAL Assessment Protocol*” standards/protocol by which the soil inventory/assessment will be performed should not be detailed in this Chapter and instead should be referenced. That way, if during implementation it is determined edits/revisions should be made to the protocol it would not need to go through the Rule Making process. It is anticipated that MAPSS will work with DACF to develop a specific protocol to facilitate this process. It may incorporate some of the standards set forth in the MAPSS Class B High Intensity Soil Survey (HISS) protocol, yet will not require the same mapping and narrative standards. MAPSS expects the protocol will include a process to provide for a “rapid assessment” procedure, for sites where an HVAL determination can be performed without the need for a soil map.  Attachment A is the DACF document developed in 2020 to facilitate the 2019 “*An Act to Promote Solar Energy Projects and Distributed Generation Resources in Maine*”, where the intent was to document that a project was sited so that no more than 10% of the project was located on land containing soils defined by the USDA Natural resources Conservation Services as “Prime Farmland” or “Farmland of Statewide Importance,” as determined by a field-based survey conducted by a licensed soil scientist. The document is entitled “*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*”. Within this document it describes in greater detail the standards set forth for field based soil assessment for Prime Farmland and/or Farmland of Statewide Importance. These standards will be consulted in conjunction with the Class B HISS standards to develop this HVAL assessment protocol.  *High-Value Agricultural Land (HVAL): High-value agricultural land includes:*   * *Land that, as verified by a field-based survey conducted by a Maine-licensed soil scientist:*   + *Has physical properties that indicate high suitability for agriculture as indicated by:*     - *One or more contiguous acres of the land area is comprised of prime farmland, farmland of statewide importance, or a combination of the two; or*     - *One or more contiguous acres of the land area is/are designated as locally valuable farmland.*   + *Is not occupied by residential, commercial, or industrial uses that substantially reduce agricultural potential; and*   + *Has no structures except for farm-related infrastructure or energy generation and transmission structures that accommodate co-located agricultural activities.*   + *Land that is considered PFAS-impacted HVAL.* * *The definition of HVAL does not include land that meets the definition of “contaminated land”.*   The minimum area of land that qualifies as HVAL that would require permitting and/or compensation is one contiguous acre. Therefore, the probable standard in the HVAL assessment protocol for soil map unit size will be analogous to the Class B HISS standard in which map units will not contain dissimilar limiting individual inclusions larger than one acre1. Dissimilar limiting inclusions may total more than one-acre per map unit delineation, in the aggregate, if not continuous. So, the understanding should be that with the on-site assessment there could be areas that classify as HVAL, however are less than one-acre and are therefore not mapped as such and are contained in a non-HVAL map unit as an inclusion.  MAPSS agrees that when assessing the portion of this section that specifically pertains to soil it must be completed by an LSS. However, making the distinction about when a non-agricultural use has substantially reduced the agricultural potential does not necessarily require an LSS to make this determination. For instance, the NRCA map could show an area being mapped as prime farmland soil, however it is now a paved parking lot. Also, engineers and other non-soil scientists are currently working with and documenting soil contaminated with PFAS or other contaminants. It is our opinion that individuals that are currently qualified to make these determinations should continue to provide this service.  *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.*  MAPPS agrees that using currently approved and accepted federal definitions of specific soil classifications is important for providing consistent and reproduceable data collection across the landscape and for applicants.  *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.*  MAPPS agrees that using currently approved and accepted federal definitions of specific soil classifications is important for providing consistent and reproduceable data collection across the landscape and for applicants.  *Locally Valuable Farmland (LVF):*   * *LVF is farmland that does not meet the criteria for prime farmland or farmland of statewide importance and is important to the continued viability of farming or agricultural infrastructure in the region.* * *LVF includes wild blueberry barrens that have been in commercial production of wild blueberries for the last five (5) years.* * *DACF will maintain a list of LVF on their website.* * *The State Soil Scientist shall develop guidance for licensed soil scientists to conduct LVF determinations via a field-based survey.*   This definition is similar to the NRCS definition of Farmland of Local Importance, which is “*Farmland of Local Importance is land that is locally important for crop production, but not categorized as prime farmland, unique farmland, or farmland of statewide importance*”. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.  MAPSS requests that the “list of LVF” on the website is specific about the location, size or composition of the soil. For instance:   * In some cases this might be mapping a landscape feature and not a soil boundary, such as a wild blueberry barren that covers multiple soil types. Mapping the different soil boundaries may not change the LVF boundary so mapping the soils would be irrelevant. * Mapping landscape features, such as the boundary of a blueberry field is not practicing pedology, and therefore would not require a soil scientist. * A land use type in one county or locality may be locally valuable in one part of the state, however not designated as such in another so the DACF data must be specific to the area where LVF applies to each type. * If a LVF has a minimum size area it must be clearly detailed on the DACF website.   *Application Requirements: Regardless of whether an applicant is applying for a PBR or an individual permit, the applicant must:*   * *Submit an “alternatives analysis” as part of their permit application as described in § 1(4) and § 3(1);* * *Submit the results from a “field-based survey” conducted as described in § 1(14) of all land that does not meet the definition of “contaminated land;” and* * *If applicable, submit documentation to prove that any portion of the land area in question meets the definition of “contaminated land” or “PFAS-impacted farmland.”*   The understanding is that the “field-based survey” may at least partially be completed by an LSS. If the property can be excluded from being classified as HVAL without the need for practicing soil science then an LSS would not be required to perform the HVAL Assessment Protocol. However, if this is not the case an LSS would be required to assess and report on the findings, which may include a narrative and/or map. MAPSS supports excluding contaminated lands from the HVAL definition. Utilizing contaminated lands for solar production:   * provides the opportunity for the landowner to obtain an income from the contaminated property; * fences the perimeter of the contaminated soil thus minimizing the potential for wildlife to access the site and potentially spread the contamination or having contaminated meat that can put the health of the local public at risk if there were to eat these animals; and * provides the time for science to develop ways to decontaminate the soil.   Attachment A: Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine  1 Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping Revised 2009. | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, the following term definitions have been revised to help improve specificity and/or clarity in V2 and V3:   |  |  | | --- | --- | | * aggrieved person * agricultural products * alternatives analysis * contaminated land * conversion pressure * dual-use agriculture & solar production * farmland (now titled “active farmland”) * farmland of statewide importance * field-based survey * hearing officer * high-value agricultural land * land area * licensed soil scientist * livestock grazing * minor change * permit * PFAS-impacted HVAL * pollinator habitat * practicable * prime farmland * start of construction * substantial completion |  |   The following term definitions have been added:   |  |  | | --- | --- | | * agricultural productivity * blueberry barren * dual-use land area * farm operation * forestland * forest products * hazardous substances * management plan * PFAS |  |   Finally, the following terms and definitions have been removed, as they were no longer needed:   * agricultural productive capacity * locally valuable farmland   DACF agrees that not all portions of the field-based survey need to be conducted by a licensed soil scientist. Per this comment, the definition of “field-based survey” was revised in V2 to include language in which the land use assessment(s) and on-site structure inventory “*may be conducted by an environmental scientist, engineer, consultant, site evaluator, or an individual who is qualified to fulfill the requirements of these subsections*” (see section 2 for revised definition).  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF will release more specific guidance regarding the protocol for identifying HVAL at a later date. DACF will work closely with MAPSS and the state soil scientist to create this guidance. No changes were made in response to this comment.  Please see the response above on this page regarding the protocol for identifying HVAL.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response above on page 32 regarding the protocol for identifying HVAL.  DACF agrees that not all portions of the field-based survey need to be conducted by a licensed soil scientist. Please see the response above on page 31.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.”  As noted above on page 33, the term “locally valuable farmland” was removed in V2. Additionally, DACF agrees that mapping wild blueberry barrens is not practicing pedology and, therefore, would not require a soil scientist. Therefore, in V3, DACF revised the definition of “blueberry barren” to remove reference to not meeting the criteria for PF or FOSI. This revision eliminates the need for a soil scientist to verify that the land doesn’t meet the qualifications of PF and FOSI. V3 also adds additional language referring to the submittal of documentation to identify land as meeting the definition of “blueberry barren.” As mentioned above, DACF will release more specific guidance regarding the protocol for identifying HVAL at a later date. Additionally, DACF agrees with the minimum size area recommendation, and the definition of “blueberry barren” incorporates a minimum size of at least one contiguous acre in V2.  As mentioned above on page 31, DACF agrees that not all portions of the field-based survey need to be conducted by a licensed soil scientist.  No changes were made in response to the remainder of this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | |
| Byers, Chris City/Town: North Yarmouth Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: Branch | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I’ve been working pretty exclusively on solar projects in the last five years, only in Maine. But I’m worried that we’re gonna start to see that disappear with this type of rulemaking. We’ve already seen a total collapse of the solar industry and opportunities in our state. Many different players came into the state to develop projects and for a variety of reasons that are totally unrelated to this rulemaking, they’re gone. We have many projects that could have happened that just can’t happen anymore. I’m afraid that this is going to result in not only a loss of solar opportunity, but ultimately it’s gonna result in a loss of opportunities for Maine ratepayers to save money.  So, if we’re looking at projects that are over 20 acres, that are potentially not going to happen because of this rulemaking, it’s just too expensive. I hear people on the energy and utilities committee all the time saying, ‘We want cheap power. We want cheap power. Build these big projects so that we can get economies of scale.’ Well, this rulemaking targets, specifically, these projects that can achieve [those] economies of scale.  I’m concerned about the purpose of the rulemaking. I heard farmers, and I heard representatives of the farming community talking about how these projects can offer a lifeline. I was sitting in a town meeting with a landowner in Brooks, pleading with her town to allow her to do this so that she could save the farm. She has a second job. She’s just trying to hay the fields on the weekends. She’s just trying to keep the farmland in the family, but she can’t even pay the taxes. So, this is her lifeline to doing this. I think there’s this perception that solar projects are the reason that we’re seeing a loss of farmland. But it’s not. I’m probably gonna misquote some stats here, but I’m trying to remember this woman, the farmer who was telling me this, but she said ‘you know, no, pricing hasn’t changed much since the 80s, but cost of doing business has gone up 3X.’ You do the math. I mean, we’re facing inflation costs. It’s just a disaster for everybody, and especially for farmers with such tight profit margins.  I think it’s also strange that we’re being penalized, not just for putting projects that are on existing agricultural use, but we’re being penalized for projects that are put on forested land that’s classified as NRCS – or classified as [forest land] by NRCS. And as Rod was saying, you know, it’s just a poor way of mapping. Even NRCS will tell you please don’t use our data for regulatory purposes. It’s just for a 10,000-foot view of what the soil might or might not be.  But what I’m hearing in these rules is that you could harvest all those trees -no problem -under a timber harvesting permit. You could put a massive 200-home subdivision on that on that land -no problem. It’s just strange that there’s such targeted rulemaking towards solar projects with this. Again, that will result in an impact on a further loss of farmland.  I believe that these projects offer the ability for these farms to stay under ownership by the original owners, alternate revenue streams, all that stuff. Yeah, it just it just seems strange that we’ve got such a cherry picking on the solar industry.  I do a lot of permitting work. I just want to talk about impact here, and I think that what we’re trying to do is avoid impact. I think I’ve made my case as to why I don’t think it’s really impact. I think it’s actually opportunity for solar to be there. But you are regulating farmland on a far greater scale than natural resources, like wetlands of special significance. So, as a developer you will start to see solar developers potentially seek to fill wetlands as a cheaper alternative than putting a solar project on farmland. The compensation ratio is far less for a developer to do that than to put a project on farmland, which just doesn’t make any sense to me. So, I feel like we’re going to see more impact in places that we don’t want to because we’re valuing this farmland so greatly with the compensation ratios that have been proposed. | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, compensation tiers were revised in both V2 and V3. Additionally, several new opportunities for permittees to lower or eliminate their compensation fees have been incorporated into the final adopted rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Per this comment and others, “forestland” was removed from the definition of “HVAL” in V2. However, DACF would like to clarify that none of the drafts of the proposed rules required NRCS data to identify “forestland” or any other category of land. The Chapter 575 rules only use the NRCS definitions of PF and FOSI, not the NRCS data. A field-based survey by a Maine-licensed soil scientist is required to identify PF and FOSI. The identification of PF and FOSI will follow the most recently updated version of the DACF guidance document “[*Determining Prime Farmland Soils And Soils Of Statewide Importance For Siting Solar Projects In Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” No changes were made in response to this comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, permitting home subdivisions is outside of the scope of what the Chapter 575 rules can regulate. Additionally, the compensation fees solar developers will pay for constructing on HVAL will go into a compensation fund for farmland conservation and solar mitigation projects. An applicant may also choose to conserve other land for agricultural production instead of paying a compensation fee. In either instance, farmland conservation would protect HVAL from future development. No changes were made in response to this comment.  Please see the response on page 35 above regarding farm viability.  It's not the case that impacts to HVAL would trigger larger compensation requirements than impacts to wetlands. The 1:1 wetland compensation ratio is for restoration or creation of wetlands, not preservation. The ratio for preservation of wetlands is 8:1 (or 16:1 for wetlands of special significance). Furthermore, while the [in-lieu fee calculation](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fdep%2Fland%2Fnrpa%2FILF_and_NRCP%2FILF%2Ffs-in-lieu-fee.pdf&data=05%7C02%7CCaitlyn.Cooper%40maine.gov%7C6ea158665471422e196608dcd762f219%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638622067168298703%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=7wTnbr8qXEd7QEt9FwvoSa60jQAxmelgH%2BjurEgmElg%3D&reserved=0) for wetland impacts is calculated at 1:1 or 2:1, this calculation accounts for the cost of wetland restoration, which comprises almost the entirety of the fee calculation. For impacts to HVAL, the fee calculation would occur at a ratio between 0.5:1 and 8:1, but it would account solely for the cost of land preservation (not restoration) in the form of the appraised land value. Therefore, the fee amount for HVAL would amount to a tiny fraction of the fee amount required for wetland impacts, on a per-acre basis. However, as noted on page 34 above, compensation tiers have been revised. | | | | | | | | | | | |
| Springer, Jake City/Town: Brunswick Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: Nexamp | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Like others, I think we’re pretty concerned about the expansiveness of the draft regulations and the practical effect it will have on solar development in the state. I think the reliance on the mapping, as you’ve heard, and potentially on the soils as well, is going to be impractical. And that there might be a misalignment here between the overall state clean energy goals, the goals to actually protect working lands, and the practical effect of these draft regulations.  In terms of the high value ag land definition, I think from a from a basic perspective, having lands that have either never been in production or are not in current production be considered high value agricultural land is a little misleading. As you’ve heard, I think soil quality is one important leg of the stool, if you will. But the other legs are having a farmer to actually work the land and the economics to support it. And I think an overreliance on soils is not necessarily gonna deliver the practical benefits that I think the rulemaking is intended to.  There’s an estimate that, from the department, this will cover about 13%, I think, of state land. But in practice, I think that’s understating the impact of where solar development actually is possible and will go. Just doing a quick analysis of our projects, our existing projects, about 60% of those would have triggered at least some amount of high value ag land review. And that’s not including, obviously, the locally valuable farmland. Which, again, it’s not fully fleshed out at this point. So, while that overall percentage number might seem small, I think the practical effect is that more and more projects, more projects than that would indicate are gonna be implicated.  You know, just to close, I mean, I was born and raised here. And I care deeply about Maines working lands, protecting those as well as, you know, the clean energy future for the state. I think it’s really important to strike the right balance here. Unfortunately, I don’t think the draft rules strike that balance, but we’ll provide written comments and look forward to working with the department going forward. | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Jake Springer on 08/29/2024 on behalf of Nexamp. | | | | | | | | | | | | | |
| Springer, Jake City/Town: Brunswick Date Received: 08/29/24 Method of Comment: Email Representing Organization: Nexamp | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Nexamp has significant concerns about the rules as currently proposed. The definition of high-value agricultural land is overly broad and difficult to implement and there are numerous areas of the rules that are incomplete or unclear. Overall, we feel the proposed rules do not strike an appropriate balance between protecting important agricultural lands and promoting needed clean energy development and would likely have a stifling effect on solar development in Maine.  Instead, DACF should narrow the scope and to focus on protecting truly the most important agricultural lands, encourage best practices, and promote methods to better integrate solar and agricultural activities.  Start of Construction Provisions Are Reasonable  The proposed rules define start of construction to include projects with site control agreements in place prior to September 1, 2024. Given the uncertainties surrounding the new permitting process and the short timeframe to implement these rules, this is a reasonable approach.  High-value Agricultural Lands Should Be More Narrowly Defined  LD 1881 narrowly tailored the scope of DACF permitting authority to only “high-value agricultural lands” (HVAL). To comply with the intent of LD 1881, and to properly limit the scope of the DACF permitting authority, the threshold for what is HVAL should represent, naturally, a high bar.  Instead, DACF’s proposed rules cast a wide net, relying on broad categories of soil types and proposing new categories (“locally valuable farmland”) yet to be detailed. NRCS specifically notes that its categories are not to be used for regulatory purposes, and while DACF is proposing to rely on on-site surveys to confirm, it is not clearly how a soil scientist would make such a determination in practice. In focusing so heavily on soils, DACF is proposing to extend its permitting authority to land that is not, or potentially has never been, in agricultural production and to then penalize its use for clean energy. As currently proposed, the HVAL definition is likely to impact a significant number of potential projects. A Nexamp review of our current projects found that 60% have some amount of HVAL based on the currently available mapping. Notably, this does not consider yet to be defined designations like “locally valuable farmland.”  In our view, this rulemaking should be more narrowly focused on land that is in active agricultural production and is producing economic value. In fact, the current definition of “farmland”, which also appears in the proposed rules, specifically uses such a test:  *As defined in 36 M.R.S. § 1102(4), “farmland” is defined to mean any tract or tracts of land, including woodland and wasteland, of at least 5 contiguous acres 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 as defined in § 1(Error! Reference source not found.), above, and 7 M.R.S. § 152(2) in one of the 2, or 3 of the 5, calendar years preceding the date of application for classification. The farming or agricultural activity and income derived from that activity may be achieved by either the owner or a lessee of the land.*  At a minimum, the current standard for defining farmland should be incorporated into the HVAL definition, providing some test that the land in question is actually used for agricultural purposes.  In addition, Nexamp recommends that DACF:   * Establish a narrower threshold for economic value (such as in dollars per acre) targeting the top 5% of Maine’s active agricultural lands as a basis for determining “high-value” * Create a clear list of exclusions from high-value agricultural land, such as:   + Land that is not in timber growth   + Land that has not produced income crops for the last 2-3 years * Allow for a simple method of demonstrating compliance with one of these criteria, should as an affidavit signed by the landowner   Clarify Method for Determining Acreage  LD 1881 also sets a threshold of 5 acres for determining whether projects are subject to these new requirements. Nexamp recommends that DACF calculate the acreage by measuring the area covered specifically by the solar panels, excluding the pervious surfaces and the areas that could be used for dual-use, such as the rows between panels. This is a more straightforward calculation than the definition of “land area” provided in the proposed rules. This is the methodology used for calculating the “Greenfield Subtractor” under the Massachusetts SMART program and is consistent with the recommendations under Maine Audubon’s model solar ordinance.  Significant Uncertainties Remain Under Proposed Rules  The proposed rules leave several important issues unaddressed or without needed clarification:   * Locally valuable farmland: The proposed rules establish this new category, but the definition is vague as is the process for further defining it. It also raises potential concerns that some communities hostile to clean energy development could push to use this category as a “catch-all” to trip potential projects. * Mitigation and compensation amounts: The actual compensation amounts are to be determined by DEP, leaving out an important aspect of the proposed rules. It is difficult to evaluate the reasonableness of the mitigation proposal without knowing the actual dollar amounts that would be required. However, the acreage ratios appear unnecessarily punitive and are likely to lead to compensation amounts that would be prohibitive for projects. * Soil survey protocols: The proposed rules reference protocols for soil scientists conducting the required surveys, but those protocols do not appear to be determined. This speaks to the challenges of relying on the broad categories of soil types, as DACF proposes to do—the categories are too broad to determine clearly and with any precision. * Best management practices: the proposed rules reference a best management practices document that is not provided or further detailed. It’s unclear how the best management practices will be determined and whether public input will be part of the process.   In our view, the rules as proposed send the wrong message—that solar energy development is generally inconsistent with agricultural activity and should be opposed. That message is inconsistent with the state’s climate goals, and our working experience, where the addition of solar is more likely to keep a farm working and able to resist permanent development. | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Per this comment and others, compensation tiers were revised in V2 and V3. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio. The final adopted Chapter 575 rules only require an 8:1 ratio for projects 1) in a county with high conversion pressure, 2) that don’t meet the case of farm viability, 3) that engage in little-to-no dual-use, 4) that are on PF or FOSI, and 5) that are on active farmland. These are lands DACF deems to be the most important agricultural lands to protect, thus requiring the highest compensation fees.  DACF is encouraging best management practices by requiring “[*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’*” (see section 5(2)(E)).  The Chapter 575 rules require applicants who are proposing to conduct dual-use activities to submit a management plan to DACF for review. DACF will use that review opportunity to advise applicants on methods for integrating solar and agricultural activities.  Unrelated to this comment, the definition of “start of construction” was slightly modified in V2 (see section 2 for revised definition).  Please see comment above on page 37 regarding the definition of “HVAL.”  NRCS states that their soil survey data should not be used for regulatory purposes. The Chapter 575 rules do not use the NRCS soil data, only the definitions of PF and FOSI. Regardless, at no point has NRCS recommended against using the definitions of PF and FOSI for permitting or siting decisions.  DACF already has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*.”](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf) The HVAL determination protocol will not change how PF and FOSI are determined. The HVAL determination protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. However, per this comment and others, DACF revised the definitions of “prime farmland,” “farmland of statewide importance,” and “field-based survey” in V2 to specifically reference using this guidance document.  Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. Unrelated to this comment, the definition of “farmland” (now titled “active farmland”) was revised in V2 to create consistency with other Chapter 575 definitions.  Please see the response above on this page regarding why land may not be in active agricultural production. Additionally, as noted above on page 37, a new term, “forestland,” has been created and is exempt from the definition of “HVAL.”  For the field-based survey to serve its intended purpose, it is essential that its methodology avoid any appearance of bias. DACF acknowledges the concerns raised by the commenter but believes that a neutral third party should conduct a field-based survey to identify HVAL. A third party can be impartial since they have no vested interest in the outcome of the survey. No changes were made in response to this comment.  Under the definition of “solar energy development,” the P.L. states “…*a development that occupies 5 acres or more*.” Without a more specific explanation of what the P.L. meant by “occupies,” DACF is following the plain meaning rule. This interpretation would mean all land that the solar energy development occupies, including land that could not be reasonably occupied by another use. Our interpretation is that “occupies” includes all land within the fenced area or land outside the fenced area that is occupied by utilities, access roads, shade management areas, vegetation buffers, etc.  Unrelated to this comment, DACF amended the definition of “land area” in V2 to exclude “*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.*” After careful consideration, aside from some minor revisions, DACF decided to leave the remainder of the definition as-is since construction activities can disrupt the soil structure and cause soil compaction to land that is outside the perimeter of the solar panels.  As noted above on page 37, the term “locally valuable farmland” has been removed.  Per the P.L., DACF’s rulemaking is routine technical, while DEP’s rulemaking is major substantive. Therefore, both department’s rulemaking processes will not be temporally aligned. Additionally, as noted above on page 37, compensation tiers were revised in both V2 and V3.  Please see the response above on page 38 regarding the technical guidance document for identifying PF and FOSI titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” Additionally, please see the response above on page 38 regarding NRCS soil data.  DACF intends to update its Best Management Practices (BMPs) for solar siting, but a current version of those BMPs exists within the technical guidance document titled “Technical Guidance for Utility-Scale Solar Installation and Development on Agricultural, Forested, and Natural Lands” (published in January 2021). No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | | |
| Megquier, Shelley City/Town: Belfast Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MFT | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: We think that the implementation of LD 1881 presents a really important opportunity to advance balanced solar sighting in a way that avoids, minimizes, and/or mitigates the impact of development on our state’s most valuable agricultural resources. And prior to LD 1881 becoming law, the Department of Ag, Conservation, & Forestry really hasn’t had a role at all in permitting renewable energy projects on agricultural land. And agricultural land really wasn’t included as a natural resource worthy of protecting under environmental law, and we see that as a major gap. So, [we] applaud this legislation and these rules as moving us forward towards more balanced solar sighting. And after [a] review of the draft rule language, it’s our conclusion that DACF has fulfilled the rulemaking responsibilities that the Maine legislature tasked them with in a thorough way, in a reasonable way, and in a conscientious way. We do have feedback on specific sections. And I should probably say that we’ll also, like others have stated, will provide written comments by the deadline. But this is just some preliminary feedback.  So, on the definition of high-value agricultural land, we support that major things taken into consideration are contiguous acreage of quality soils and that those are being defined based on the best available evidence at this point. But also, that there’s that step of requiring the field-based survey so that the land is truly what it’s mapped out as. We heard that a lot during the process- that there was need for that ground truthing, that verification – so [we] are really glad to see that inclusion that the land must be verified by a licensed soil scientist as being of the highest quality for agricultural production. The specificity of the definition seems to align with the intention of the law as we’ve interpreted it, that DACF was to interpret which ag land qualifies as high value, explain why in an evidence-based way, and ensure that there’s an added layer of regulation for those lands.  We also appreciate the really careful consideration that the department has given to PFAS-impacted lands. Earlier on in the process, when we provided our stakeholder input, we were sort of thinking ‘if it’s PFAS-impacted lands, it shouldn’t qualify at all as high value agricultural land.’ But these rules do include PFAS-impacted lands as high value, but then don’t require a mitigation fee. And given how much is changing in what we know about PFAS, what’s possible on PFAS-impacted lands, and the fact that each situation is very unique in terms of the level of contamination and the ability to grow food on that land, it makes sense to have some oversight by the department, but no mitigation fee required. So, we support where the department has landed in this.  Not too much to say on the definition of dual use. It seems pretty satisfactory and aligned with other state definitions of dual use – that ability for there to be flexibility as production needs change is really important, as others have pointed out. What’s gonna work for -in terms of like the marketing of a particular crop- may shift over time. And that’s why we really like that there’s – that the management plan is not just agreed to by all parties, which is incredibly important, but is also updated and reviewed annually. So that as things change, it can be updated and there’s that flexibility kind of built-in.  So, in terms of the variability compensation amounts, there were two pieces of constructive feedback that I just wanted to float now rather than save it for the written comments. One piece is that soil designation and active farming history are the most heavily weighted, and that seems appropriate, but we would actually like to see a higher points given to prime agricultural soils that are verified and one way to do this could be reducing points elsewhere so that things balance out and there continues to be alignment with the DEP rulemaking.  And then on the category two, conversion pressure, just a bit of explanation in the rules in terms of how those six counties were chosen would be helpful. I heard you say in your introduction that it was based on mapping of impervious surfaces, but that would be useful. And also, as conversion pressures change over time, there needs to be a process laid out about how and when this criteria will be updated and which data sources and indicators are gonna be monitored. So that as conversion pressure changes around the state, we’re keeping these up to date rather than being like, ‘these are our six counties now and forever.’ So, I think that makes sense. But despite wanting more information, we do agree that high-value farmland in locations with a lot of conversion threat and strong access to markets should be evaluated at a higher rate compared to others. And so, I’ll wrap up there, just thanking you for the opportunity to share input and for the thought and care that DACF put into these rules. | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Shelley Megquier on 08/24/2024 on behalf of the Maine Farmland Trust. | | | | | | | | | | | | |
| Megquier, Shelley City/Town: Belfast Date Received: 08/24/24 Method of Comment: Email Representing Organization: MFT | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** After review of the draft rule language for solar energy development on high-value agricultural land dated 7/25/24, it is reasonable to conclude that DACF has fulfilled the rulemaking responsibilities that the Maine Legislature tasked them with in a thorough, reasonable, and conscientious manner. While there are some pieces of constructive feedback that Maine Farmland Trust has to share in this comment, we overwhelmingly support the Department’s work on these rules.  Definitions  *High-value agricultural land*  What DACF has proposed for a definition of high-value agricultural land considers suitability for agricultural based on contiguous acreage of quality soils – defined, based on the best available evidence, as verified prime farmland, farmland of statewide importance (or a combination of the two), or 1+ acres of locally valuable farmland. Based on this definition, DACF is responding to concerns heard from many stakeholders that Natural Resource Conservation Service (NRCS) soil maps are not always accurate and need to be verified in the field. Land that is scientifically verified by a licensed soil scientist as being of the highest quality for agricultural production should be treated with special consideration. Avoiding development of this land, which is a finite natural resource, will ensure we have enough quality land to grow our food into the future and that those who want to contribute to feeding and sustaining our communities are able to access the land they need in order to do so.  There is also an important emphasis placed in the proposed definition that farmland soils that are underlying developed areas or on land with existing structures are not intended to be considered high-value nor included as warranting special consideration.  It makes sense that locally valuable farmland be included in the definition of HVAL so that there is permitting oversight by the Department but MFT’s opinion is that if there is a need to amend the proposed Compensation Tiers to respond to stakeholder concerns then reducing the points assigned to “HVAL that is Locally Valuable farmland” may be one place to do so.  The specificity of the HVAL definition aligns with the intention of the law, as MFT has interpreted it – that DACF was to determine which agricultural land qualifies as ‘high-value’, explain why in an evidence-informed way, and ensure that the added layer of regulation required through LD 1881 only applies to a relatively small portion of the state.  We appreciate the careful consideration being given to PFAS impacted farmland in these draft rules and the inclusion of PFAS-impacted land in the definition of HVAL. The State playing a role in permitting projects on PFAS-impacted HVAL but not requiring mitigation fees makes sense. There is so much being learned through PFAS and agriculture research and each situation is truly unique and needs to be treated as such – thus some oversight by the Dept but no mitigation is appropriate at this point in time.  *Dual Use*  The definition of dual use in the proposed rules is satisfactory and aligned with commonly used definitions in other states (e.g. New York, Massachusetts). Given that dual-use agricultural and solar production is not practiced in a widespread manner in Maine and that research is still emerging on standards and productivity, it makes sense for the definition of dual use included in these rules to be streamlined and straightforward and for detailed management plans to be required. MFT also supports that a final management plan must be agreed to by all parties involved and updated and reviewed annually. This ensures that producer needs are being taken into consideration, that agricultural productivity and viability is maintained, and that adaptations can be made as producer needs shift.  Variable Compensation  We applaud the Department’s efforts to ensure that compensation tiers are structured in a predictable yet nuanced way. The system proposed includes multiple criteria being weighted at various levels to consider the relative importance of each criteria so that a project proposed on a piece of impacted land can be considered based on the unique features of that land and the proposed project and then classified as within a refined compensation tier. It is clear that the Department is making a good faith effort to establish compensation tiers that require mitigation fees for unavoidable impacts to agricultural lands but for those fees to be required and applied with scalpel-like precision rather than as a blunt instrument.  The draft rules present four categories for consideration in calculating agricultural value and therefore commensurate compensation: soil designation; conversion pressure; active farming history; and dual-use. Soil designation and active farming history are the most heavily weighted – appropriately so – since these lands are most valuable for agricultural production but we do recommend edits to the Categories and point system to refine it further. Please see our recommendations and an explanation of each change below:  Graphical user interface, text, application  Description automatically generated  Table  Description automatically generated  The revision proposed to the chart above places heaviest weight on prime agricultural soils, which are the rarest, and includes a needed focus on farm viability. The addition of farm viability in Category 3 considers situations in which a solar array is installed on high-value agricultural land but is ancillary to ongoing agricultural production on the same farm property. On-farm renewable energy installations can be an important contributor to the ongoing viability of an existing farm business since, in addition to addressing climate change, energy production may provide a diversified source of income as well as reduce the farm’s energy costs. By reducing the points incurred when calculating compensation fees in such situations, this may enable HVAL that is part of the same farm operation to stay in production. When formulating rules, the Department should set a threshold to determine what constitutes “ancillary” in this specific context (e.g. solar energy development should encompass less than 25% of the active farmland owned by the landowner working in partnership with the solar energy developer seeking a permit).  In addition, MFT would like more explanation of Category 2: Conversion Pressure and the data source from which the percent of impervious surface was calculated that led to the 6 counties named being chosen. Also, if conversion pressure changes over time then there should be an explanation of how and when that criteria could be updated and what data sources and indicators would be monitored to determine how and when conversion pressure criteria should be updated.  Despite wanting more information, we do agree that high-value farmland in locations with relatively high levels of conversion threat and strong access to direct-to-consumer or other markets should be evaluated at a higher rate than comparable land in an area with lower conversion threat and less direct access to markets.  On the topic of compensation amounts, it is worth mentioning that farmland market value and conservation value are highly variable based on the individual characteristics of the property in question and location. When translating the compensation tiers to monetary value, MFT can provide information on regional easement values for agricultural development rights, if desired. It is necessary to ensure that fees are set at such a level so that there is some level of avoidance of the highest tier of HVAL and to ensure that collected fees are actually enough to accomplish good farmland conservation projects.  Permitting process  MFT does not have specific feedback on the permitting process since permitting of solar energy development is outside of our scope of expertise. However, the permitting process looks clear and straightforward as outlined in the July 25th, 2024 Memo distributed along with the draft rules.  Conclusion  MFT supports these proposed rules which allow Maine to add a layer of protection for its most valuable agricultural soils. High-value agricultural land is critical to supporting a robust local and regional food system – now and in the future. Some additional information and refinement are needed but the State is on the right track in completing the work that they were asked to do by the Legislature and we are in support. | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the definition of “HVAL” was revised in V2 and V3 while still incorporating the same themes as the first iteration. The term “locally valuable farmland” has been removed, and in its place is a new term: “blueberry barren.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As noted on this page above, the term “locally valuable farmland” has been removed, and in its place is a new term: “blueberry barren.” Per this comment and others, compensation tiers were revised in both V2 and V3.  As noted on this page above, the definition of “HVAL” has been revised.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the term “dual-use” was marginally revised in V2 while still incorporating the same themes as the first iteration.  Unrelated to this comment, the compensation tiers were revised in V2 and V3.  The Table 1 categories were revised in V2 to soil designation, active farming history, dual-use, and farm viability. Conversion pressure has been moved to only be incorporated into tier 4 (the 8-to-1 ratio). Please see the response on page 44 below for more details.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. While the point values of Table 1 were revised in V2 and V3, they were given different point values than what was recommended by the commenter. However, PF still holds the heaviest weight in the soil designation category.  Per this comment and others, the definition of “conversion pressure” was revised in V2 and V3 (see section 2 for revised definition). Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[5]](#footnote-5) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website, and state what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated.  Per 38 MRSA §484-C(2), the compensation fee, and thus, the monetary value of a property, will be calculated by DEP. Therefore, that is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | | | | |
| Spalding, Heather City/Town: Unity Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MOFGA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: I just want to say that keeping agricultural land in production is a priority for MOFGA and we know it is for DACF. And, you know, I think everybody shares that. We appreciate the efforts that the DACF is putting forward to protect Maine’s precious and finite agricultural soils. Financial and ecological sustainability are critical for the viability of all Maine farms. We recognize that we need to shift away from wasteful, polluting energy consumption. We need to become much more frugal in our use of energy. And we need to shift away from our reliance on fossil fuels.  But at the same time, we recognize that Maine is overly and tenuously reliant on food from ‘away.’ And we know that we need to produce more of the food that we consume. So, we need more farmers to farm more Maine land. We need to protect the best soils we have from industrial development, including industrial-scale solar arrays. We’re not categorically opposed to solar arrays, of course, those that can be sited for dual use. But we want to ensure that our agricultural soils are protected for their best and highest use.  So, we recognize that, you have to see it when you drive around Maine, that the development of solar arrays has really exploded in recent years, and that is largely because of the subsidies put in place by the legislature. It’s clear, we’re hearing from our farmers; they’re competing for the same land to farm and to have hay and other agricultural resources. They’re competing with solar development, and that reduction in the farmland is driving up the value of existing farmland and driving up the property taxes on farmers who are already competing against existing development pressure.  We recognize that for many farmers, their wealth is tied up in the value of their land and in some cases, farmers need access to that income, for solar development that they may offer as they near retirement. We believe that the mitigation fee approach proposed by the rules balances the potential for income to help farmers- or even income to help support ongoing farm businesses. These rules would steer solar development away from the most valuable soils while still allowing access to those soils for development if the developers pay. We feel like the developers are making a lot of profit from these investments and that’s why so many have been built simultaneously and why farmers are being offered such high prices for their land. We do feel that we need to look at how those mitigation costs are being passed on. We really are concerned about ratepayers having to bear the brunt of the fees. We think that that should be on the developers.  We also recognize that there are communities across the state that have been implementing moratoriums, moratoria, as they’ve seen the development spreading and changing the landscape. The farmers and rural communities need a fair and balanced approach that would help protect the soils. We believe there’s a relatively low barrier of five acres in the definition of solar development, and that’s balanced by the larger 20-acre threshold to trigger a requirement for individual permit. We approve of the NRCS definition of farmland of statewide importance.  We do believe that it’s appropriate for the use of a soil scientist to review that. And we see a lot of potential in the co-location of solar development and agriculture. We approve the reduction of mitigation fees in light of successful dual-use projects. And finally, we appreciate the balance of soils of statewide importance with locally valuable farmland, and we believe that keeping a list of the locally valuable farmland helps to make it a clear and transparent process. | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Heather Spalding on 08/29/2024 on behalf of the Maine Organic Farmers and Gardens Association. | | | | | | | | | | | | |
| Spalding, Heather City/Town: Unity Date Received: 08/29/24 Method of Comment: Email Representing Organization: MOFGA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** On behalf of the Maine Organic Farmers and Gardeners Association (MOFGA) I am submitting comments in support of the draft rules regarding installation of solar energy arrays on Maine’s high value agricultural land (HVAL). MOFGA is a broad-based community, working to create a food system that is healthy and fair for all. Through education, training and advocacy, we are helping farmers thrive, making more local, organic food available and building sustainable communities. We certify 539 organic farms and processing operations representing roughly $120 million in sales, and we have more than 15,000 members.  Keeping agricultural land in production is a priority for MOFGA and we know it is for the Department of Agriculture, Conservation and Forestry (DACF) as well. We appreciate your efforts to protect Maine’s precious and finite agricultural soils. As healthy and productive woodlots invariably are part of Maine farm businesses, MOFGA also wants to ensure that Maine woodlands are protected and managed to build healthy forest soils, biodiversity of plants and animals both above ground and in the forest soil microbiome.  Financial and ecological sustainability are critical for the viability of all Maine farms. MOFGA fully recognizes that we need to move away from wasteful energy consumption, become much more frugal with the energy we use, and shift away from our reliance on fossil fuels. At the same time, we recognize that Maine is overly and tenuously reliant on food from away and we know that we need to produce more of the food that we consume. We need more farmers to farm more Maine land and we need to protect the best soils we have from industrial development, including industrial-scale solar arrays. We are not categorically opposed to solar arrays. We support dual-use projects. We want to ensure that Maine’s agricultural soils are protected for their best and highest use, which we believe is having Maine farmers produce food, fiber and forest products for Maine people.  Solar development has exploded in recent years due to high subsidies put into place by the Maine Legislature, and we are hearing from our farmers that they are having to compete with solar development for access to land that used to support their businesses. The industrial demand for farmland is compounding the challenge of escalating prices of farm real estate. We recognize that for many farmers, most of their wealth is tied up in the value of their land and that, in some cases, farmers need access to the income that solar development may offer them as they near retirement. We believe that the DACF has fulfilled its obligation to Maine’s Legislature, which directed DACF to: define HVAL; establish different levels of HVAL with variable compensation amounts; define dual-use agricultural and solar production; and implement a related permitting program.  MOFGA approves of the use of the NRCS definition of “farmland of statewide importance,” and we believe that it is appropriate the that use of the term is verified by a soil scientist. The proposed definition of high-value agricultural land is thoughtfully crafted to ensure that it targets a relatively small portion of the state.  MOFGA sees a lot of potential in the co-location of solar development and agriculture and approves of the reduction in mitigation fees considering the proven success of dual use projects.  MOFGA appreciates the balance of soils of statewide importance with locally valuable farmland and believes that keeping a list of Locally Valuable Farmland helps to make it a clear and transparent process.  We believe that the mitigation fee approach proposed by these rules balances the potential for income to help older farmers, or even income to help support ongoing farm businesses. The implementation of these rules would steer solar development away from the most valuable agricultural soils, while still allowing access to those soils for development if the developers would pay for it.  We feel that developers should not pass the mitigation costs for developing high value agricultural land to ratepayers. It would be more appropriate that they develop other land instead. If they insist on developing land with higher costs, they should carry the cost themselves.  MOFGA believes that the relatively low barrier of 5 acres in the definition of solar development, is balanced by the larger 20-acre threshold to trigger a requirement for an individual permit. | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  In response to a number of comments, a new term, “forestland,” was created in V2 and is excluded from the definition of “HVAL.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Unrelated to this comment, the definitions of “farmland of statewide importance” and “HVAL” have been revised to improve clarity in V2 and V3.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. requires a person who constructs or causes to be constructed a solar energy development located on HVAL to pay a compensation fee or other form of compensation for any portion of the development that is located on HVAL. The P.L. does not give DACF the authority to dictate how the applicant responds to those costs and whether they carry the cost or pass it on to ratepayers. Therefore, that is outside of the scope of what the Chapter 575 rules can regulate.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. However, the Department would like to note that the 5-acre threshold within the definition of “solar energy development” was designated within the P.L. and is not a new designation as part of the Chapter 575 rules. | | | | | | | | | | | | | | | |
| Bergeron, Mark City/Town: Augusta Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: TRC | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I guess my overall aim this morning is to make sure we add predictability and clarity to the rules for the regulated community, because that’s going to help most. The high-value ag lands definition includes timberlands, but that doesn’t seem to be covered in statute. So, I think that the department may be stretching a little bit there.  We do see in the law that there can’t be overlapping compensation fees for, say, wetlands and HVALs, but it’s not clear which fee goes first. Is it the higher? Is it the first fee that comes in? So, additional clarity there between the DEP and ag. Which one applies there?  The concept that locally valuable farmland isn’t identified yet adds another complexity to doing development because when our soil scientists go out – is this an LVF? Is it not? I understand the department’s gonna be doing some guidance on that, but having guidance, it’s separate from rulemaking makes it difficult versus doing the rulemaking with those changes all at once would be helpful.  And then in the permitting flow chart, looks like – and I know that’s not kind of, you know, rule and hard facts – but it seems to indicate that the avoidance and minimization statement has to be submitted to a department before the PBR or individual permit application. And it seems like there’s an offramp there that if the department doesn’t like the avoidance and minimization statement, they can say ‘Nope, sorry, you don’t have a project. We can’t give you a permit.’ But it seems like the avoidance and minimization statement needs to be part of the application process. Maybe that’s the intent, but again, if you can clarify that in the permitting flow chart, because again, what a lot of our clients like to do is pull up any guidance, any rules, any information on the website before talking to any agencies. So, if they get to a point where they just don’t know, they may say, you know, ‘It’s too unclear. We don’t wanna talk to agencies yet.’ So, the more you can have clarity and predictability for developers or the regulated community upfront would be helpful. | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, “forestland” was removed from the definition of “HVAL” in V2.  Per 38 MRSA §484-C(2), the compensation fee will be calculated by the DEP. Therefore, the hierarchy of fees will be described in their rules, which is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  Unrelated to this comment, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. Further, keeping the specific nature of the guidance document separate from rulemaking reduces the administrative burden of conducting rulemaking every time the guidance document needs to be updated.  Per this comment and others, in V2 the avoidance and minimization language has been updated in section 5(3)(B)(1) for PBR applications and section 5(4)(C) for individual permit applications. Both permit types require an avoidance and minimization statement, though the specific requirements differ between permit types. Additionally, the avoidance and minimization summary can be grounds for permit denial as described in section 5(3)(E)(3) for PBR and section 5(4)(F)(3) for individual permits. | | | | | | | | | | | | | | |
| Bourgoine, Lindsay City/Town: Montville Date Received: 08/19/2024 Method of Comment: Public Hearing Representing Organization: Revision | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** As you likely know, we’ve built many – multiple solar projects to aid in revenue diversification for farmers and, therefore, share an interest in the viability of Maine’s agricultural economy. Conceptually, we believe mitigation frameworks accompanied by permit by rule processes can function effectively, and in fact, there are such programs here in Maine that we work with, but the details matter. And unfortunately, we feel this draft rule and the permit by rule process within it does need some work. We appreciate the department’s inclusion of a permit by rule for projects under 20 acres. However, we do agree with others that it’s a bit more onerous than a typical PBR regime, such as the DEP stormwater program. Which, if you achieve clearly defined and documented best management practices, you receive a permit. So, there’s transparency and predictability. We have multiple concerns with the proposal as written, but we’ll put those in our written comments, just a few comments here today.  The surveys and analyses required ”or t’e PBR will significantly increase costs. Smaller distributed generation projects like those under 20 acres will have tighter margins. So, the addition of such costs will impact whether a project can pencil. And the requirement of a 500-foot buffer on those projects- of projects of those size- seems unreasonable and could materially add to the acreage requiring surveys and additional costs. There’s also limited guidance on what soil surveys should include. I think we’ve heard a little bit about that this morning. And, no opportunity for a field finding to overturn NRCS mapping. So, we’d love to see more clarity there. And, additionally, we are concerned about the department’s discretionary approval authority for project design as there’s no transparent criteria outlining bounds for permit denial.  Regarding landowner rights, we are really proud of our work with farmers in the face of a changing climate and the resulting impacts on agricultural viability. We have helped farmers utilize a small portion of their farmlands for solar production, enabling many diversify revenue and therefore maintain family ownership and long-term viability. From the beginning, our farmers guide us in project development as they know their lands best.  We ask the department to consider a PBR option to account for landowners’ perspective, especially for projects located on a portion of farmland that allows remaining land to stay in production. That PBR could require impacting less than a maximum percentage of HVAL on the property or provide an opportunity for landowners to attest to the agricultural value of the land as well as personal goals. But regardless of the mechanism, we feel it’s critical for landowners to have a voice in the process.  Finally, we believe the proposal does lack ripeness and would just ask that, prior to implementation, we get some clarity on a few things. Again, we’ll cover in our written comments, but definitions and thresholds of PFAS contamination, designation process and extent of locally valuable farmland, guidance on specific standards for field surveys, the section that says additional requirements may be added for dual-use, standards to obtain a PBR, and standards for permit denial, and guidance on how the rule will be implemented ahead of DEP’s final approval to collect compensation.  So, to wrap up, as we noted in our initial comments, we remind the department of the challenges today in bringing-Maine has considerable measures in place regarding siting and permitting, including a strong decommissioning law. Which requires removal of infrastructure in full and a return of the land at the end of project’s lifetime, which does enable land use at the end of project viability. One last point, I just wanna raise is we would also ask the department to keep mitigation funds within the county of the project, so make sure we’re ensuring that money goes back to local support. While we appreciate the inclusion of the PBR, we asked the department for further refinement and another opportunity to provide comments. | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Lindsay Bourgoine on 08/29/2024 on behalf of Revision Energy. | | | | | | | | | | | | | | | |
| Bourgoine, Lindsay City/Town: Montville Date Received: 08/29/24 Method of Comment: Email Representing Organization: Revision | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Conceptually, we believe mitigation frameworks accompanied by permit by rule processes can function effectively— in fact, there are such programs to date right here in Maine. However, ultimately it is the details of such frameworks that determine success, and whether balance was achieved. While there are components of the rule we appreciate, including a permit by rule process and the definition of commence construction, unfortunately, we believe, overall, the proposed regulations are expansive, onerous, limiting of landowner rights, and lack ripeness.   * 1. Expansive   ReVision is very concerned about the expansive definition of High Value Agricultural Land  (HVAL), which has three significant issues:   1. It relies on existing soils data (prime farmland and farmland of statewide significance) that was mapped at course scales and not developed for regulatory purposes, 2. It includes a category, Locally Valuable Farmland, that is largely undefined with broad criteria and unknown areas of additional lands that will warrant inclusion, and 3. It lacks consideration of whether the subject land is active farmland, thereby ignoring landowners’ lived experience owning, managing, and understanding their lands by regulating the use of hypothetically valuable farm soils, all while increasing permitting costs, timelines, and unknowns for local clean energy development and constraining landowner options.   We believe it is unreasonable to require an additional and demanding permitting process and such significant compensation on land that may never be utilized for agricultural purposes, even more, on forested tracks of land in which clearing could even potentially expand agricultural opportunities in the future. The proposed definition of HVAL amounts to 13% of the state’s land—which is significantly more land than was initially discussed during the legislative process.  ReVision, therefore, wishes to again advocate for the utilization of the Farm and Open Space Tax Law definitions to hone in on the most desirable lands to protect without unduly hindering future solar development and the options for landowners to support their business and family interests.  While we appreciate the consideration of current land use in the compensation tiers, we have worked with landowners on many parcels of land that may never be farmed, and we are concerned about such unfair penalization, especially when current decommissioning laws require restoration.  Considering our comments raise the existence of Maine’s solar decommissioning law in multiple places, we wish to remind the Department that per LD 802 (2021), decommissioning means “the physical removal of all components of a solar energy development, including but not limited to solar panels and associated anchoring systems and foundations to a depth of at least 24 inches or to the depth of bedrock, whichever is less, and other structures, buildings, roads, fences, cables, electrical components or associated facilities and foundations” also to a depth of at least 24 inches. Even more relevant to the current discussion is that the law clarifies that decommissioning for “any portion of solar energy development located on land classified as farmland any time within 5 years preceding the start of construction,” the physical removal must be to a depth of at least 48 inches. It is important to remember that such a law seeks to achieve the same goal of long term protection of lands, and especially farmlands, ensuring potential utilization for agriculture in the future.  Additionally, we are concerned about the ultimate determination of the definition of impacts to the land, as the currently proposed definition of “Land Area” is also expansive. We respectfully ask the Department to evaluate how similar permitting regimes consider the area of impact, such as the Department of Environmental Protection’s (DEP) permitting under the Natural Resources Protection Act, where only the direct and indirect impact of the actual solar installation is considered, not inter-row spacing, area within the fence, etc.  II. Onerous  We appreciate the Department’s inclusion of a ‘Permit by Rule’ (PBR) for projects under 20 acres. However, the proposal is more onerous than typical PBR regimes, such as the DEP’s Stormwater Program, where if you achieve clearly defined Best Management Practices (BMP), you receive a permit, which enables both transparency and predictability. In Section 2, Permit by Rule, subsection B does note the applicant must meet the BMPs described in “BMP doc reference,” which indicates this provision is unfinished. We have multiple concerns with this proposal, outlined below.   * Both the required soil survey and the alternatives analyses will significantly increase project costs. Smaller distributed generation projects—5-20 acre projects eligible for the PBR— have much tighter margins than utility scale projects and thus the addition of such costs will impact whether a project is feasible. To date, we have received preliminary estimates of $15,000 to $30,000 for such requirements (on a distributed generation sized project) based on project size, parcel size, and parcel cover. To be clear, spending $30,000 would double our current site surveying and diligence costs, which is asking smaller developers to put two times the cash at risk during the project feasibility phase.   Additionally, the proposed rule’s requirement within the definition of ‘Field Based Survey’ of surveying a 500 foot buffer in addition to the development itself is unreasonable and could materially add to the acreage requiring surveys, and therefore costs.   * There is limited guidance on what soil surveys should include and how the results would be compared to the broad categories used to define High Value Agricultural Land (HVAL). The proposed rule’s definition of a Field Based Survey notes it will include “an inventory of soil resources” but goes on to note the Department must “add reference to survey protocol by state soil scientist.” There is no definition of what soil characteristics or physical properties must be present to qualify as HVAL. * Such concrete definitions would also enable a field finding to overturn mapping. Given the Natural Resources Conservation Service’s (NRCS) maps of prime farmland and farmland of statewide significance were never created for regulatory purposes, we believe the developer should have the opportunity to overturn such a designation should the soils on site prove not to constitute HVAL. Essentially, should field verification show inaccuracy in NRCS data, there must be a clear and reasonable dispute resolution process for the developer to receive an exemption given the criteria of prime farmland soils is not met. Again, clarity into the physical properties of HVAL will enable proper field designation—without such clarity that designation becomes arbitrary. * Additionally, the Department has discretionary approval authority for project design based on the Alternatives Analysis, and there are no transparent criteria outlining the bounds for permit denial.   It also appears the Department has full discretion to enable a project to proceed only if it reduces its land area and/or changes its orientation on the parcel. Such changes could ultimately require the developer to downsize the project, and it is important to note what a major hurdle such a change could be for the developer given there is no opportunity to downsize unnecessarily within the utility interconnection process. Changing a project size, at times, is not permitted by the utility, and if it is allowable, can significantly increase study costs as the impact on the system must be studied again.  Overall, while we appreciate the goal of expediting permitting for smaller projects, we ask the Department to ensure the process is in fact a true permit by rule, which requires clearly outlining the standards a project must meet to automatically receive a permit. The current proposal includes significant discretion, and a true permit by rule instigates denial only if the project cannot meet the required criteria.  III. Limiting of Landowner Rights  Revision is proud of its work with farmers—in the face of a changing climate and the resulting impacts on agricultural viability, we have helped farmers utilize a small portion of their farmlands for solar production, enabling many to diversify revenue and thus maintain family ownership and long-term viability. From the beginning, they guide us in project development, as they know their lands best.  Given the broadly held view that farmers should have the opportunity to develop a portion of their lands for the purposes of revenue diversification in support of long-term farm business viability, we ask the Department to consider a specific ‘revenue diversification’ PBR option:   * If the project is located on more than 5 acres of HVAL that is active farmland (as defined below), the landowner shall be permitted to utilize a PBR to develop no greater than 20% of the total HVAL acreage on the property (including the subject tax parcel and any contiguous parcels owned by the same landowner). * If the project is located on more than 5 acres of HVAL that is not active farmland (as defined below), the landowner shall be permitted to utilize a PBR to develop no greater than 40% of the total HVAL acreage on the property (including the subject tax parcel and any contiguous parcels owned by the same landowner). This directly addresses the fact that HVAL may be found in open space on properties owned by municipalities, schools, or businesses—landowners that have no intention of utilizing the land for agricultural production. However, solar projects enable revenue diversification for these entities, too, and therefore they should have similar access to such a PBR. * For the purposes of this PBR, we recommend utilizing the definition of farmland from the Farm and Open Space Tax Law (34 MRS §1102(4)) to define active farmland as any tract or tracts of land, of at least five contiguous acres, that meets the following criteria: “Farming or agricultural activities on the tract or tracts have contributed to a gross annual farming income of at least $2,000 per year from the sale value of agricultural products as defined in Title 7, section 152, subsection 2 in one of the 2, or 3 of the 5, calendar years preceding the date of application. The farming or agricultural activity and income derived from that activity may be achieved by either the owner or a lessee of the land.”   We believe such a compromise will satisfy many landowners—ensuring that there is a reasonable pathway to development, while maintaining some protections for HVAL onsite. Ultimately, regardless of the policy mechanism, we believe it is critical landowners have a voice in the process, a sentiment that was clearly echoed in the August 19 public hearing. We believe the landowner should be afforded the opportunity to attest to the agricultural value of the land as well as their personal goals with the property.  Finally, we ask the Department to remember that landowners can convert their lands to any use they see fit including the development of a self-storage facility or a subdivision for permanent building infrastructure, and such conversion results in a greater impact on the land, however, is permissible under these rules. Solar energy development, which already includes requirements regarding decommissioning, is yet again receiving heightened scrutiny over any other form of land use.  IV. Lacks Ripeness, Is Vague  Finally, we believe the proposed rule lacks ripeness given the portions of the rule yet to be completed and the instances in which clarification will be required for ease of implementation. We respectfully ask that prior to implementation, the following issues are addressed:   * Include definitions and thresholds regarding PFAS contamination in a manner in which an applicant will understand if the property they seek to develop includes the contamination levels required to enable a PBR. The current definition of “PFAS-Impacted HVAL” relies on Department policy, and it is unclear whether such a policy has been established yet. * Include the designation process and therefore the extent of Locally Valuable Farmland. The current definition notes what could be considered but does not outline a process for such determination. Even more, it notes the State Soil Scientists shall develop guidance for such determinations, but again, this appears to be an incomplete section of the rule. * Include guidance on specific standards for field surveys. Currently, the definition outlines the need for a high level assessment of use and on-site structures, as well as an inventory of soil resources as described in “[Add reference to survey protocol by state soil scientist].” As potential applicants, we respectfully request clarity of this protocol to understand the scope and therefore costs of such an assessment. We also, as discussed, seek further clarification on what soil properties should be evaluated, and whether such a survey can overturn NRCS mapping. * Include any additional requirements to be added for Dual Use. Currently, Section 5, Subsection C(2)I denotes that the Department “may add additional requirements here.”   On a related note, we believe the requirement of annual management plan is very onerous on both the developer and the Department and instead recommend a timeline similar to a working farm or forest conservation easement, which typically require a written management plan to be submitted at a minimum of every five years.   * Include standards to obtain a PBR and standards for permit denial. As previously noted, currently, the rule in Section 4, Subsection (2)(B) denotes that the applicant must demonstrate “how the applicant plans to meet the BMPs described in [BMP doc reference].” We ask the Department to define such BMPs in a manner in which the applicant can clearly understand whether their project meets such criteria and therefore could obtain a PBR. Defining such requirements should aid the Department in clearly outlining standards for permit denial for the applicant’s understanding, too. * Include guidance on how the proposed rule will be implemented ahead of DEP’s final approval to collect compensation. We ask the Department to address the implementation timeline given the fact that the enabling legislation, LD 1881 (2023), establishes the DEP as the department to collect compensation, which is denoted as a major substantive rulemaking, and thus requires legislative oversight. We respectfully request clarity as to how this program would operate prior to such approval occurring. | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The Chapter 575 rules do not use the NRCS soil data or maps of PF and FOSI, only the definitions. A soil survey by a Maine-licensed soil scientist is required to identify PF and FOSI using the most recently updated version of the DACF guidance document “[*Determining Prime Farmland Soils And Soils Of Statewide Importance For Siting Solar Projects In Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” No changes were made in response to this comment.  Per this comment and others, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.”  Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if they are not currently producing economic value.  Please see the response above regarding reasons why land may not be in active agricultural production. Additionally, per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  After careful consideration, DACF has decided not to adopt the Farm and Open Space Tax Law definition of “farmland” (now titled “active farmland”). However, the definition is already largely based on the Tax Law definition, with some modifications. The revisions of the definition of “farmland” were required to achieve consistency within the Chapter 575 rules and with other DACF rules. No changes were made in response to this comment.  Aside from the compensation tiers and Table 1 compensation structure, the current land use is also incorporated in the definition of HVAL such that it “*is not occupied by residential, commercial, or industrial uses, that substantially reduce agricultural potential; and has no structures except for i) farm-related infrastructure or ii) energy generation and transmission structures that accommodate co-located agricultural activities*.” Additionally, please see the response above on page 50 regarding active agricultural production.  While DACF acknowledges that the state’s solar decommissioning law requires the removal of all solar energy development components, the P.L. directed DACF to establish a permitting program for solar energy developments on high-value agricultural land. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment, DACF amended the definition of “land area” in V2 to exclude “*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.*” Construction activities can disrupt the soil structure and cause soil compaction to land that is outside the perimeter of the solar panels. After careful consideration, DACF decided to leave the remainder of the definition as-is.  DACF intends to update its Best Management Practices (BMPs) for solar siting, but a current version of those BMPs exists within the technical guidance document titled “Technical Guidance for Utility-Scale Solar Installation and Development on Agricultural, Forested, and Natural Lands” (published in January 2021). No changes were made in response to this comment.  Per 32 M.R.S. §4903, “*No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter.*..” Since the definition of “HVAL” is largely based on soil properties, a soil survey is required, which can legally only be conducted by a Maine-licensed soil scientist. DACF believes that trying to identify PF or FOSI without evaluating the soil or trying to identify HVAL without a field-based survey would lead to inaccurate results.  However, the definition of “field-based survey” was amended in V2 such that a soil scientist is not required to be the entity evaluating on-site structures or current/past site uses since it doesn’t require practicing soil science. Additionally, if the property is disqualified from being considered HVAL due to on-site structures or current/past site uses, then a soil scientist is not required to survey it. Additionally, per this comment and others, the alternatives analysis requirement for a PBR was simplified in V2 (see section 5(3)(B)(1)).  Per this comment, the definition of “field-based survey” was amended in V2 such that surveying an additional buffer zone is no longer required.  DACF already has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” This guidance document details what soil characteristics or physical properties must be present to qualify as PF and FOSI. Additionally, NRCS details specific criteria that must be met for land to be categorized as PF (See 7 C.F.R.§ 657.5(a)(2)).  The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. The HVAL identification protocol will not change how PF and FOSI are determined. However, per this comment and others, DACF revised the definitions of “prime farmland,” “farmland of statewide importance,” and “field-based survey” in V2 to specifically reference using the aforementioned guidance document.  As noted on page 50 above, the Chapter 575 rules do not use the NRCS soil data of PF and FOSI, only the definitions. DACF is aware that NRCS soil data can be unreliable, thus requiring a soil survey conducted by a Maine-licensed soil scientist to identify PF and FOSI. The field-based survey described in the Chapter 575 rules are entirely disconnected from any soil survey conducted by the NRCS. The onus is on the applicant to produce the results of a field-based survey. If the applicant is dissatisfied with the results of a field-based survey, they are within their rights to get a second opinion. Since DACF plays no part in having a field-based survey or soil survey conducted, there is no need to create a dispute resolution process as the commenter describes. However, if an applicant wants to appeal against any decisions made by DACF, they can do so by following the provisions of Section 12. No changes were made in response to this comment.  DACF agrees that standards for permit denial should be included for transparency and predictability. These standards have been included in section 5(3)(E) for PBRs and section 5(4)(F) for individual permits in V2.  The P.L. states, “*Notwithstanding any provision of law to the contrary, the Department of Agriculture, Conservation and Forestry has permitting authority over solar energy development”* which includes adopting rules to implement the statute such as “*standards for the approval of a permit*.” Therefore, the P.L. gives DACF the authority to use its discretion on whether an applicant should be issued a permit for the construction of a solar energy development. No changes were made in response to this comment.  As noted above on this page, standards for permit denial have been included in section 5(3)(E) for PBRs. Per this comment and others, DACF incorporated grounds for permit approval in V3, which are simply the opposite of the grounds for permit denial (see section 5(3)(D)).  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Regarding open space on properties, all landowners have the same opportunity to lower their compensation tier, and thus fees, regardless of the current use of the land. Additionally, per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  DACF chose to implement 20% of the farm operation land instead of the total HVAL acreage on the property, since identifying HVAL requires a field-based survey. With this format, the applicant is only required to conduct a field-based survey of the solar energy development land area, instead of the entire property or contiguous properties owned by the same landowner. DACF adopted this format for the same reason it removed the 500-foot buffer from the definition of “field-based survey”, to reduce the acreage of land requiring surveys, thus reducing survey costs.  Please see the response above regarding the definition of “farmland” (now titled “active farmland”) from the Farm and Open Space Tax Law, on page 51.  For the field-based survey to serve its intended purpose, it is essential that its methodology avoid any appearance of bias. DACF acknowledges the concerns raised by the commenter but believes that a neutral third party should conduct a field-based survey to identify HVAL. A third party can be impartial since they have no vested interest in the outcome of the survey. No changes were made in response to this comment.  While DACF acknowledges the state’s solar decommissioning law, the P.L. directed DACF to establish a permitting program for solar energy developments on high-value agricultural land. The P.L. does not give DACF the authority to require a permit for any form of development other than a solar energy development. Therefore, regulating other forms of development, such as developing a self-storage facility or a subdivision for permanent building infrastructure, are outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The DACF Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J (Effective July 31, 2024. Revised August 22, 2024) can be found on the DACF website here:  <https://www.maine.gov/dacf/ard/resources/docs/pfas-solar-contamination-determination-82224.pdf>  As noted above on page 50, the term “locally valuable farmland” has been removed.  As noted above on page 52, the HVAL identification protocol will not be developed until the rules are adopted. Additionally, as noted on page 50 above, the Chapter 575 rules do not use NRCS maps.  Per this comment and others, DACF clarified the required contents of the annual management plan update in V2 (see section 6(2)(C)(2)).  After careful consideration, the dual-use annual update requirement was not revised as a result of this comment. DACF believes requiring annual oversight will ensure the permittee is making a good-faith effort to engage in dual-use activities as promised.  Please see the responses above on page 53 regarding standards for permit denial and approval. Please see the response above on page 51 regarding Best Management Practices.  Were DACF’s rules to go into effect prior to DEP’s rules being implemented, DACF would process permits for PBR permits. Once DEP’s rules are implemented, DACF will begin processing individual permits. | | | | | | | | | | | | | | | |
| Gundrum, Francesca City/Town: Falmouth Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: Audubon | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Firstly, I’ll say that one of the leading threats, right behind habitat loss, to wildlife, is climate change. And Maine Audubon is a strong supporter of renewable energy development. And we know that the rapid deployment of new renewable energy resources is critical to reducing our reliance on fossil fuels and avoiding the worst impacts of climate change. So, we think today that these rules represent a solid start.  There’s a lot of really great content within the DACF rules put forward here. But we need to continue to strike that balance between making sure that we are able to thoughtfully and rapidly deploy renewable energy technologies. And also, protecting our natural resources -and in the case before us today, our agricultural resources. So, that’s the lens by which we were approaching our review.  We’ve been here since the very start. What, it’s been almost two years, or so, now, since this idea became bill -law -rules before us. And we have given our expertise on ecology- conservation side, have been quite focused on the DEP side of the rulemaking. But of course, as we all know, how everything intermingles from agency to agency is critical to making sure that this program operates effectively and in ways that, again, we balance the needs of getting those renewable energy technologies deployed and thoughtfully protecting our resources. So that’s why we’re here today on the DACF side.  And like I said, we believe we’re on the right track, but with input from Maine Audubon and other stakeholders in the room here, we think we can get closer to that balance. So, we look forward to providing comments on some of our questions related to dual use, some of which have been brought up here today. Some clarity in definitions and timeline. Again, making sure that we’re offering that predictability and flexibility to developers. But doing right by, again, the legislature – the now law before us and making sure we’re fulfilling what the legislature has told us to do here.  Some questions about the PBR process and refining that. There’s some, as folks have mentioned, some unique components to the PBR within these rules that is a little atypical. So, we just want to take a closer look, and we’ll offer comments on that. And then, big picture, we are reviewing both the DEP and DCF rules here too, with the lens to make sure that we are not unintentionally creating really extreme competition between our agricultural resources and our natural resources. And that is going to inherently happen once we put numbers to resources, but making sure how they all line up isn’t putting so much pressure on our natural resources versus ag.  I’ll just say in closing, here that we’d be remiss if I didn’t share something that’s on the minds of everyone at Maine Audubon, in that there are so many pressures, development pressures, on our resources, agriculture and natural. And housing comes to mind too. And so, we look forward to any opportunity to think about ways in which we can address the holistic, big picture scope of this issue, pressure on our resources across the state and making sure that we are not just focusing solely on our renewable energy development, which we need. So, I’ll close there and just say thank you to DACF staff for this start. We’re definitely headed on the right track, and we look forward to submitting written comments and to any kind of collaboration we can work on here forward. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the joint written comments provided by Francesca Gundrum and Kaitlyn Nuzzo on 08/29/2024 on behalf of Maine Audubon and the Nature Conservancy. | | | |
| Nuzzo, Kaitlyn City/Town: Gray Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: TNC | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We were involved in initial stakeholder conversations that led to LD 1881. We helped draft and pass the bill in the legislature. And those initial stakeholder conversations are really important. They included representatives from the industry, representatives from state agencies, [and] NGO partners. I think they were really important and really good conversations, ultimately, which led to a draft of a bill that went through the legislative process. It came out of committee with a really great vote. It passed under the hammer and both bodies of legislature. So, I just think that that context is important here. This law was built with a lot of really great support, and I think the legislature was directing us to think really carefully about this piece. TNC also submitted initial feedback on the rules when DACF opened that process. Thank you for that opportunity at that point.  I wanna be really clear. Our organization fully supports the rapid deployment of renewable energy and we believe that careful siting that fully considers climate, conservation, and community impacts will deliver the best outcomes for our state. We did some polling and March of 2023 as we were working on this bill that showed that 70% of Mainers support policy requiring renewable energy developers to pay a fee to compensate for those impacts to highly valued lands, and using that revenue to conserve, restore, or protect lands in Maine. The Nature Conservancy works with the state agencies to oversee the MNRCP program, which is the wetland mitigation program. And we sort of use that experience and thinking through that process that’s been in place for a long time to think through both the DEP side and the ag side of this process. We’ll be submitting technical written comments, as [Francesca] noted, with Maine Audubon. We’ve worked really closely with them throughout this process.  At a really high level, I think we appreciate, first off, that the draft rules rely on many existing statutory definitions. I think that’s a good start. Creating new definitions in rulemaking is never a good case for efficiency. So, we think that was really good. We think that the team that drafted these rules- I’ve never seen such a clear memo. I think the memo that accompanied the rules was really helpful. And the two goals that are outlined in the memo, I think, were accomplished. ‘Using the standards that are objective as science currently allows’ and then addressing the importance of other factors, including development pressure and current use.  A lot’s been said about soil mapping soil data. That was something that was discussed repeatedly throughout the stakeholder group, in the legislature, and committee process. We think that having the soil surveys is a really great balance. I think that’s what developers had asked for at that point in the process. So, having the ground truthing is important. It’s part of the MNRCP process as well. Somebody goes out and ground truths. There might be a wetland on a map, but somebody goes out and actually ground truths that. I think that parallel makes a lot of good sense. Again, a lot has already been covered I think will submit really some more details in written comments. But I just wanted to offer a little bit of context and how we’ve been approaching this. So, thank you for the opportunity to comment and submit the written details. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the joint written comments provided by Francesca Gundrum and Kaitlyn Nuzzo on 08/29/2024 on behalf of Maine Audubon and the Nature Conservancy. | | | |
| Nuzzo, K. & Gundrum, F. City/Town: Gray Date Received: 08/29/24 Method of Comment: Email Representing Organization: TNC & Audubon | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Our organizations appreciate the careful work that went into developing these new rules. The Legislature charged both DACF and the Department of Environmental Protection (DEP) with separate rulemaking processes to accomplish the coordinated goal of balancing renewable energy development with preserving the farms, forests, and natural resources that characterize our state and are the backbone of its economy. This effort requires careful coordination and alignment between the two agencies and their distinct areas of focus to ensure that one set of valued lands and resources is not inadvertently placed in disproportionate conflict with one another.  After careful review of both these proposed rules and the DEP’s reposted draft rule for Chapter 375, we see some areas of potential overlap, conflict, and confusion. The DEP made substantial changes between posting their initial draft rules in January 2024 and reposting in July 2024. Additional comments on the DEP reposted rules will be received in early September and considered by staff and the Board of Environmental Protection this fall. Given these pending changes, we encourage DACF to continue inter-agency coordination efforts by synchronizing the agency’s next steps with the DEP’s upcoming actions on this joint rulemaking process. We offer the following feedback on specific areas of the draft rule:  *Define high-value agricultural land (HVAL)*  The new definition of high-value agricultural land (HVAL) is key to the implementation of this new mitigation program. As drafted, the definition is based on soil characteristics and not on the current uses of the land. We believe the mitigation requirements should be tied to the current use of the land and forest land should not be included in the definition of HVAL. As written, any lands with soils that fall within the HVAL category would be regulated as such, regardless of the current use of the land. We understand the interest in protecting important soils to preserve opportunities to expand farming in our state, but worry that this expansive definition could unintentionally tip the scales toward protecting farmland above all other natural resource values.  To help illustrate this concept, we explored how a previously permitted project – Three Corners solar – would be permitted under the new rules proposed by DACF and DEP. We intend for this to serve as an example, not to convey a position on the project itself which has already been permitted and is currently under development.  A picture containing text, book  Description automatically generated  Figure 1. Map of Three Corners solar project with farmland soils and deer wintering area layers created by Maine Audubon on August 27, 2024.  This project illustrates how multiple values and mitigation tiers can overlap and interact with each other, with prime farmland and farmland of statewide significance underlying forested Deer Wintering Areas. In areas where Deer Wintering Areas (DWA) overlap with prime farmland or farmland of statewide importance the proposed DACF and DEP rules would default to the highest applicable compensation ratio. It seems likely in this case that the underlying soils would drive mitigation towards agricultural mitigation, even though the current use of the land is forested and the Impacts would be to DWAs. A developer in this situation may choose to maximize the project area in the lowest compensation tier, thus driving more of the project into purely DWA and off of HVAL. The imbalance of these two values creates incentives that impact siting choices. Mitigation requirements should be tied to the current use of the land, and therefore the actual impact to that resource. Forested land should not be included in the definition of HVAL. We raise this example to highlight the complexity of the proposed rules in practice and encourage DACF and DEP to explore other examples to better understand the complexity of balancing intersecting goals and overlapping resources.  Additionally, the definition of “locally valuable farmland” is vague and undefined. DACF should specify either what they mean by locally valuable farmland or clarify the process by which those parcels will be identified, listed, and updated.  *Dual-use agricultural and solar production*  LD 1881 specified that a compensation fee could be reduced if the project proposed dual-use. We believe dual-use or agrovoltaics projects are an exciting evolving area that has the potential to provide ecological, economic, and community benefits in addition to clean energy. This type of development inherently attempts to address the challenges with balancing necessary renewable energy development while minimizing loss of productive agricultural land and should be further explored and incentivized in our state. We understand from conversations with developers in Maine and elsewhere that dual-use or agrovoltaics projects are often costly and complicated and that more research through pilot projects and incentives are needed.  We suggest that DACF shift the way dual-use is accounted for in the compensation requirements and tiers. Developers proposing to implement dual-use measures should see a true benefit and reduction in, or elimination of, their overall fee. One way to implement this incentive would be to allocate “negative” points for dual-use proposals so that a developer might be able to reduce their final score and shift into a different compensation tier. In the table below we suggest the inverse of the currently proposed points (in red)– with the most challenging types of dual-use (e.g, crop production and livestock grazing) on the largest percentage of land area qualifying for the biggest reduction in the total score for a project. Projects that propose little-to-no dual-use would have no impact (adding or subtracting) on their total score.  Table  Description automatically generated  We support Section 5 of the draft rules which clearly outlines how DACF will implement and regulate dual-use projects. The process for review and approval of management plans will ensure all entities are on the same page around what is expected in order to operate a dual-use agriculture and solar development and qualify for the benefits afforded to these types of projects. We also support the clear, outlined process for annual updates and withdrawal from the program.  Plans should be specifically designed for the full lifespan of the solar development, to retain farming activities and should allow flexibility for changes in farming activities within the solar development footprint throughout the life of the project. To account for unforeseen issues in a management plan’s implementation, it is important that the rules address instances where management criteria are not met due to circumstances outside of any party’s control, such as drought, disease, etc.  *Calculating compensation tiers*  Mitigation levels for the use of high-value agricultural land for renewable energy development should be based on the quality of the agricultural land being developed, and the manner in which it is developed. While we appreciate that DACF has taken “Conversion Pressure” into consideration, we believe that it should be excluded as a category when calculating compensation. This recommendation stems from concerns that by increasing compensation values in areas facing higher conversion pressure, renewable energy development would be pushed into areas with less development across the state. Siting renewable energy assets closer to established transmission infrastructure, population loads, and existing development is a preferred outcome that becomes more difficult to achieve when conversion pressure is used as a metric. Given the focus of these collective rules on solar and wind energy development and high-impact electric transmission lines, we also believe that the inclusion of “Conversion Pressure” as a category allows other forms of development to drive up compensation values that renewable energy developers would ultimately need to pay, without necessarily slowing the conversion of agricultural lands.  In instances where developers are able to demonstrate a project’s clear contribution to the ongoing viability of a farming operation through revenue diversification and/or cost reductions, reduced compensation amounts should be applied after taking into account total impacts to high-value agricultural lands. This concept was expressed by both the Maine Renewable Energy (MREA) Association and Maine Farmland Trust (MFT) with an emphasis on ancillary areas and direct partnership between the farmer and the solar developer.  Overall we support the alignment of fee ratios between this draft rule and the DEP’s proposed fee ratios. We also support the administrative clarity achieved by tasking DEP with determining which compensation fee or other form of compensation applies to avoid confusion in situations where proposed projects occur on lands that meet both the criteria for high-value agricultural land and wildlife habitat.  *PFAS-impacted farmland*  Our organizations originally suggested exempting PFAS-impacted farmland and similarly contaminated lands from mitigation fees altogether. We support the solution proposed in the draft rules to exempt PFAS-impacted HVAL from compensation fees and allow those types of projects to apply through the expedited permit-by-rule (PBR) process. This will make it easier for these types of properties to be used for other purposes while the DACF PFAS Response Team continues their work to identify mitigation strategies and remediation science. We also support the proposed rules requiring a permit for proposed projects on PFAS-impacted HVAL even when no compensation is required. Collecting data on these properties and tracking where these projects have been conducted will help inform future land use and policy decisions. More data is always useful in situations of ongoing uncertainty – like PFAS or contaminated farmlands.  *Permit-by-rule*  The administrative process for permitting should be clear, consistent, and common sense. We find the permit-by-rule (PBR) option for some projects a favorable inclusion. However, we suggest streamlining the proposed PBR option by not requiring an “alternatives analysis” or a soil survey as part of developers’ PBRapplications. These proposed requirements go beyond what is expected in a typical PBR. | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per the P.L., DACF’s rulemaking is routine technical, while DEP’s rulemaking is major substantive. Therefore, both department’s rulemaking processes will not be temporally aligned. No changes were made in response to this comment.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Additionally, the current land use is incorporated in the definition of HVAL such that it “*is not occupied by residential, commercial, or industrial uses, that substantially reduce agricultural potential; and has no structures except for i) farm-related infrastructure or ii) energy generation and transmission structures that accommodate co-located agricultural activities*.” After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio. As noted above on page 58, “forestland” is now exempt from the definition of “HVAL.” Also, please see the response above regarding active agricultural production on page 58.  As noted above on page 58, the term “locally valuable farmland” has been removed and replaced with the term “blueberry barren.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As noted above on page 59, compensation tiers have been revised. Per this comment and others, DACF incorporated two additional avenues to achieve tier zero in the final adopted rule. Applicants could conduct a portion of the site as crop production and a portion as livestock grazing to meet the percentage threshold for tier zero. Additionally, applicants could conduct a portion of the site as livestock grazing and a portion as pollinator habitat to meet the percentage threshold for tier zero.  Per this comment and others, in V2, dual-use strategies were made into a point subtractor in the Table 1 compensation structure. Unrelated to this comment, the Table 2 compensation structure was added in V3, in which dual-use strategies have a point adder instead of subtractor. This was due to the lack of categories 1 and 2 in Table 2, which would eliminate a starting value to subtract from. Regardless of whether applicants use Table 1 or 2, applicants engaging in dual-use activities have the ability to lower the compensation tier, and thus, compensation fee.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, a new definition and term was included for “management plan” in V2. The definition language was originally found in the dual-use section of the rules but has now been incorporated into the definitions section. Further, the definition was revised to specifically state “*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.*” (underline added; see section 2 for revised definition).  Additionally, DACF clarified that the required contents of the annual management plan update must include “*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*” (see section 6(2)(C)(2)). If a situation arose that resulted in the need to stop agricultural production, that situation would need to be explained in the annual management plan update. DACF understands that dual-use is relatively new to Maine and will likely take some trial and error to become successful. Even without the complexities of dual-use, farmers, in general, face many challenges from livestock diseases to crop pests. DACF understands that dual-use activities might not be successful for every year the solar energy development is in operation for reasons beyond their control. DACF will consider that when reviewing annual management plan updates and plans to be flexible if unpreventable challenges arise. However, DACF wants to ensure the permittee is making a good-faith effort to engage in dual-use activities as promised.  Per this comment and others, in V2, conversion pressure was limited to only tier 4, the 8:1 ratio. Additionally, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near urban areas, it can also be beneficial to protect farmland near these developed areas. Agriculture may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Per 38 MRSA §484-C(2), the compensation fee will be calculated by the DEP. Therefore, the hierarchy of fees will be described in their rules, which is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, the alternatives analysis requirement for a PBR was simplified in V2 (see section 5(3)(B)(1)). Additionally, per 32 M.R.S. §4903, “*No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter.*..” Since the definition of “HVAL” is largely based on soil properties, a soil survey is required, which can legally only be conducted by a Maine-licensed soil scientist. DACF believes that trying to identify PF or FOSI without evaluating the soil or trying to identify HVAL without a field-based survey would lead to inaccurate results. | | | | | | | | | | |
| Pluecker, Bill City/Town: Warren Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: SHR | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I’m the state representative from House District 44, which represents Hope, Warren, and Union. I’m also the Chair of the Agriculture, Conservation and Forestry Committee. Just want to start off by saying thank you so much to DACF for all of your continuing hard work on this issue. I think you’ve really taken on a super challenging topic and come up with something that, from my perspective, looks really fair and balanced. And I appreciate- I think there’s flexibility in the rules, which are necessary in order to keep farms moving forward, both by protecting their land and by creating opportunity for financial viability for them. I think necessarily that balance – that flexible balance – is hard to strike when you’re drafting these things. And I think we’re all reflecting that here today.  I would love to just reflect that, I think the core of this idea is farm viability. Right? So, making sure that we have the land going forward to take care of our industry. So that we have the processing that we need for dairy to keep it afloat. So we have the supply for the processors, which means, goes all the way back to having the land. But then I think also when we look at the five-acre and the 20-acre PBR- [I] want to make sure that those are workable for farmers as well. So that they have additional sources of income to stay in business. I don’t wanna be in competition with wildlife resources at all, but I’m so proud of the fact that we are saying that our agricultural land is significant. It is important to the value of the state. It’s part of our history. It’s part of our continuing cultural resources and we don’t wanna lose it.  And so, once again, just going back to the idea that striking this balance of caring for our communities by making sure that there’s electricity and energy being produced for them that’s affordable for all, but also making sure that we’re still growing the milk and the beef and the carrots that we all want to be able to have in our farmers markets. Before I was a legislator, I didn’t raise them, but I educated dozens of apprentices who are still farming in the state of Maine. And they give me calls and say, ‘I don’t have access to the hay that I need to feed my beef. I’m getting wonderful, you know, value for my beef. The prices are great. I can make this work. I just need to feed them.’  And they’re in leads. They’re competing with big solar projects going in. And we know about Warren, and I live in Warren. The 660-acre project going to Warren is very controversial for our community. It’s hard for a lot of folks to swallow. And [there’s] big meetings happening where people don’t want it to go in and people are worried about what happens at this point. So, I think that’s a little bit of what the solar industry is facing here is there’s people are seeing the panels go out, and they’re seeing the nature of their homes change, and they are made uncomfortable by it. Right?  And so, finding that balance, so that farms stay in business, the land stays open, stays in production, but also finding the energy we need is at the core of what we’re doing. So, just to sum up, looking at that PBR, making sure we have farm viability and opportunity for solar development to continue in the right ways, smart growth, and development. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by representative Bill Pluecker on 08/28/2024. | | | |
| Pluecker, Bill City/Town: Warren Date Received: 08/28/24 Method of Comment: Email Representing Organization: SHR | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Thank you for the opportunity to comment on the Chapter 575: Solar on HVAL Rulemaking. As a legislative proponent of the statute that lead to this rulemaking, I very much appreciate the process that the agency has gone through in crafting rules that find a balance between diverting solar development from our precious agricultural soils, while at the same time ensuring that farmers can continue to use solar development as a means of ensuring the long term viability of their businesses.  Our agricultural industry and our agricultural soils are endangered. From the most recent agricultural census we can see how the last few years have affected our industry. There are those that feel the losses in our industry offer the opportunity for profits, but even if our agricultural soils were completely developed for green energy production, the droughts, floods, and fires of the West, where much of our food is shipped from, will continue to threaten the supply lines we depend on for food shipped from away. Farm viability must be at the core of both our climate approach as well as our solar development.  Within the rules as drafted, I applaud the approach taken to not regulate developments under 5 acres, and making those under 20 acres not likely to require fees. I just spoke to a farmer who is planning on a solar development of 8 acres and he expected $18,000 annually in income from the development. This kind of cash infusion could be a huge boon to farmers who are just breaking even and is a great example of how these rules strike a balance in favor of the farmer.  The definition and inclusion of the concept of dual use solar production is another example of strong rulemaking. Farmers have the opportunity to develop large scale solar developments on their properties as long as the panels are situated in such a way that agricultural production can continue. Dual use production with livestock is a proven method for keeping land in both food and energy production. When it comes to intermingling vegetables and solar, it does make vegetable production less efficient, but the income potential for the farmer vastly outweighs the cost.  In the context of the national stresses that are put on our food industry by climate change, I believe it is important to divert solar development away from all High Value Agricultural Land (HVAL), not just those which are currently open or in production. This would include those currently growing trees. Large landowners in Maine continue to bankroll their operations with the increasing value of their property, and a tremendous increase in property value is represented by the potential for solar development. When Maine is called upon to once again become the breadbasket of New England due to climate stress in the West, this land will be needed. Food production already represents an increase in value for most woodlots, and thereby represents an opportunity for landowners to make money off of increased land values. By department estimates, the current definition of HVAL would only affect 13-14% of the landmass of Maine, leaving 86% of the land currently in wood production wide open to development and increasing land value. We could easily see increased demand for Maine food in the next 40 years which is the estimated life of many solar developments.  Any time that an industry is challenged by emerging regulations they are going to fight back. They have investments and investors to protect, and these rules mean that our state will be using some small percentage of their profits for the protection of natural and working lands. We must make policy in a way that reflects the long term needs of Mainers, not the short term profits of an industry. It is this long term vision which has given us the Maine we know today, from Governor Baxter and his protection of Baxter State Park to the Land for Maine’s Future Program. We need solar development for our future, and for the economic potential it holds in the coming decades for local businesses, but it cannot be done at the expense of a longer term vision for Maine’s farmers. Without the land base, we cannot survive, no matter how many grants, loans, or programs we develop to support us.  The challenges that the agricultural industry faces is not an invitation to take that which was passed down to us by our grandparents. Those challenges are a call to protect our future, to provide opportunities for near term stability with reasonable solar development, and give us the chance to hold on till the rest of New England remembers just how important Maine’s farmers are to the entire region. I encourage you to move forward with these rules centering farm economic viability and embracing smart solar development that builds an agricultural industry for the future. | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, in V2 the term “forestland” was created and is exempt from the definition of “HVAL.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response above regarding farm viability on page 64. | | | | | |
| Strauch, Patrick City/Town: Exeter Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: MFPC | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We’re concerned about forest regulations in all parts of the state as it relates to small and large landowner policy, wood supply, and opportunities to diversify landowner income that ultimately ensure long-term forest management investments. We’re like the farmers in that we see the opportunities for solar farms, wind farms, conservation easements – these are all mechanisms that create stability for the landowner community. So, especially in times like this, right now, when markets are depressed, we can maintain ownership of land.  Why am I here talking about prime ag land? When I look at the rule, I am not clear as to where the limits are when we’re talking about prime ag land. When I read it, the rule extends into forest land without limitations. As written, any parcel of land with high-value soils now becomes regulated and part of this effort. And part of this is in the staff write-up, which was very good, but it really made me understand where the philosophy of this was going. And staff write-up says quote, ‘the proposed rule does not restrict the definition of HVAL to already cleared lands or operating farms because important soils will be critical to the expansion of agriculture in Maine to feed a growing population and help Maine become more food independent. Prime soils that are currently forested that are still valuable for agricultural activities now and in the future, and are therefore included in the current definition of a high-value agricultural land.’  I know there’s some distinctions in that they get maybe a lower rating in the tier. But the policy itself is much more expansive than I think the ACF committee talked about. That means any forest land as it’s written now doesn’t have to have a farm connected to it, doesn’t have to have a field connected to it, is gonna be subject to this kind of policy. And I think that’s a much bigger discussion than we had in the ACF Committee on this issue. So, if it’s a trial balloon, I’m trying to strongly suggest we not go there. This is a big policy decision. Now that the ag committee really gave you license to determine what high-value agriculture is in in adopting these rules. So, this is a great chance to try and set the direction straight in terms of where we go with this.  So, you can see where my concern is. We think these solar projects are important, but in a state where you have a lot of privately-owned land, we need to rethink these kinds of policies. It would be better to be thinking about where can we encourage these kinds of developments to occur and put more effort into that. You have a history of that with expedited wind zones, and I think this, along with Chapter 375, are creating quite a bit of policy discussion from the forest land community. So, I’d encourage you to rethink where we’re going with this plan section in the agricultural policy. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Patrick Strauch on 08/28/2024 on behalf of the Maine Forest Products Council. | | | |
| Strauch, Patrick City/Town: Exeter Date Received: 08/28/24 Method of Comment: Email Representing Organization: MFPC | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Our primary concern with this rule is that it extends into forested land without limitations. As written, any parcel of land with high value soils (even without current agricultural land) is regulated. Although the current rule language is not specific, the published DACF rulemaking fact sheet makes clear that the intention of the rule is to include all soils suitable for farming, including forested areas in a regulated regime. The rule needs to limit HVALs to existing cleared land with a current history of agricultural use.  Staff writeup: *“The proposed rule does not restrict the definition of HVAL to already cleared lands or operating farms because PF and FOSI soils will be critical to the expansion of agriculture in Maine to feed a growing population and help Maine become more food-independent. Prime soils that are currently forested are still valuable for agricultural activities, now and in the future, and are therefore included in the current definition of HVAL. However, there are some distinctions in the compensation tiers that take current land use into account. Solar energy developments proposing to build on HVAL that is currently farmed would owe a higher compensation fee than developments that build on forested HVAL due to the current agricultural benefit of actively farmed lands.”*  While the DACF in consultation with the Governor’s Energy Office has legislatively been given discretion in defining the rules, I don’t remember a legislative discussion or intent to expand HVAL designations to forested land. MFPC considers this interpretation as a major expansion of the rule beyond the law’s intent to focus on prime farmland.  Similarly the definition of Locally Valuable Farmland creates a catch-all category that is undefined and subject to a variety of interpretations: “*farmland that does not meet the criteria for prime farmland or farmland of statewide importance and is important to the continued viability of farming or agriculture infrastructure in the region.”* This definition violates one of the Departments stated goals to “Use standards that are as objective as science currently allows to identify and protect Maine’s finite agricultural soil resources.” This definition is subjective and will create problematic public policy. MFPC recommends a more detailed definition without inclusion of forestland.  Summary:  MFPC opposes expansion of the Prime Farmland Rules by including forested lands in the definition. This issue was not contemplated by the Legislature’s ACF Committee and it would result in a major expansion of affected acres scattered throughout Maine. Both proposed DACF Chapter 575 and DEP Chapter 375 are regulatory measures that have not been coordinated in a plan to identify how that state will site energy development to meet state and regional policy goals. This lack of planning and regulatory clarity works against the orderly development of clean energy, discourages investment in our state, and makes it difficult for landowners to predict the use of their property for these purposes.  These rules need to be integrated into a statewide plan that identifies where grid scale energy development could or should occur to meet state goals. The plan would balance the need for clean energy against the protection of natural resources, including wildlife habitat and prime agricultural land. The rules would then implement the plan by encouraging development in preferred places and discouraging it in unpreferred places. We urge the Department to recommend a planning process to the Legislature and keep these rules in draft form until that plan can direct the provisions of the rule. In the interim, this rule should be amended to strictly focus on protecting prime agriculture lands that are in current use. | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response above on page 65 regarding the definition of “HVAL.”  Per this comment and others, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.”  Please see the response above on page 65 regarding the definition of “HVAL.”  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, integrating the rules into a statewide plan is outside of the scope of what the Chapter 575 rules can regulate. However, the Chapter 575 rules have a multi-tiered compensation fee approach, which places the highest fees on the agricultural land with the highest value. These fees are intended to deter solar energy development away from HVAL and towards other lands.  Regarding the comment to focus on protecting prime agricultural lands that are in current use: Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. No changes were made in response to this comment. | | | | | | | | | | |
| Daniel, Kate City/Town: -- Date Received: 08/19/24 Method of Comment: Public Hearing Representing Organization: CCSA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: In setting the context for our comments, and we’ve heard this today in other forms, but we’d like to be very clear that solar is indeed compatible with agriculture. And we appreciate the need to identify and preserve the most valuable farmland for food production. However, we must be honest about the actual impact of solar on farmland loss. As we’ve heard already, we need better data on this issue, but some simple, back-of-the-envelope analysis could still be helpful here. There are currently approximately 900 megawatts of commercial community and utility-scale solar in Maine, which equates to approximately 4,500 acres of land. The latest US Census of Agriculture shows that there is still over 1.2 million acres of farmland in Maine. And of the total of over 82,000 acres that Maine has lost since 2017 of farmland, solar is less than 5% of that.  So, we must acknowledge that not only is solar not the main driver of concerns around agricultural land, but also, as many of the commenters before me have noted, that solar can actually protect and enhance agricultural communities by diversifying revenues, allowing farmers to hold on to their land. And really, it’s important to trust farmers and landowners to do what is best for their livelihoods. We will provide written comments and I appreciate all that’s been said today. So, I have just a few additional brief areas to note.  We appreciate many areas of the rulemaking and ways in which DACF has been responsive to comments filed earlier. We still do have a few significant concerns. And those primary concerns are around the mismatch in some of the timing of the rulemaking development, particularly with the DEP chapter 375 process that we’ve heard today, as well as the several areas of undefined or undeveloped areas of rulemaking here that still leave a significant amount of uncertainty to how these rules will actually impact both solar development and farmland. We have some concerns around the definition of the high-value agricultural land, in that the scope of what's included there is overly expansive as compared to what the original intent was. And as well as the potential for compensation fees to be overly high and burdensome, even on lands that are still farmed with solar on them. Or are not likely to be farmed in the future anyway.  We do support several areas in the draft rules, and I want to thank DACF for these areas. Particularly how the start of construction is defined in order to make sure that we are protecting the agreements that landowners and farmers have put in place with their business partners. We appreciate the permit by rule process with some notes that I, you know, I share the concerns of Revision and MREA before me on some of the specifics around the permitting process there. And similarly, we appreciate the differential treatment of PFAS-impacted land and not requiring projects on land with PFAS to pay compensation. Though, there are some additional details to develop on that piece of things. So again, we will provide further details in our comments, and we greatly appreciate the process here and your time today. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Kate Daniel on 08/29/2024 on behalf of the Coalition for Community Solar Access. | | | |
| Daniel, Kate City/Town: -- Date Received: 08/29/24 Method of Commen**t:** Email Representing Organization: CCSA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We would like to be very clear that solar *is* compatible with agriculture. We fully appreciate the need to identify and preserve the most valuable farmland for food production. However, we must be honest about the actual impact of solar on farmland loss. We need better data on this issue before harshly restricting solar development, but some back of the envelope analysis can still be helpful:   * There are currently 906 MW of commercial, community, and utility scale solar in Maine on approximately 4,500 acres of land.1 The latest US Census of Agriculture shows that there is still over 1.23 million acres of farmland in Maine. Of the total of over 82,500 acres of farmland that Maine lost since 2017, land with solar makes up less than 5%.2   Meanwhile, solar is a temporary use of often only the least productive portion of a farm. Income from solar leases allows farmers to retain their land and keep it in agricultural production when they face economic hardship. The primary alternative option is to sell the land to other types of development interests, including housing, retail, or other permanent development. With these alternatives in mind, we encourage DACF to take a very specific, tailored approach to defining High Value Agricultural Land and setting the parameters for solar operating on such land.  CCSA strongly supports the proposed definition of “Start of Construction.” It is critical that landowners that have already entered into an agreement with a solar company are protected in that agreement. Without the inclusion of site control as a component of the construction/development process, farmers would lose key revenue they were counting on should the costs of a solar project rise beyond what the sponsor can bear while still making the same lease payments promised to the landowner.  CCSA has concerns regarding the current definition of High Value Agricultural Land and the resulting broad scope of land that is included. At a high level, DACF’s memo regarding the rulemaking notes that the proposed definition will impact approximately 13% of all land in Maine. While the memo presents this as a favorable statistic, the community solar industry finds it concerning as it is out of alignment with the rates of farmland lost to solar (less than 5%, as noted above). Further, the memo notes that the existing definitions of two of the three categories of the proposed definition – soils designated as prime farmland and as farmland of statewide importance – would together comprise 12.8% of Maine’s land. As this amount does not even include the third category, locally valuable farmland, we are concerned that the actual acreage of impacted land is far greater than presented to stakeholders and as intended in the statute. Locally valuable farmland is not currently defined and should not be included until it is well defined, as it introduces incredible amounts of uncertainty into the regulations.  CCSA also objects to inclusion of land that has not been in active agricultural production. This inclusion will penalize solar companies and landowners for converting land that there is no evidence has, or ever will be, actively farmed. Such an inclusion does not address the overall intent to protect local food production, as the prohibition of solar does nothing to encourage the active production of food.  We also encourage DACF to amend the rules to limit permit requirements to lands with at least 5 acres of contiguous HVAL, to align with the attributes of impacted solar projects.  We appreciate that PFAS-impacted land will not be subject to compensation, but CCSA has concerns around the requirement to apply through the permitting process. The staff’s memo suggesting that mitigation protocols may some day allow PFAS impacted land to be farmed is not a compelling reason to add any barriers to productive uses of such land. Solar on PFAS-impacted land should be encouraged, not made more difficult.  While we appreciate the use of permit-by-rule, several pieces of the permitting process are poorly defined and overly burdensome. We appreciate and strongly support the inclusion of a permit by rule (PBR) process for solar on agricultural land. A PBR regime is an appropriately streamlined and simplified way of ensuring projects meet requirements required by the law and regulations while minimizing added costs and workload to both project sponsors and the permitting authorities. Solar projects are already subject to state and local land use permit requirements, and therefore a light touch on additional agricultural permitting is appropriate. For these efficiency reasons, we would encourage you to apply a PBR for all solar projects on HVAL.  As the draft regulations are written, there are significant uncertainties and subjective procedures that CCSA finds troubling, as they do not provide solar companies or farmers with the clarity and guidance they need as to whether a project is feasible. Survey protocols are not fully defined, which means the costs and timelines of permitting are also unknown.  CCSA also has concerns about the availability of Maine-licensed soil scientists to conduct these surveys.  The requirement for an alternatives analysis is similarly not well defined and overly burdensome for farmers, landowners, and solar project sponsors. The regulations do not specify who will determine whether alternative project designs are “practicable”, or what criteria will be used to determine that the alternative analysis is sufficiently thorough. We hold that the requirement to conduct such an analysis is unnecessary, as the landowner and project sponsor are already incentivized to minimize impacts to farmland that could otherwise generate meaningful revenue through agricultural production, and the solar project sponsor has inherent incentives to minimize its lease costs and maximize the productivity of the project.  CCSA supports the use of a tiered approach to compensation but recommends reductions to the proposed levels.  CCSA supports the use of differentiated compensation amounts for projects with different impacts to agricultural land. We also strongly support the exemption for projects on PFAS-impacted land and dual use projects from paying compensation. CCSA finds, however, that the compensation levels are overly burdensome. The compensation levels for the highest tiers are prohibitive, which unnecessarily penalizes and restricts the ability of landowners to make well-informed decisions and support their livelihoods. Even the minimum compensation levels, a ratio of 0.5:1, is still a significant penalty on projects that may be sited on land classified (without clear rationale) as Locally Valuable Farmland, that has never been in use as an active farm, and that helps preserve other pieces of active farmland.  In addition, the current definition of “conversion pressure” is overly broad and not a particularly useful measure of whether land is actually in higher need for farm preservation. DACF has not provided sufficient explanation or data for why the counties identified were chosen, nor any evidence that all land within a county is under the same degree of conversion pressure. Nor does the metric or regulations consider whether requiring higher compensation for solar in such areas will achieve the assumed purpose of conserving land in that area as active farmland. We therefore recommend removing the category from scoring altogether or developing a data-driven, evidence-based metric for showing a particular piece of land is likely to stay in active farm production without solar development.  CCSA does recommend consideration of whether a solar project on farmland has a *positive* impact on agricultural preservation. Compensation requirements should be waived or at least minimized for projects that can demonstrate that the revenues from a solar project has preserved other portions of farmland that would otherwise be at risk for conversion. We also urge DACF to reconsider an exemption for farmland that includes a permanent easement for conservation after the life of the solar project. There is no more speculation or uncertainty regarding the availability of that land for farming in the future as there are for any other parcels of farmland that do not host a solar project, and in fact, there is considerably *more* protection for those areas.  Further clarification and better alignment with other rulemakings are needed before finalizing these rules. As noted above, there are several undefined or undeveloped areas of the rule that still leave significant areas of uncertainty to how these rules will impact solar and farms. We do not recommend codifying these rules before fully defining such key aspects as the types of land impacted by the rules (i.e., the inclusion of the undefined “locally valuable farmland”), requirements for demonstrating the land’s classification (i.e., soil survey protocols), and what acceptable alternative designs would satisfy the permitting requirements. Putting regulations into effect before providing the clarity needed equates to “building the plane as you fly it”, and will result in unintended consequences and implementation headaches for landowners, solar companies, and DACF alike.  Several parties at the August 19 public hearing also noted the potential for unintended and increased impacts to species habitat regulated under the Department of Environmental Protection’s Chapter 375 rulemaking, also directed by LD 1881. We echo these concerns and recommend that DACF and DEP have a comprehensive understanding of land subject to compensation or mitigation, the levels of compensation required on various types of land, and the relative tensions that may cause. We also recommend that the effective compensation requirements are aligned in timing, which given that the DEP Chapter 375 rules are major substantive rules that will require legislative approval, is not currently the case. | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Regulating HVAL conversion for uses other than solar energy development is outside the purview of the Chapter 575 rules and the P.L. it implements. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Unrelated to this comment, the definition of “start of construction” was slightly modified (see section 2 for revised definition).  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. No changes were made in response to this comment.  While large, contiguous acres of HVAL are certainly beneficial for farming purposes, DACF feels that even one acre of HVAL is worth protecting. This is especially true considering the rapid loss of farmland and the small percentage of HVAL within the state. No changes were made in response to this comment.  The DACF Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J (Effective July 31, 2024. Revised August 22, 2024) can be found on the DACF website here: <https://www.maine.gov/dacf/ard/resources/docs/pfas-solar-contamination-determination-82224.pdf>. As the Departmental policy and Chapter 575 rules are currently drafted, PFAS-impacted HVAL with concentrations of PFOS over 100 ppb would be subject to the Chapter 575 rules but no compensation fee would be required for constructing a solar energy development on this land. HVAL with concentrations of PFOS under 100 ppb is not considered PFAS-impacted and would be subject to the Chapter 575 rules, including potentially requiring a compensation fee for constructing a solar energy development on this land. This structure is intended to discourage solar energy development on land with a low enough level of PFAS that it is still safe to use for farming.  Applying a PBR for all solar projects on HVAL would defeat the purpose of the statute. Under the current structure, projects that obtain a permit via a PBR are not required to pay a compensation fee. Without individual permits, and thus without compensation fees, the rules would not be implementing the compensation tiers, creating a compensation fund, or conserving farmland as directed by the P.L. No changes were made in response to this comment.  DACF already has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” The HVAL identification protocol will not change how PF and FOSI are determined. The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. After careful consideration, no changes were made as a result of this comment.  A field-based survey requires a 1) high-level assessment of current or past site uses, 2) a high-level inventory of on-site structures, and 3) an inventory by a licensed soil scientist of soil resources. Per 32 M.R.S. §4903, “*No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter...,*” therefore, the inventory of soil resources can only be conducted by a Maine-licensed soil scientist. Most Maine-licensed soil scientists are a member of the Maine Association of Professional Soil Scientists (MAPSS). In our coordination with MAPSS, they have not indicated any concern that there would potentially be a shortage of Maine-licensed soil scientists.  However, per this comment and others, the definition of “field-based survey” was amended in V2 such that a soil scientist is not required to be the entity evaluating on-site structures or current/past site uses since it doesn’t require practicing soil science. Additionally, if the property is disqualified from being considered HVAL due to on-site structures or current/past site uses, then a soil scientist is not required to survey the site.  Per this comment and others, the alternatives analysis requirement for a PBR was simplified in V2 (see section 5(3)(B)(1)). Additionally, the alternatives analysis definition was made to be more specific to the level of effort required with regard to minimum and maximum page lengths. Alternatives analyses are standard practice for evaluating a project’s effect on certain resources. For example, DEP requires an alternatives analysis for proposed impacts to wetlands and waterbodies.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio. DACF also incorporated two additional avenues to achieve tier zero in the final adopted rule. As noted above on page 68, the term “locally valuable farmland” has been removed. Also, please see the response above on page 69 regarding active agricultural production.  Farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. This is why conversion pressure is used to evaluate “whether land is in a higher need for farm preservation” since it shows the risk of whether farmland would be converted due to urban sprawl. However, per this comment and others, conversion pressure has been limited to only tier 4, the 8:1 ratio. Further, the definition of “conversion pressure” was revised in V2 and V3.  Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[6]](#footnote-6) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website, and state what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated.  Please see the response above on page 68 regarding “farm viability.” Per 38 MRSA §484-C(4), an applicant may also choose to conserve other land instead of paying a compensation fee.  Per the P.L., DACF’s rulemaking is routine technical, while DEP’s rulemaking is major substantive. Therefore, both department’s rulemaking processes will not be temporally aligned. Additionally, please see the responses above regarding locally valuable farmland, HVAL identification protocol, and alternatives analyses.  As noted on page 71 above, compensation tiers have been revised. More specifically, the revised Chapter 575 draft rules only require an 8:1 ratio for projects 1) in a county with high conversion pressure, 2) that don’t meet the case of farm viability, 3) that engage in little-to-no dual-use, 4) that are on PF and FOSI, and 5) that are on active farmland. These are lands DACF deems to be the most important agricultural lands to protect, thus requiring the highest compensation fees. Additionally, as noted on this page above, both departments’ rulemaking processes will not be temporally aligned. | | | | | | | | | | |
| Knapp, Dale City/Town: -- Date Received: 08/19/2024 Method of Comment: Public Hearing Representing Organization: Walden | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I was actually very active when this was in legislative committee in May of 2023. Initially, the rule contained the language that identified prime farmland and soils statewide importance as being the resources to be regulated in this law. Ultimately, after some testimony and some back-and-forth, I think the committee and the legislature wisely removed that language from the bill and directed DACF to develop a unique definition for high-value agricultural land. You know, prime and soils of statewide importance is an NRCS definition. These are truly soil potential ratings and, you know, that definition and data is not suitable for use in regulatory purposes or for permitting and they make that abundantly clear. So, I think that, you know, the proposed rule goes right back to that, to some degree, in defiance of what the legislature directed the department to do.  Now I recognize that, you know, part of this is, you know, the soil physical and chemical characteristics that make a soil potentially suitable for use as agriculture. I think when we think- when I think about high-value agricultural land, you know, there’s another factor to it. And I think that the department needs to do more work there. Potentially, it is that it produces a crop yield. It is a part of a working farm. I think this needs to be narrowed down and specified a little bit better, I think, as directed by the legislature.  And looking at these rules, some of the things that I struggle with, I think about, you know, the conversion of forest to field. And, you know, ultimately, you know, in some of these instances, if you have an area that’s identified as prime farmland, there may be a limiting factor that’s present, such as, I think it was mentioned earlier, stony- stony ground or just being covered by forest period, you know, makes it costly to transition that site into active use as agriculture. So, let’s say, hypothetically, we install a solar facility, and we’ve removed the rocks, we level the site, we remove the forest land, and we establish meadow cover under those panels. These- most of these projects have a long-term lease, but that lease has a lifespan. So, eventually that lease terminates, and the use of that land reverts to the underlying landowner.  So, I think I heard it mentioned earlier, kind of this ‘highest and best use’ principle. You know, if in 30 years when that site is decommissioned as fully funded prior to breaking ground, if, then the highest and best use for that land is agriculture, it will be the most suitable site for agriculture, you know, post-operation. You know, the rocks will be clear, the trees will be gone. You know, it’ll be, you know, ready to produce a better crop you choose. And so, I think some of the- some of the rules, even in instances where you take a forested condition, convert it to a solar field, and you use- you meet the qualification for dual-use agriculture, you’re still paying a fee. So, you know, you’re converting forest into a solar farm that is also an agriculture operation. And you know, there’s a cost tied to that. So, it sounds – seems to me like there are components of this rule that, you know, are kind of penalizing developers for doing what ultimately would be beneficial for agriculture. I will provide more detailed written comments. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  Please see DACF’s response below to the written comments provided by Dale Knapp on 08/28/2024 on behalf of Walden Renewables. | | | |
| Knapp, Dale City/Town: -- Date Received: 08/28/2024 Method of Comment: Email Representing Organization: Walden | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** My comments will be focused on three areas, the proposed definition of HVAL, how the department proposes to define impact, and the broader impacts of creating more barriers to our legislative mandate to transition from harmful fossil fuels to renewable energy.  The proposed definitions in the draft rules utilize the Natural Resource and Conservation Service (NRCS) definitions of both Prime Farmland and Soils of Statewide Importance. The original language proposed LD 1881 in early 2023 utilized these definitions, I provided testimony to the Joint Standing Committee on Environment and Natural Resources that the NRCS states explicitly in their published Use Limitations that “This data set (Farmland Soils) is not designed for use as a primary regulatory tool in permitting or siting decisions”1. The committee amended the language of the bill and directed the DACF to create and define a new category of soils (HVAL) that would be applicable to regulate under these rules. The newly enacted law states that *HVAL means land that has a high value for agricultural use, as determined in accordance with rules adopted by the Department of Agriculture, Conservation and Forestry, in consultation with the department and the Governor’s Energy Office.*  The NRCS data set does not necessarily portray land that Is currently used for farming; It Identifies potentially productive soils that may be suitable to be farmed, IF managed for that purpose. The Farmland Soils data does not incorporate current land use changes which may affect the farmland soil designation, nor site specific conditions such as available water capacity or surface cover.  The use of this data set is inappropriate for Chapter 575, as the definitions below contain soils that could harbor the “potential” to have a high value for agricultural use, but that is not necessarily the case. Existing slopes, stony ground cover, depth to bedrock or restrictive layers, water holding capacity, could all easily be considered shortcomings for areas mapped as Prime Farmland or Soils of Statewide Importance that would prevent these areas from functioning for “High Value Agriculture”. The formal definition of these types of farmland are far too broad to be incorporated into any rule and were never intended for that purpose, specific and defined criterion must be developed and incorporated to create a definition unique to HVAL.  The NRCS defines these resources as follows:   * Prime Farmland Soils:   + Soils that have the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oil seed crops, and are also available for these uses (the land could be cropland, pastureland, rangeland, forestland, or other land, but not urban built-up land or water). It is expected to possess the soil quality, growing season and moisture supply needed to economically produce sustained high yields or crops when treated and managed, including water management, according to acceptable farming practices. * Statewide Important Farmland Soils   + Soils that fail to meet one or more of the requirements of prime farmland, but are important for the production of food, feed, fiber, or forage crops. They include soils that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods.   I understand that there are additional definitions and methodologies pending that may provide clear and measurable characteristics that would further define and categorize HVAL, but the existing rule as proposed contains no detail regarding the specific process by which HVAL is categorized. The rule includes the NRCS definition, which in both my opinion and the NRCS published opinion is not suitable for regulatory purposes such as inclusion in Chapter 575. Further work needs to be completed to provide specific and measurable criteria for determining what should be reasonably regulated as HVAL.  The state of Maine has a long history of determining what should be reasonably regulated and compensated for as an “adverse” impact. The current rules could benefit from additional reductions in compensatory mitigation required if the proposed solar facility does not constitute an unreasonably adverse impact on HVAL.  The NRCS has issued a public memorandum that ground-mounted solar does not represent a permanent loss of farmland soils. I have attached a memo here published by the NRCS on this issue (See Attached MAINE INSTRUCTION – 440-384). If a solar project operates on a ground lease, not ownership, as most energy projects do, and the project is subject to the Maine Solar Decommissioning Law (35-A M.R.S. §§ 3491 – 3496), it will be removed from operation at the end of its useful life and the land returned to a natural state, wholly suitable for a higher value for agricultural use post-operation than pre-construction. The NRCS has published numerous studies that show maintenance of vegetation on a field, maintaining a “no-till” approach to management, and taking an are out of active crop rotation is the best practice for restoring and maintaining soil health and fertility. There should be fee reductions available for a project commitment to maintain such practices to improve soil health and fertility and a term limit to a lease agreement that would allow for the land to be available again beyond the life of the project for use as agricultural land, if market conditions all for such use, or another viable use the landowner determines appropriate. This is an important concept to revisit again, the assumption that properly constructed solar projects will have adverse impacts on our soils is inaccurate, and often times there are tangible benefits to farmland soils.  Under the rules as currently drafted, compensation would still be required even in a case where a solar project is sited on forested land determined to be HVAL that employs dual use management. Building on the previous narrative, say a forested area mapped as HVAL is covered with a limiting factor such as a very stony surface, but is cleared and the stones are removed as part of the construction of a solar energy facility, and the facility used managed for dual use for both energy production and agriculture, then active farmland is being created, not lost, and no fee should apply. When the facility has reached the end of its useful life, an agricultural field that did not exist prior to the development of a solar facility, stands ready for beneficial use post decommissioning. These are important realities that do not seem to factor into these rules. If the definition of HVAL is updated to exclude these types of areas that are not suitable for agricultural use today are removed, this becomes a non-issue, but this comment applies to the rules as written.  My final comment is intended to address the proposition that this rule will not have an adverse impact on the proliferation of renewable energy projects but will only be encountered sporadically. The rulemaking memo purports that these soils are only mapped as 14% of the state, while this may be true, there are huge portions of the state that are served by neither roads, nor transmission infrastructure and projects could not be sited in these locations. As can be seen from the attached figure (Attachment 2) these soils account for more than 40% of the land area in most communities served by electrical infrastructure, where renewable energy projects need to be located to serve load without lengthy and costly transmission lines.  We ran an analysis of the compensation fees that would be associated with several projects should these rules be implemented as currently drafted and assuming that the NRCS maps of Prime Farmland and Farmland of Statewide Importance and are accurate for regulatory purposes (knowing this will definitely not be the case). The results of our analysis show that the numbers represent significant increases in the cost of the project, which will drive development toward forested lands and wetland areas (where compensation ratios are actually lower in many cases). For a 20 megawatt solar project, the capital cost of the entire facility today would be approximately $28 million, a compensation fee for constructing a facility on an upland field with 40 acres of the projects total 120 acres footprint of roughly $1 million, that constitutes a 4 % increase in the total cost of the project. While that might not sound like much, the margins on renewable energy projects are already extremely thin. A table illustrating the fees for three projects that have received permits from the Maine DEP is included below. Pair these significant compensation fees with ever increasing costs in interconnection, labor, and materials means projects such as these will not get built and deliver their low-cost renewable energy to Maine ratepayers. One only has to look to the grid scale projects awarded by the Maine Public Utilities Commission in the last five years, skyrocketing costs have led to abandonment and cancellation of power deliver commitments and the high cost of this rule will only exacerbate the situation.  A picture containing table  Description automatically generated  I strongly recommend that specific definitions be developed to narrow the areas within the state that would meet the definition of HVAL. As currently defined it is far too subjective to be incorporated and consistently applied in the proposed rules. Provide credit, where credit is due, if land that is unsuitable for farming purposes is improved by the installation of an energy facility with the defined operational end date, do not penalize the mutual benefit of such a project.  Balance our current needs with the land we have available, if a 50-acre array on a farm provides an annuity that supports the economic viability of the farm, allow this, without penalty. The big picture calls for all hands-on deck, not binding one behind our collective backs. The need for a renewable energy transition is of paramount to Maines future, creating barriers or impediments exclusive to the siting of these low impact, and predominantly temporary facilities is harmful to us all. If not renewable energy, then what will go on these fields, in many instances housing and commercial development will permanently occupy that land, and it will be a use that goes unregulated with regards to HVAL.  1 GM\_430 – Title 430 – Soil Survey 402.6 Limitations on Use and Distribution of Soil Survey Information  Attachment 1 NRCS MAINE INSTRUCTION – 440-384 | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The citation provided by the commenter can be found in the Technical Soil Services Handbook and states “*402.6 Limitations on Use and Distribution of Soil Survey Information A. Soil surveys seldom contain detailed site-specific information and are not designed for use as primary regulatory tools in site-specific permitting decisions, but are useful for broad regulatory planning and application. Official Soil Survey Information is public information and may be interpreted by organizations, agencies, units of government, or others based on their own needs; however, users are responsible for the appropriate application of soil survey information. NRCS will not accept reassignment of authority for decisions made by other Federal, State, or local regulatory bodies. NRCS will not make changes to Official Soil Survey Information, or of any supplemental soil mapping, for purposes related solely to State or local regulatory programs.*”  The USDA NRCS website states “*The Technical Soil Services Handbook provides authority, responsibilities, definitions, guidance, and procedures for technical soil services within NRCS.”* Finally, the National Soil Survey Handbook states its purpose in section 600.1: “*The National Soil Survey Handbook and other technical and procedural references provide the standards, guidelines, definitions, policy, responsibilities, and procedures for conducting the National Cooperative Soil Survey (NCSS) in the United States*” (underline added). In summary, the Chapter 575 rules do not use the NRCS NCSS soil data of PF and FOSI, only the definitions. Regardless, at no point has NRCS recommended against using the *definitions* of PF and FOSI for permitting or siting decisions. No changes were made in response to this comment.  A soil survey by a Maine-licensed soil scientist is required to identify PF and FOSI using the most recently updated version of the DACF guidance document “[*Determining Prime Farmland Soils And Soils Of Statewide Importance For Siting Solar Projects In Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” The fact that NRCS data may not necessarily be the most accurate or up-to-date is precisely why the Chapter 575 rules require a field-based survey to verify on-site conditions. No changes were made in response to this comment.  As noted on this page above, the Chapter 575 rules do not use the NRCS NCSS soil data of PF and FOSI, only the definitions. DACF already has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” This guidance document incorporates soil erodibility (which includes slope), surface stoniness, depth to water table, permeability rate of the soil, and water supply. The HVAL identification protocol will not change how PF and FOSI are determined. However, per this comment and others, DACF revised the definitions of “prime farmland,” “farmland of statewide importance,” and “field-based survey” to specifically reference using this guidance document.  The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. Additionally, at no point has NRCS recommended against using the definitions of PF and FOSI for permitting or siting decisions. No changes were made in response to this comment.  The Chapter 575 rules incorporate a PBR option for projects below 20 acres, which would not owe compensation. Additionally, the Table 1 compensation structure is designed to incorporate fee reductions for a number of mitigation strategies. The compensation tiers were revised in both V2 and V3, which now incorporate two new avenues to achieve tier zero, and thus, zero compensation fee.  The referenced Maine Instruction 440-384 states “*Ground anchored solar installations are not considered to be irreversible conversions of farmland to non-agricultural uses by Maine NRCS*.” However, even with all solar components removed, construction and decommissioning activities can disrupt the soil structure and cause soil compaction to farmland that can take years, if not decades, to restore. After decommissioning, the land may still be considered farmland but may be degraded in quality to the point where it is no longer considered HVAL. DACF considered the possibility of a fee reduction for projects that can show an improvement to the soil health and fertility of the site. However, if the soil health and fertility are not improved after a 30 to 40-year lease, DACF would not have any recourse to recoup the compensation fees. Therefore, this option was not incorporated into the final adopted rules. No changes were made in response to this comment.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  While it is beneficial to site solar developments near transmission infrastructure, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher land-use conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. No changes were made in response to this comment.  As noted above on page 74, the Chapter 575 rules do not use the NRCS NCSS soil data of PF and FOSI, only the definitions. With the removal of “forestland” from the definition of HVAL, compensation ratios will no longer be at odds between HVAL and large undeveloped habitat blocks as described in DEP’s Chapter 375 rules. However, per this comment and others, compensation tiers were revised in both V2 and V3, which now incorporate two new avenues to achieve tier zero and thus, zero compensation fee.  Additionally, it's not the case that impacts to HVAL or habitats would trigger larger compensation requirements than impacts to wetlands. The 1:1 wetland compensation ratio is for restoration or creation of wetlands, not preservation. The ratio for preservation of wetlands is 8:1 (or 16:1 for wetlands of special significance). Furthermore, while the [in-lieu fee calculation](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fdep%2Fland%2Fnrpa%2FILF_and_NRCP%2FILF%2Ffs-in-lieu-fee.pdf&data=05%7C02%7CCaitlyn.Cooper%40maine.gov%7C6ea158665471422e196608dcd762f219%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638622067168298703%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=7wTnbr8qXEd7QEt9FwvoSa60jQAxmelgH%2BjurEgmElg%3D&reserved=0) for wetland impacts is calculated at 1:1 or 2:1, this calculation *accounts for the cost of wetland restoration*, which comprises almost the entirety of the fee calculation. For impacts to habitats and HVAL, the fee calculation would occur at a ratio between 0.5:1 and 8:1, but it would account *solely for the cost of land preservation* (not restoration) in the form of the appraised land value. Therefore, the fee amount for habitats and HVAL would amount to a tiny fraction of the fee amount required for wetland impacts, on a per-acre basis.  As noted above on page 76, the definition of “HVAL” has been revised. Additionally, the P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Land that is unsuitable for farming purposes, as confirmed by a field-based survey, would not be considered HVAL and would not be subject to the Chapter 575 rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. Additionally, the P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, permitting housing or commercial development is outside of the scope of what the Chapter 575 rules can regulate. | | | | | | | | | | |
| McEvoy, George H. City/Town: Boothbay Harbor Date Received: 08/20/2024 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am writing to support LD 1881 which was put into place to protect Maine’s farmland. Farmland protection is critically needed in the State of Maine. Based on the U.S. Department of Agriculture’s most recent Census of Agriculture, released this year, Maine lost more than 82,000 acres of farmland and 564 farms between 2017 and 2022. Solar development adds to the pressure already facing farmland and the open, high-quality fields best suited for agriculture. While solar development is critical for Maine’s energy future, taking a balanced approach that protects our best farmland and soils is vital for our farmers, farming communities and food systems. Maine’s best farmland is a limited resource and should be prioritized for current and future agricultural production. I hope you support the continuation of LD 1881. | | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | |
| Sheridan, Paul City/Town: Northport Date Received: 08/20/2024 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I can only hope that the Bangor Daily News article on these draft rules was a case of sloppy reporting!    Here: <[https://www.bangordailynews.com/2024/08/20/politics/state-politics/maine-solar-developers-farmland-protection-rule-criticism/](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.bangordailynews.com%2F2024%2F08%2F20%2Fpolitics%2Fstate-politics%2Fmaine-solar-developers-farmland-protection-rule-criticism%2F&data=05%7C02%7Cagenergy%40maine.gov%7C2d58a2cd45a34050722108dcc18441b0%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638598021006559586%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=CfE0NMNvhhV1%2FENlf2yp1wuhOtLdE76O7HX7HJtf11s%3D&reserved=0)> “Solar developers take aim at Maine farmland protection rule” My COMMENTS: I can see the several sides to this issue–yes, solar panels can take land out of production, but maybe not as permanently as housing and paved parking lots, for example.  But this paragraph (hoping this was not just sloppy reporting...?)–“......Under regulations *drafted* by the Maine Department of Agriculture, Conservation and Forestry, *developers would have to assess if their project was on high value agricultural soil.* They would then need to pay compensation to offset the cost of losing access to the land.” The developer “would have to assess if their project was on high value agricultural soil???” And then get some compensation levied against their project? That certainly does not seem a neutral way to make a determination! What are the odds that developers WANT it to be determined as “high value agricultural soil?”?? Do the *developers themselves* take the soil samples (assume plural, as a field can vary over its surface)? Or is there a neutral third party going to be tasked with collecting the samples and determining if theses are “high value agricultural soil”? So, is the Maine Department of Agriculture, Conservation and Forestry okay with the fox guarding the hen house? | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, housing and paved parking lots are outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment.  The definition of HVAL includes PF, FOSI, and wild blueberry barrens. Only a Maine-licensed soil scientist can verify the presence of PF and FOSI via a soil survey. Further, soil testing is not a requirement of the Chapter 575 rules, only a field-based survey. Maine-licensed soil scientists are overseen by the Maine [Board of Licensure of Geologists and Soil Scientists](https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-geologists-soil-scientists) but would be hired by the developer or applicant. Regardless, if there is a concern that a soil scientist is not acting neutral, ethically, or honestly in their role, a complaint can be filed with the [Office of Professional and Occupational Regulation Complaint Unit](https://www.maine.gov/pfr/professionallicensing/home/file-a-complaint), which may result in disciplinary action ranging from a formal warning to revocation of their license. For more information, please see Chapter 3: *Code of Ethics* and Chapter 6: *Complaints, Investigations and Adjudicatory Hearings* under the State Board of Certification for Geologists and Soil Scientists [Rules](https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-geologists-soil-scientists/home/laws-rules).  Additionally, a field-based survey to identify HVAL such as wild blueberry barrens may be conducted by an environmental scientist, engineer, consultant, site evaluator, or a qualified individual. The results of the field-based survey will be provided to DACF for review. Per section 9(3)(F), “*The filing of (i) a permit application for the construction of 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.*” Therefore, DACF will be able to conduct site visits to verify the information presented to it. No changes were made in response to this comment. | | | | | | | | | | | | | | |
| Fish, Gary City/Town: Augusta Date Received: 08/23/24 Method of Comment: Email Representing Organization: DACF | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Just sending a comment on the definition of Agricultural Products. I prefer a more straight forward approach to nursery/greenhouse ornamental crops.  Title 36 they define Commercial Agricultural Product as:   1. “Commercial agricultural production” means commercial production of crops, maple syrup, honey, plants, trees, compost and livestock.   In the draft rule, “Agricultural Products” are defined as:  3.       AGRICULTURAL PRODUCTS. As defined in 7 M.R.S. § 152(2), “agricultural products” are defined to mean 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; or  I.        any other plant, animal, 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.  The highlighted part of the list always seems ambiguous to me. Is it any plant or only any plant that supplies humans with food, feed, fiber or fur?  I would prefer to see it like this:  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, trees, annual and perennial ornamental plants and other similar products; or  I.        any other plant or animal, or plant or animal products, that supply humans with food, feed, fiber, or fur.  I think it should clearly show that Horticulture is also Agriculture. | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment, the definition of “agricultural products” was revised in V2 and V3. The State of Maine doesn’t currently have a definition for “horticulture” in statute. However, Brittanica defines it as “*the branch of plant agriculture dealing with garden crops, generally fruits, vegetables, and ornamental plants*.”[[7]](#footnote-7) The revised definition of “agricultural products” now incorporates those garden crops. | | | | | | | | | | | | | | |
| Grogan, Althea City/Town: -- Date Received: 08/24/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I desperately urge the DACF to be extremely strict regarding new rules for solar permitting. Maine is the most forested state in the nation and we have a rich history of responsible forestry and land management. The new solar fields being developed across the state are destroying that history. Every week I see a new swath of land clear cut and gutted for solar farms and I see the beauty of our state being chipped away.  Moreover, the loss of agricultural land to solar development is extremely concerning. It has never been more important to protect farmland and protect our food independence. The consequences of indiscriminately blanketing the countryside with solar panels will be devastating to our environment, biodiversity, soil health, and more. We are already seeing these consequences in the form of severe erosion and flooding on homeowner property neighboring solar developments. Solar infrastructure should be infilled in cities and industrial areas NOT farms and forests. Please, protect these areas and conserve Maine’s beauty and heritage. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | |
| Kalloch, Norman City/Town: Carrying Place Town Township Date Received: 08/25/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I support the proposed guidelines as described in LD1881. Prime farmland soils and other important agricultural soils need protection to maintain the land resource base in Aroostook County for current and future agricultural endeavors. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | |
| Pike, Frederick City/Town: -- Date Received: 08/27/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Stop littering our beautiful views with these hideous solar farms! There’s plenty of land where they could be installed out of view. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | |
| Svedlow, Aaron City/Town: Falmouth Date Received: 08/27/24 Method of Comment: Email Representing Organization: NLE | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Leasing land for solar provides a predictable revenue stream which often allows landowners to keep other property in active agricultural production or avoid having to sell property for more permanent types of development (e.g., residential or commercial buildings).  Solar energy projects have minimal to no impact on agricultural soils and give those soils an opportunity to rest and become more fertile. Please see list of peer reviewed literature citations attached, these are studies of various potential impacts of solar on farm land and habitat. We work hard to assure that our solar projects have a positive impact on soil health by allowing soils to lay fallow with long term beneficial cover crops such as legumes, radishes, and other soil restoring graminoids and sedges. We also have implemented grazing, pollinator habitat at our projects and promote other agricultural activities (e.g., community gardens, new farmer training programs).  We seek to assist the Department’s rulemaking to assure the rules respect private landowner’s property rights and Maine’s agricultural land. Farming in Maine is increasingly economically challenged, and by making solar more challenging to build on farms, we must be careful not to reduce the options farmers have to generate revenue from their properties. Many farmers I speak to are concerned with the future of their farms, they see solar as another “crop” that can help them keep farming and avoiding selling their property for other uses that would forever prevent agriculture on the property. Regulations should avoid limiting a farmer’s options for deriving revenue from their properties, especially revenue from environmentally positive activities like solar energy.  PFAS affected farms and properties of all type should have no restrictions or requirements for mitigation. PFAS contamination has severely affected the properties in Maine, and the state should be doing everything possible to help PFAS affected landowners derive value from their land.  Supportive of the following aspects of the draft rules  • The inclusion of compensation tiers.  • The option of a permit-by-rule for some projects.  • Exempting projects that are already deep in development.  Suggested areas of improvement  Definition of “high value agricultural land” (HVAL) is vague and exceptionally challenging to interpret.  Additionally, in lieu of repeating all of Maine Renewable Energy Association’s (MREA) comments we will simply indicate that we support MREA’s suggested edits.  The definition of “Farmland” appears to largely mirror the tax law definition of farmland. However, the fact that it is wholly defined in the proposed rule – as opposed to simply referencing the statute – suggests that there is a difference.  It is unclear, under the definition of “Field-based Survey” and otherwise, whether protocols would require delineating the boundary between prime farmland, farmland of statewide importance, and locally valuable farmland. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  No changes were made in response to this comment as it does not specify a request for revisions to the requirements of the draft Chapter 575 rules.  Please see the response above regarding farm viability.  The DACF Policy for the Determination of PFAS Contaminated Land Pursuant to 35-A MRSA § 3210-J (Effective July 31, 2024. Revised August 22, 2024) can be found on the DACF website here: <https://www.maine.gov/dacf/ard/resources/docs/pfas-solar-contamination-determination-82224.pdf>. As the Departmental policy and Chapter 575 rules are currently drafted, PFAS-impacted HVAL with concentrations of PFOS over 100 ppb would be subject to the Chapter 575 rules. However, if the only HVAL that a project anticipates impacting is considered PFAS-impacted HVAL, then the applicant is allowed the opportunity to pursue a PBR and would not be subject to compensation requirements. If the project anticipates impacting multiple types of HVAL, including PFAS-impacted HVAL, and is not eligible for a PBR (i.e., the project is larger than 20 acres in size), the applicant will have to pursue an individual permit but would not be subject to compensation fees for the PFAS-impacted HVAL.  HVAL with concentrations of PFOS under 100 ppb is not considered PFAS-impacted and would be subject to the Chapter 575 rules, including potentially requiring a compensation fee for constructing a solar energy development on this land. This structure is intended to discourage solar energy development on land with a low enough level of PFAS/PFOS that it is still safe to use for farming. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the requirements of the draft Chapter 575 rules.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Please see DACF’s responses to MREA’s comments on pages 23-29.  Please see DACF’s response to the same comment presented by MREA on page 26.  Please see DACF’s response to the same comment presented by MREA on page 26. | | | | | | | | | |
| Tillson, Jasmin City/Town: -- Date Received: 08/27/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am emailing you concerning Chapter 575. It is less of a question about high-value land, and more about how poorly placed solar panels are in general. All of the land in Maine should be highly valued. There should be no harm done to the environment in this venture; it is supposed to eliminate the harmful side effect of energy consumption. Cutting down trees, or placing solar panels on land that should be untouched is not the right way to go about it. We are taking a good thing and ruining it with the placement of these panels, and it is honestly just stupid.  The best place to put them would be on top of shopping mall stores. For example, on the north 95 exit on Western Ave in Augusta. There is a whole shopping strip right next to a small solar panel farm that is full of flat rooftops that we could have put those solar panels on. Cutting trees down – which is decimating habitats for animals in the city – to place solar panel farms is a highly uneducated and irresponsible action on the governments part. Many people were excited by this ‘greener’ option for energy, and you have let all of us down. Listen to the word of your people. Prove us wrong in saying shopping malls would be a better option for solar panels placement. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | |
| Marshall, John L. City/Town: Sedgwick Date Received: 08/27/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** LD1881 requires that solar energy projects in Maine that occupy viable farmland will be required to pay a compensation fee for land taken out of potential agricultural use. 95% of land lost to development in Maine over the next 20 years will not be devoted to renewable energy, and will therefore be exempted from compensation fees. Why is this? If the purpose of the Act is to save agricultural land for the future (or for that matter to increase State revenues or the State bureaucracy) I submit that requiring fees for all development would maximize the effect. With regard to preserving agricultural land I note that land devoted to photovoltaic arrays is readily returned to agriculture when it is no longer being used to generate power. Most other types of development (housing, parking lots, warehouses, shopping malls, gravel pits, fuel storage facilities, etc.) permanently destroy arable land. I conclude that singling out renewable energy projects for the punishing fees and inconvenience represents either capitulation to the fossil fuel lobby or perhaps just pure stupidity. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  DACF recognizes that other forms of development are a threat to HVAL. However, the P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, regulating other forms of development is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | |
| Phillips, Niki City/Town: -- Date Received: 08/28/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** No more solar panels! They are taking away from the animals who live here and they are ugly! How many years will it be before these big , ugly, pieces of metal will be abandoned in fields everywhere because of the next big thing to come? You see it everywhere with abandoned building. This will be the same! No more Solar Panels! | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | |
| Kenney, Maxwell City/Town: -- Date Received: 08/28/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** The comments here are on behalf of me and my family, not any renewable energy development company or industry organization. My fondest memories of growing up on my family’s farm in Fairfield include learning how to plant corn in straight rows from my grandfather, milking cows with my cousins on Friday nights and harvesting a turkey with my dad on opening day of the annual spring hunting season. I didn’t know it at the time, but without a doubt, my experiences on the farm have shaped me into the person I am today.  In the 1970s my grandfather agreed to accept municipal sludge for beneficial reuse as fertilizer on select crop fields around the farm. This practice was approved, licensed and encouraged by the state of Maine as an environmentally responsible way to handle community waste. At the time, nobody on the farm knew that me and my four cousins would be the last generation of kids to grow up raising animals and learning life skills on Tozier’s Dairy Farm. In July of 2019 my family received notice that milk from our farm had been detected with high levels of P.F.A.S. and could no longer be sold. We had never heard of PFAS and had no idea how it could have gotten into our milk supply.  Over the next several months we continued to milk our cows twice a day, each day dumping the milk collected down the drain, a sight that would make any dairy farmer cringe. We hoped that testing would show our milk was safe. Eventually, with support from the Maine DEP, we were able to determine the municipal sludge spread on the crop fields nearly 50 years prior contained super elevated levels of a tiny forever chemical that would change the agricultural and economic viability of our 10th generation family farm forever.  Today, several years later, our family farm sits dormant. Overgrown corn fields, barns falling into disrepair, and ever-increasing property taxes requiring payment. The hundreds of cows my cousins and I named, raised and milked every day were dispatched and composted in the pastures that fed them for generations. My family continues to hold out hope for a way to permanently remediate the PFAS contamination that plagues our farm and so many other communities across Maine. However, with hundreds of acres of contaminated land and no livestock producing income, we are faced with few options.  Shortly after our farm was discovered to be highly contaminated with PFAS and deemed unfarmable, we were approached by several large scale solar energy developers eager to develop grid scale solar projects on our farm. My 85 year old grandfather who took over the family farm at 15 years old, when his parents passed away, was hesitant to consider development of any kind on the land that had sustained our family for centuries. Reluctantly he agreed and we had hope that solar development may be the financial lifeline that would allow our family to keep ownership of the land.  Nearly five years later our farmland sits empty. No cows, no tractors bailing hay, no kids harvesting their first deer and zero solar development. All the while we watch hundreds of acres of forested land in Benton and farms without PFAS contamination right down the road moving forward with large scale solar development. To date, there has been no incentive to develop PFAS contaminated land over other land including high value agricultural lands.  The passage of LD 1519 *An Act to Promote Economic Reuse of Contaminated Land Through Clean Energy Development* and subsequently LD 1881 *An Act Regarding Compensation Fees and Related Conservation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-impact Electric Transmission Lines Under the Site Location of Development Laws* has been encouraging for our family and I believe the general public. From our perspective there is growing community discontent for solar development, however there is wide public support for locating solar development on farmland with significant PFAS contamination.  My family and I don’t have any technical comments on the proposed rules for Chapter 575, however we ask that DACF considers us and other farming families like us when finalizing the proposed rules. We ask that you further disincentivize solar and other forms of energy development on unrestricted high value agricultural lands and healthy forest. We ask that you make permitting solar development projects easier on contaminated lands. We ask that you support the infrastructure investments required to facilitate solar development on contaminated lands. We ask that you implement these proposed rules quickly so that contaminated lands can become competitive for locating solar projects; our last hope of maintaining ownership of the farm.  Sadly, whether our family is able to entice solar development on our 1,000 acre farm or not, our farm will likely never again produce food crops, support animal grazing or provide high school students with their first job milking cows on the weekends. We would do anything to reverse the spreading of PFAS contaminated sludge on our land and continue the agricultural traditions our family has passed down for generations before me. The time is NOW to protect high value agricultural land whether it is being actively farmed or not. We have a finite amount of land suitable for farming and more is being taken up by development every day. We implore DACF to support smart solar development with the proposed rules. | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As the Chapter 575 rules are currently drafted, PFAS-impacted HVAL with concentrations of PFOS over 100 ppb would be subject to the Chapter 575 rules. However, no compensation fee would be required to construct a solar energy development on this land. HVAL with concentrations of PFOS under 100 ppb is not considered PFAS-impacted and would be subject to the Chapter 575 rules, including potentially requiring a compensation fee for constructing a solar energy development on this land. This structure is intended to discourage solar energy development on land with a low enough level of PFAS that it is still safe to use for farming.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing infrastructure investments required to facilitate solar development on contaminated lands is outside the scope of what the Chapter 575 rules can regulate. Additionally, land contaminated with substances other than PFAS/PFOS, such as hazardous substances, is not subject to the Chapter 575 rules. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | | |
| Sassaman, Ezra City/Town: Bar Harbor Date Received: 08/28/24 Method of Comment: Email Representing Organization: MCAN | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** MCAN strongly supports the proliferation of solar as an important part of a just transition away from fossil fuels to a world that is sustainable for future generations. At the same time, we recognize that not all climate solutions are created equally.  As a state, we must act decisively to avoid replicating the top-down model of fossil fuel projects, instead implementing renewable energy projects that have the consent of local communities, ideally with the opportunity for local ownership and for communities to have a seat at the table in decision-making processes. Achieving for a just transition means we must not only advocate for sustainable energy systems, but sustainable food systems as well. This means continuing to recognize the importance of farmland as part of the state’s heritage and cultural resources.  As it stands, Maine is rapidly losing both farms and farmers in a worrying trend. For example, in the five years between 2017-2022, 564 farms and 82,567 acres of farmland fell out of agricultural production in Maine.1 We support the intention of rulemaking to ensure large-scale solar development is not yet another threat to farmland in the state. Rooftops, urban spaces, abandoned or underused industrial sites, waste management facilities, and other non-rural areas should all be explored for solar usage before valuable farmland is considered. | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, permitting rooftops, urban spaces, abandoned or underused industrial sites, and waste management facilities is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | |
| VonSeggern, David City/Town: Westbrook Date Received: 08/28/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** This rule (62 pp.) is quite long and detailed and cannot be easily comprehended except by those familiar with Maine legislation and rulemaking.  The efforts in making and applying this rule and the additional efforts of solar developers to adhere to the rule may be considerable.  They may together exceed the cost of the harm incurred by the citizens of Maine if no rule existed.  The legislation leading to this rule was passed in a dearth of social and economic information that could have influenced the legislation.  Although the time to raise objections to this legislation and consequent rule has passed, I point out that the law (LD 1881, PL 2023, Chapter 448) singles out only solar development as a threat to agricultural land in Maine.  This is patently unfair, as residential, business, and industrial development continuously acquires agricultural land and removes it from Maine’s inventory of food-producing land.  Loss of such land is projected by the Farmland Trust ([Farms Under Threat 2040](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffarmlandinfo.org%2Fwp-content%2Fuploads%2Fsites%2F2%2F2022%2F08%2FAFT_FUT_Abundant-Future-7_29_22-WEB.pdf&data=05%7C02%7Cagenergy%40maine.gov%7Cd40f7243086445c59b8c08dcc773ca03%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638604547336199230%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=6Cxz%2BUdOUm79b1WYCM%2B52gK467%2FzGCxEILn%2BTB%2FhC0k%3D&reserved=0)) to be 53,400 acres in Maine by the year 2040.  This does not include any solar development.  It is important to point out that harvesting solar energy is a fairly efficient use of land area — estimates by SEIA are, conservatively, 10 acres of land can support 1 MW of solar capacity.   If even 10% of that 53,400 acres were developed into solar farms, about 5,000 acres, it would supply roughly 500 MW of solar power.   Maine’s current peak electrical load is roughly 2,000 MW ([ISO-New England](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.iso-ne.com%2Fstatic-assets%2Fdocuments%2F100010%2Fnew-england-power-grid-state-profiles.pdf&data=05%7C02%7Cagenergy%40maine.gov%7Cd40f7243086445c59b8c08dcc773ca03%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638604547336208614%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=MidY85HSiAg3P6DNLdElPWE40zwaq4wq3FsAz91SxAI%3D&reserved=0)).  Thus the conversion of farmland into solar generation to satisfy one-quarter of Maine’s peak electrical demand will be small compared to the farmland losses due to other needs. | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Given the nature and novelty of what the P.L. directed DACF to do in rulemaking, the first draft (V1) amounted to 31 pages. The final adopted Chapter 575 rules (V3) amounted to 38 pages. During both the first and second comment periods, commenters requested additional clarity on a number of topics. Therefore, seven pages were added in response to requests from the public for clarity or revisions to the Chapter 575 rules. Additionally, per section 8, anyone who has questions about the permit process can set up a pre-application meeting with DACF. No changes were made in response to this comment.  DACF recognizes that other forms of development are a threat to HVAL. However, the P.L. directs DACF to establish a permitting program for solar energy developments on HVAL. Therefore, regulating residential, business, and industrial development is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | |
| Sewell, Nathaniel P. City/Town: York County Date Received: 08/28/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I own hundreds of acres in York County. I am interested in installing solar on a portion of my land, and I am concerned that the proposed rules are too restrictive and would make solar development not economically viable. Like most of Southern Maine, much of my land was farmed in the past but the majority has regrown into forest, and I currently manage it for forestry. I am interested in pursuing solar development not only because it would provide value in the near term, but also because when the solar project is decommissioned, I would be able to leave the cleared land to my children to farm in the future. If I am not able to do this, over time, I will likely need to convert significant portions of my land for housing development to support Southern Maines high costs of ownership.  If the intent of the rules is to protect farmland from conversion, it does not make any sense to restrict solar development on land that is not currently being used for agriculture. On the contrary, in my case, using my land for solar would actually serve to preserve & prepare the land for agricultural use in the future - thereby adding to, not subtracting from, Maine’s stock of agricultural lands.  If the intent is to preserve large undeveloped blocks, in Southern Maine this is in conflict with the U.S Fish & Wildlife as well as the USDA Natural Resource Conservation Services identified critical shortage of early successional habitat. Both agencies are presently providing significant taxpayer funded payments to Southern Maine landowners who are willing to clear large (20+ acre) patches of forested land to create needed early successional habitat. Well designed solar development creates this habitat at no cost to the taxpayers as well as many other environmental and financial benefits.  In general, I do not appreciate being restricted on how I choose to use my own land. In addition, these rules arbitrarily single out primarily family forest landowners in the southern part of the state. Why should this minority group of landowners be penalized for the generations of hard work and sacrifice that have gone into preserving and adding to their land? If new regulations are imposed, they should be written more narrowly. | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Land may not be in active agricultural production for a number of reasons, After careful consideration, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if they are not currently producing economic value. No changes were made in response to this comment.  The P.L. directs DACF to establish a permitting program for solar energy developments on HVAL. The compensation fees solar developers will pay for constructing on HVAL will go into a compensation fund for farmland conservation and solar mitigation projects. An applicant may also choose to conserve other land for agricultural production instead of paying a compensation fee. In either instance, farmland conservation would protect HVAL from future development. The intent of the Chapter 575 rules is to protect HVAL. No changes were made in response to this comment.  Please see the response on this page above regarding the definition of “HVAL” and “forestland.” | | | | | | | |
| Golden, Jared F. City/Town: Lewiston Date Received: 08/29/24 Method of Comment: Email Representing Organization: USHR | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am writing in support of the Maine Department of Agriculture, Conservation, and Forestry’s (DACF) draft rule for permitting and compensation tiers for solar energy development on high-value agricultural land, which was released on July 25, 2024.  As Maine continues to transition to renewable sources of energy and increasingly construct ground-based solar projects, I believe our state must also continue to preserve finite agricultural soils to ensure long-term farm viability and local food production. While it is important to support on-farm energy production for those farm businesses seeking additional opportunities to make a living, Maine currently lacks adequate data and tracking of renewable energy projects and the impacts they have on our working agricultural lands. The proposed rule promotes a balanced approach to increasing Maine’s renewable energy goals while also protecting our most valuable natural resources.  At a time when prices for farmland are continuing to rise, farmers across the state have voiced concerns about the access to and affordability of valuable agricultural land due to competition with solar development companies. My office has had numerous conversations with farmers and other constituents who have contacted my office to voice their concerns about the negative impacts of prolific solar development absent safeguards to protect farmland and data to better inform land use.  I look forward to continuing to engage with all stakeholders, including farmers, renewable energy developers, private landowners, and state-wide organizations to ensure that while Maine invests in clean energy projects, it also protects the valuable farmland and local food production that has sustained this state for generations. | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | | | | | |
| Browne, Juliet T. City/Town: Porland Date Received: 08/29/24 Method of Comment: Email Representing Organization: Verrill Dana LLP | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am concerned that Chapter 575 will increase the costs and regulatory burdens associated with solar development, reduce or eliminate an important revenue source for landowners who may struggle to maintain their land for farming, forestry, or open space more generally, and does not address the more significant threats to productive agricultural lands such as residential sprawl and the challenging economics of farming. While the underlying policy of protecting productive agricultural lands may be well-intentioned, Chapter 575 is a blunt interest that will set Maine back on its renewable energy goals without achieving its intended policy objectives.  In my comments below, I have flagged several issues that I believe are significant or on which I have specific language suggestions.   1. The Assumption That Many Solar Projects Will Not Be Affected Is Misplaced   The definition of High Value Agricultural Land includes areas that meet the definition of Prime farmland, farmland of statewide importance, and locally valuable farmland. These terms are broad and unduly subjective.  Prime farmland and farmland of statewide importance are defined based on the USDA Natural Resources Conservation Service (NRCS) definitions below.  Prime farmland is defined by NRCS generally as:  [L]and that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.1  Farmland of statewide importance is defined by NRCS as:  Land …that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, the additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.2  Locally valuable farmland is defined in Chapter 575 as “important to the continued viability of farming or agricultural infrastructure in the region,” and will be determined by DACF and maintained on their website.  These are subjective and expansive definitions that do not provide sufficiently clear direction to developers on whether land falls within or outside those definitions. For example, what does it mean for soils to be “important for the production of food, feed, fiber, forage and oil seed crops”? Likewise, what does it mean for land to “be important to the viability of farming or agricultural infrastructure in the region”? While the general definition of prime farmland goes on to include specific soil criteria such as acidity, erodibility, and water content, the definitions of farmland of statewide importance and locally valuable farmland do not include any objective criteria. The definition of high-value agricultural land should include objective criteria for determining whether the land area is regulated under Chapter 575. These definitions do not meet that objective.  Not surprisingly, *the NRCS explicitly recommends against use of these definitions and data set as a tool in permitting or siting decisions*.3  The NRCS has mapped soils that it has concluded meet these definitions. The mapping suggests that approximately 14% of the land area in Maine meets these definitions, which is apparently the basis for DACF’s conclusion that the rule will not affect many projects. It should be noted, however, that the common use of complexes/associations in the more remote areas of Maine means that the mapping underestimates the percentage of soils that meet the definition of Prime farmland or Farmland of statewide significance.  Additionally, there is significant overlap between the mapped soils and proximity to transmission infrastructure, which is a critical requirement for siting solar projects. The exhibit prepared by Walden Renewables and attached here for reference demonstrates the extent to which mapped soils are in locations most likely to be developed.  This rule also restricts solar development on land irrespective of whether it is in agricultural use or likely be so in the future. The result is to remove a revenue stream for landowners, unnecessarily regulate landowner rights, and inhibit renewable energy development without advancing the objective of helping Maine to become more food independent. At a minimum, the definition should be tied to land that is in agricultural use, not land that is not and may never be put to such use.   1. The Mitigation Ratios Will Significantly Increase Development Costs   The mitigation ratios will require significantly more mitigation than is required for impacts to other types of protected resources. For example, the mitigation ratio for filling a wetland is 1:1 (or 2:1 if certain sensitive resources are present). Likewise, in the draft Chapter 375 rules under consideration by the Maine Department of Environmental Protection, the mitigation ratio for impacting large undeveloped habitat blocks is 1:1 for fenced areas and 0.5:1 for unfenced areas. In contrast, Chapter 575 requires mitigation ratios of up to 8:1. This is equivalent to the mitigation required for impacts to habitat for threatened or endangered species.  The cost to the project of mitigation is significant and, in many instances, cost prohibitive. By way of example, a project located in Penobscot County located on 25 acres of soils that meet the definition of Prime Farmland would have to pay $392,040 in mitigation fees (25 x 43,560 x 0.09 x 4), even if that land was forested or otherwise was not in and never will be converted to agricultural use. For a similar project located in Androscoggin County, the mitigation cost increases to $1,252,350. The mitigation ratios in Chapter 575 will create perverse incentives for developers to site projects in unfragmented habitat blocks or even wetlands to avoid the penalties associated with siting a project in broadly defined high-value agricultural land.  Graphical user interface, text, application  Description automatically generated | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, compensation tiers were revised in both V2 and V3. Additionally, per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. Additionally, the P.L. does not give DACF the authority to require a permit for any form of development other than a solar energy development. Therefore, regulating other forms of development such as residential sprawl are outside of the scope of what the Chapter 575 rules can regulate.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As noted above on page 87, the term “locally valuable farmland” has been removed.  DACF has a technical guidance document for identifying PF and FOSI. It was published in March 2020 and is titled “[*Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine*](https://www.maine.gov/dacf/ard/resources/docs/prime-farmland-determination-guidelines-v6.pdf).” The HVAL identification protocol will not change how PF and FOSI are determined. The HVAL identification protocol will not be developed until the rules are adopted to reduce the administrative burden of revising the protocol each time the rules are revised. After careful consideration, no changes were made as a result of this comment.  The citation provided by the commenter refers to example metadata for a soil map data set in Minnesota and states “*This dataset is not designed for use as a primary regulatory tool in permitting or siting decisions but may be used as a reference source.*” Further, the citation comes from the National Soil Survey Handbook which states its purpose in section 600.1: “*The National Soil Survey Handbook and other technical and procedural references provide the standards, guidelines, definitions, policy, responsibilities, and procedures for conducting the National Cooperative Soil Survey (NCSS) in the United States*” (underline added). The Chapter 575 rules do not use the NRCS NCSS soil data of PF and FOSI, only the definitions. Regardless, at no point has NRCS recommended against using the definitions of PF and FOSI for permitting or siting decisions. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  While it is beneficial to site solar developments near transmission infrastructure, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher land-use conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. No changes were made in response to this comment.  Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. After careful consideration, DACF decided against limiting HVAL only to land in active agricultural production. Additionally, please see the response above on page 87 regarding farm viability. No changes were made in response to this comment.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio. However, it's not the case that impacts to HVAL or habitats would trigger larger compensation requirements than impacts to wetlands. The 1:1 wetland compensation ratio is for restoration or creation of wetlands, not preservation. The ratio for preservation of wetlands is 8:1 (or 16:1 for wetlands of special significance). Furthermore, while the [in-lieu fee calculation](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fdep%2Fland%2Fnrpa%2FILF_and_NRCP%2FILF%2Ffs-in-lieu-fee.pdf&data=05%7C02%7CCaitlyn.Cooper%40maine.gov%7C6ea158665471422e196608dcd762f219%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638622067168298703%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=7wTnbr8qXEd7QEt9FwvoSa60jQAxmelgH%2BjurEgmElg%3D&reserved=0) for wetland impacts is calculated at 1:1 or 2:1, this calculation *accounts for the cost of wetland restoration*, which comprises almost the entirety of the fee calculation. For impacts to habitats and HVAL, the fee calculation would occur at a ratio between 0.5:1 and 8:1, but it would account *solely for the cost of land preservation* (not restoration) in the form of the appraised land value. Therefore, the fee amount for habitats and HVAL would amount to a tiny fraction of the fee amount required for wetland impacts, on a per-acre basis. Additionally, with the removal of “forestland” from the definition of HVAL, compensation ratios will no longer be at odds between HVAL and large undeveloped habitat blocks.  Please see the responses above a) on page 87 regarding compensation tiers, b) on page 88 regarding “forestland,” and c) on page 89 regarding why land might not be in active agricultural production and wetland compensation ratios. Additionally, conversion pressure, as it relates to the counties the commenter references, has been limited to only tier 4 (the 8:1 ratio) in V3. Per 38 MRSA §484-C(2), the compensation fee will be calculated by DEP. Therefore, the hierarchy of fees will be described in their rules, which is outside the scope of what the Chapter 575 rules can regulate.  DACF agrees with the revised definition of “start of construction” and amended the definition accordingly. | | | | | | | | | | | | | | | |
| Doak, Thomas City/Town: Augusta Date Received: 08/29/24 Method of Comment: Email Representing Organization: MWO | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment**: In particular, I am especially concerned with the definition of "High-Value Agricultural Lands." While the definition in the proposed rule does not specifically include forestland, the staff memo explaining the rule provides:  "The proposed rule does not restrict the definition of HV AL to already cleared lands or operating farms because PF and FOSI soils will be critical to the expansion of agriculture in Maine to feed a growing population and help Maine become more food-independent. *Prime soils that are currently forested are still valuable for agricultural activities, now and in the future, and are therefore included in the current definition of HVAL."* (emphasis added) This interpretation of the HV AL definition to include forestland is overly broad. As envisioned it includes all forestland that has high suitability for agricultural use, and doesn't just apply to lands with current agricultural use. This definition, by including forestland, goes beyond what was contemplated in LD 1881.  It is also concerning that if land is categorized as both HV AL and a Large Undeveloped Habitat Block as defined in Rule 375, deference would be given to the HVAL's higher triggered compensation ratio. This would seem to have the impact of pushing development into the LUHB's that Rule 375 is trying to protect.  We understand and appreciate the need to establish a structure for the permitting of solar energy sites on agricultural lands. We cannot support this rule as proposed, however. We encourage the Department to amend the rule to specifically focus the definition of High-Value Agricultural Lands on lands that are in current agricultural use. Thank you for your consideration of these comments in opposition to the rule. | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  With the removal of “forestland” from the definition of HVAL, compensation ratios will no longer be at odds between HVAL and large undeveloped habitat blocks.  Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. After careful consideration, DACF decided against limiting HVAL only to land in active agricultural production. | | | | | | |
| Smith, Andrew City/Town: -- Date Received: 08/29/24 Method of Comment: Email Representing Organization: MOMP | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** On behalf of the Maine Organic Milk Producers, I’m writing to express support for the draft rules for solar development on high value agricultural land. Maine has seen an incredible increase in commercial solar energy projects in the last six years and the vast majority of this development has occurred on farmland. While we absolutely need a swift transition to renewable energy to help avoid the worst effects of climate change, we also must not recklessly consume our state’s limited agricultural lands. We believe the program outlined by DACF will go a long way towards protecting our most productive agricultural soils while balancing the need for renewable energy development.  While leasing land for solar development has provided needed income for some farmers, for many more it has become a barrier to land access. Many farmers rely heavily on leased land for their farming operations and this is especially true of beginning farmers and those in the dairy industry. Farmers cannot compete with the lease rates the solar industry offers for land which are often more than twenty times the going rate for pasture and hayland. We look forward to the implementation of this program which will divert solar development away from our most productive soils and hopefully reduce the competition we’re experiencing for agricultural land. | | | | | | | | | | | | | | | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules. | | | | |
| Watson, Annie City/Town: Augusta Date Received: 08/29/24 Method of Comment: Email Representing Organization: MDIA | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We appreciate the time and effort that has so clearly gone into this process and are grateful the needs of our agricultural community are being considered as our state works to balance our needs with the need for renewable energy sources. A strong agricultural industry is the key to a strong rural economy, and it is more important now than ever that we do everything we can to ensure farmers are able to continue to farm and have access to adequate markets for our products. Incentivizing agricultural production is of benefit to all of Maine’s people.  We would like to see clarification in the definition of “locally valuable farmland.” Additionally, clarification in regards to the use of the funds these fees will serve would also be appreciated. Specifically, more information around the term “solar mitigation efforts”- what this means and what those efforts might include.  Lastly, we suggest ensuring a portion of the accrued funds get back to producers. This would potentially be one way to help address the issues of financial sustainability for our farming community, some of whom feel limiting their options for development of this kind is styming their financial flexibility for the future. | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Due to a number of comments, the term “locally valuable farmland” was removed in V2. Per 38 MRSA §484-C(3), “*all compensation fees collected under this section must be deposited in an account in the Department of Agriculture, Conservation and Forestry and must be distributed at the discretion of the commissioner for the purpose of farmland conservation and solar mitigation projects*.” The P.L. does not require DACF to define “solar mitigation efforts,” nor detail how the funds are to be used beyond what is stated in 38 MRSA §484-C(3). No changes were made in response to this comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. Additionally, as noted above on page 92, the compensation fees will be used for farmland conservation and solar mitigation projects. | | | | | | | | | | | | | | | | | | | | | |
| McFarland, Amy City/Town: -- Date Received: 08/29/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am contacting you today concerning the solar panel use on farmland. The panels are not recyclable and have an expected lifespan of 15-20 years. As these panels degrade, they can negatively affect their surrounding environment.  The EPA states: Hazardous waste testing on solar panels in the marketplace has indicated that different varieties of solar panels have different metals present in the semiconductor and solder. Some of these metals, like lead and cadmium, are harmful to human health and the environment at high levels. If these metals are present in high enough quantities in the solar panels, solar panel waste could be a [hazardous waste](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fhw%2Flearn-basics-hazardous-waste&data=05%7C02%7Cagenergy%40maine.gov%7Cf86d2f7b0dc34ff8f30f08dcc87af59f%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638605678000773943%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C40000%7C%7C%7C&sdata=maBs0rja%2BLhBSx3IEzgcbAVEb%2BB3z1bGJQiTOnDVNhU%3D&reserved=0) under [RCRA](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Frcra&data=05%7C02%7Cagenergy%40maine.gov%7Cf86d2f7b0dc34ff8f30f08dcc87af59f%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638605678000784493%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C40000%7C%7C%7C&sdata=V10Q%2F0bfwLGa%2F5e3OrUsy4atQ1739%2BJ4nbjlLclwZ5Y%3D&reserved=0). Some solar panels are considered hazardous waste, and some are not, even within the same model and manufacturer. Homeowners with solar panels on their houses should contact their state/local recycling agencies for more information on disposal/recycling.  ([https://www.epa.gov/hw/end-life-solar-panels-regulations-and-management](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fhw%2Fend-life-solar-panels-regulations-and-management&data=05%7C02%7Cagenergy%40maine.gov%7Cf86d2f7b0dc34ff8f30f08dcc87af59f%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638605678000792398%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C40000%7C%7C%7C&sdata=G3t6ddNiRm8GYtp5GcS9utbANKOh23ioMG150%2F%2FBSaM%3D&reserved=0))  I am concerned we will have another issue like the PFAS down the road.  If we are going to use these possible hazardous waste products, then perhaps they should only be used on farms that can no longer be used due to PFAS.  In addition to this issue, I have concerns about 88% of the solar panels being made with slave labor by the Uyghur Muslims in China. By engaging in commerce with these companies, we in turn are participating in "Crimes Against Humanity". With that said, I ask you to not allow solar farms on pristine farmland. | | **DACF Response to Comment**: Thank you for your comment. DACF understands and shares your concern about farmland contamination. However, based on a thorough review by DACF of currently available data, metal leaching or contamination from solar panels is a low risk during normal use. Per the EPA link the commenter provided, solar panels “*typically have a lifespan of more than 25 years*.” After this time period, solar panels become less efficient at capturing solar energy. However, currently, data does not show that they are more likely to leach hazardous substances after a certain period of time. Based on recently reviewed, published, and peer-reviewed studies, metals would only be released into the environment if the panels are broken and then exposed to an acidic environment like a landfill or acidic rain (which is why they are treated as hazardous waste). Studies show that metal leaching is low, even in the worst-case scenarios, and is unlikely to create a potential health risk. [[8]](#footnote-8)  Based on this low risk, DACF does not believe that solar energy development permits issued under Chapter 575 rules should only be limited to farms that can no longer be used due to PFAS contamination. Additionally, the P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, controlling where developers purchase solar equipment is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | | |
| Wright, John City/Town: Leeds Date Received: 08/29/24 Method of Comment: Email Representing Organization: Sparkplug Farm | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I am writing to express my support for Chapter 575: Solar on HVAL Rulemaking [LD 1881](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.mainelegislature.org%2Flegis%2Fbills%2FgetPDF.asp%3Fpaper%3DHP1206%26item%3D9%26snum%3D131&data=05%7C02%7CAGEnergy%40maine.gov%7Cf29d974028314daa1def08dcc898dd74%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638605806090117585%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=z5V5rfKe0iXcY9zqdTHRBN3JPNX8PIi6vbZG85kiDaM%3D&reserved=0) (P.L. 2023, Chapter 448). My partner and I are first generation farmers in Leeds, Maine. Over the past few years we have been dismayed at the amount of farmland in our town that has been converted to solar installations. Our farm currently leases 75% of the land on which we produce organic eggs, grass fed beef, and hay. Access to farmland is critical for our farm's survival and continued growth. The amount of money being offered by solar developers dwarfs the amount we are able to pay in rental fees to land owners at the current price of food.  My one concern with the law is that I would like to see dual use held to a high enough standard that it actually means something. I think these solar developers stand to make a lot of money and will say anything to get a project approved.  Dual use needs to be for the length of the project and actually produce an agricultural commodity.  Our farm runs on solar power from an array on the edge of our field. It is great technology and more reliable than other options. Over the past year we have watched an 150 acre solar installation bulldoze and land level what were farm fields. Despite the developer's promise that the land could return to agriculture at the end of the project's life span, I do not believe that soil will ever be as productive as it was. Not in my lifetime and not in my son's lifetime.  In a perfect world I would like to see solar on rooftops, previously developed land, or unusable land. Please take care of this limited resource. | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, DACF has incorporated two new paths to achieve tier zero and, thus, zero compensation fee. Applicants could conduct a portion of the site as crop production and a portion as livestock grazing to meet the percentage threshold for tier zero. Additionally, applicants could conduct a portion of the site as livestock grazing and a portion as pollinator habitat to meet the percentage threshold for tier zero.  Per this comment and others, a new definition and term was included for “management plan” in V2. The definition language was originally found in the dual-use section of the rules but has now been incorporated into the definitions section. Further, the definition was revised to specifically state “*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.*” (underline added; see section 2 for revised definition). Additionally, in V1, V2, and V3 of the Chapter 575 rules, the definition of “dual-use agricultural and solar production” required the activity to “*result in the production of agricultural products to retain the land’s agricultural productivity.*”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar or solar on developed/unusable land is outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | |
| Koons, Jean and Peter City/Town: Sidney Date Received: 08/29/24 Method of Comment: Email Representing Organization: Koons Farm | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** *Primary Point:* As Central Maine dairy farmers and cheesemakers we wish to express our support for the draft guidelines for solar development on high value agricultural land.  The serious consideration given in this document to Dual Use solar convinces us that this legislation is not simply an attempt to discourage the positive environmental and fiscal opportunities of renewable energy, specifically solar, in Maine. Dual Use agrivoltaics are rapidly evolving here and overseas and provide pathways by which the current generation can afford to farm their property, and gives future generations the potential and hope for a financially stable future, above the poverty level.  *Secondary Points:* There is an apparent inconsistency in the relative values allotted to cropping and livestock dual usage: Table 1 Tier 0 equates cropping and grazing and assesses them at the same, zero-level; Under Category 4: in the <75% category, livestock grazing is assessed at 2 points while cropping for the same proportion of land use is assessed at 0. Is this a mistake; a personal bias; or is there some science here?  All the point allotment categories assume that the alternative to solar is continued agricultural usage of this HVAL land. Unfortunately for farmers that require an income source to sustain the farm, if they are discouraged or prohibited from solar development, the primary alternative is selling land for industrial/domestic development. Solar introduces minimal impervious areas and, by current law, is potentially reversible after the lease period (@ 25 years).  Industrial/domestic development introduces massive increase in impervious surfaces and effectively forever removes the land from agricultural use.  We personally know several family farms in Central Maine that have remained operational and not sold out to development pressure because of the income brought in by solar leases.  We encourage the State to rigorously examine the larger issue of land use  - development and solar- in light of the loss of HVAL.  The State must establish maintenance/ grazing, etc...guidelines for solar developers to allow dual usage in initial land lease agreements! Currently leases have a mishmash of ground maintenance models often precluding landowner usage. | | | **DACF Response to Comment**: Thank you for your comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Per this comment and others, compensation tiers were revised in both V2 and V3. Please see section 7(4)(A) on how applicants can achieve tier zero via dual-use under the standard compensation tiers. There is now a lower percent area requirement for crop production to achieve tier zero in comparison to livestock grazing. Currently, livestock grazing is a more widespread practice in the dual-use community than crop production as it is easier to implement and has a higher success rate. Studies and pilot projects are still trying to determine the best way to incorporate crop production with large solar projects. Due to its uncertainty of success and challenging nature, it warranted a different point value than livestock grazing.  DACF makes no assumptions about how the land will be used as an alternative to solar development. The Table 1 and Table 2 compensation fee point structures are designed to establish a tier level for the HVAL impacted. However, per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, permitting industrial or domestic development is outside the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on this page above regarding farm viability. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  While DACF regularly updates different guidance documents regarding farmland and solar energy development, this is outside the scope of what the Chapter 575 rules can regulate. If a developer is interested in incorporating dual-use into their projects, then the onus is on them to ensure the land lease allows that use. Similarly, the onus is on the landowner to negotiate language in the lease that gives them a say in how their land is used. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | | | |
| Fife, Chris City/Town: Bingham Date Received: 08/29/24 Method of Comment: Email Representing Organization: Weyerhaeuser | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Weyerhaeuser is concerned with the Maine Department of Agriculture, Conservation and Forestry (the Department) proposed Chapter 575 rule. We do not object to reasonable mitigation requirements for renewable energy developments in line with the directives of P.L. 2023, Ch. 448. However, we are very concerned with the Department’s decision to include forested land in the definition of HVAL.  Applying DACF’s estimate of 13% of land designated as HVAL to Maine’s forested land indicates 2.277 million acres of HVAL forested land. On Weyerhaeuser’s timberland we could expect over 109,000 acres of HVAL. Much of this acreage is scattered across the forest in locations where agriculture is impractical and illogical when compared to growing trees.  The USDA 2022 Census of Agriculture reports that the average size of a farm in Maine is 174 acres yet the definition of HVAL, applicable to forested land, is one or more contiguous acres of the land area is comprised of prime farmland, farmland of statewide importance, or a combination of the two; or one or more contiguous acres of the land area is/are designated as locally valuable farmland. In most cases across Maine’s 17.5 million acre forest this one or more contiguous acre will never be used for agriculture.  Additionally, solar projects are typically minimally disruptive to soils so that, at the end of a project’s useful life, the site can easily be restored to its initial condition with HVAL available for agricultural use. Essentially, the solar project conserves the HVAL.  With projects in Maine, and other states across the country, Weyerhaeuser has demonstrated that well sited renewable energy projects are compatible with working forests, and the many benefits they provide. We request that the Department remove forested land from the definition of HVAL so that forest landowners are not inappropriately disadvantaged in their ability to host solar development and can continue to play a role in helping the state meet its renewable energy goals. | | | **DACF Response to Comment**: Thank you for your comment. Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  As noted above, “forestland” is now exempt from the definition of “HVAL.”  While the average size of a farm in Maine is 174 acres, almost half the farms in the state are less than 50 acres (3,232 farms, or 46% of farms in Maine). Only 32% of the farms in Maine (2,232 farms) are in the 50- to 179-acre size range. The 23% of farms over the size of 180 acres (1,572 farms) heavily skew the average farm size. While large, contiguous acres of HVAL are certainly beneficial for farming purposes, DACF feels that even one acre of HVAL is worth protecting. This is especially true considering the rapid loss of farmland and the small percentage of HVAL within the state. Finally, as noted on this page above, “forestland” is now exempt from the definition of “HVAL.” No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  As noted above on this page above, “forestland” is now exempt from the definition of “HVAL.” | | | | | | | | | | | | | | | | | | | | | | |
| Timberlake, J. & Farrin, B. City/Town: -- Date Received: 08/29/2024 Method of Comment: Email Representing Organization: State Senators | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We are writing this to express our serious misgivings surrounding the Department’s proposed rule change prohibiting the placement of solar production on what will be considered “high-value agricultural land.”  To begin, there are basic principles involved whereby State Government is poised to infringe upon the private property rights of farmers by determining for them how their land is to be utilized. We consider this to be a gross overreach. While we do understand and respect that there is precedent for departments such as the Maine Department of Environmental Protection and Maine Department of Agriculture, Conservation and Forestry to enforce certain parameters that relate to potential ecological harm and other similar issues, the example we are currently facing does not, in our view, rise to that level nor merit this form of intervention.  Extending from the issue of property rights is the ability to use farmland in the manner private citizens best see fit given the differing, sensitive and highly complex financial incentives at play. All too often, farming is not nearly as profitable as many perceive it to be. In many instances, a profit is not being turned at all. If a farmer considers it to be in their best interest to allocate a portion of their land for solar development, they should enjoy the liberty to follow through on that free from the arbitrary whims of bureaucrats who are not adequately familiar with their unique situation.  Going forward, we would strongly urge the Department to be as conservative as possible in its application of the term “high-value agricultural land” to afford farmers the maximum amount of latitude that can be realized in managing their operations – ensuring they maintain viability and independence in the future. | | | **DACF Response to Comment**: Thank you for your comment.  The P.L. requires a person who constructs or causes to be constructed a solar energy development located on HVAL to pay a compensation fee or other form of compensation for any portion of the development that is located on HVAL. The P.L. also gives DACF the authority to implement this via rulemaking. No changes were made in response to this comment.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions). | | | | | | | | | | | | | | | | | | | | | | |
| Cleaves, Robert City/Town: Portland Date Received: 08/29/24 Method of Comment: Email Representing Organization: BNRG | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** As a local developer, we believe in responsible siting, development, and construction of solar energy systems in Maine. While we agree with DACF’s efforts in protecting Maine’s most valuable agricultural land, we remain deeply concerned that Chapter 575 will bring solar energy development and the state’s critical clean energy transition to a standstill. Solar development is an essential resource to curb the adverse impacts climate change will have on Maine’s agriculture. Therefore, BNRG Dirigo urges the DACF to consider and incorporate the feedback from the development community to adopt rules that protect Maine’s most valuable agricultural land, while also ensuring sustainable solar development over the coming years.  BNRG Dirigo offers the following comments on Chapter 575 for DACF’s consideration:   1. The definition of High-Value Agricultural Land (HVAL) in Chapter 575 is too broad. 2. The compensation tiers and multipliers in Chapter 575 are too high and risk being prohibitive to new solar. 3. *The definition of High-Value Agricultural Land (HVAL) is too broad*   In its *Memo to Persons affected by P.L. 2023, Chapter 448, and members of the pubic*, the DACF shares that it anticipates only 13% of Maine to be designated as HVAL, and therefore, “many solar projects will not be affected by this rulemaking.” BNRG Dirigo contends this estimation of solar impacts is conservative and does not reflect the magnitude of solar development likely to be adversely impacted by Chapter 575.  The Chapter 575 definition of HVAL includes areas of one or more contiguous acres of prime farmland (“PF”), farmland of statewide importance (“FOSI”), or locally valuable farmland. Land typically suitable for solar facilities – low slopes, limited ledge and boulders – has the same qualities as land that is likely to fall into these categories. Further, overlap in areas designated as either PF or FOSI with the transmission system in Maine demonstrates that areas designated as HVAL under the Chapter 575 definition will have substantial impacts on grid-scale projects that need to be located in close proximity to the transmission network. Conversely, large areas of the state that are less likely to be designated as PF or FOSI are similarly not feasible for solar development because the land is distant from the transmission grid, inaccessible, includes areas of high slope, or lacks the ground conditions necessary for solar construction. Therefore, DACF’s 13% HVAL classification estimate does not represent the amount of potential solar land or number of solar projects that will be impacted by Chapter 575.  By screening BNRG Dirigo’s projects currently under development for PF and FOSI classifications, we found that 86% of our portfolio would impact land to be designated as HVAL under the Chapter 575 definition, notwithstanding BNRG Dirigo’s projects are not sited on active farms or recently farmed land. Therefore, we believe HVAL classifications as defined in Chapter 575 are likely to impact up to 75-80% of potential solar projects. We strongly urge the DACF to refine the HVAL definition to protect valuable, active agricultural land, while reducing the impact on future solar development.  Because the proposed definition of HVAL is not limited to operating farms, or lands with a history of farming, the number of solar projects that will be subject to high agriculture compensation fees is significantly increased. Additionally, implementing compensation fees for HVAL that has no history of farming requires solar projects to pay compensation fees even where no farmland is taken out of production by the project. This compensatory fee structure is based on the theory that landowners, or future landowners, of sites where solar projects are developed would otherwise clear the land, invest in the equipment and infrastructure required to farm the land, and then actively farm the land, at some point in the future. BNRG Dirigo urges the DACF to implement evidence-based rules that govern current and past use of HVAL, not future, uncertain, and hypothetical land use characteristics. Moreover, because solar facilities impact the underlying land only temporarily, solar should be a preferred use of non-active PF or FOSI over other forms of development that would permanently impacts local environments. Therefore, we strongly urge the DACF to revise Chapter 575 such that only land that is actively farmed, or has been farmed over the last five years, qualifies as HVAL.  Finally, under Chapter 575, solar developers have no determination as to what land will fall under the HVAL definition until an expensive soil survey is performed. Restricting the definition of HVAL to only land that is actively farmed, or has been farmed within the last five years, allows developers to predictably and reliably target suitable solar sites, accounting for potential HVAL classification. Despite having no active farmland projects in our pipeline, BNRG Dirigo is deeply concerned that most of our projects will still be impacted by Chapter 575.   * 1. *2.* *The compensation tiers and multipliers are too high*:   Under Chapter 575, solar projects over 20 acres will have to pay a compensation fee with ratios ranging from 1.5-to-1 to 8-to-1 if HVAL is impacted. As an example, solar projects will have to pay a 3-to-1 or 4-to-1 ratio if the project impacts FOSI or PF, respectively, with no history of farming on the land, and if no dual use is applied. In comparison, under Chapter 310, the Maine Department of Environmental Protection (“DEP”) charges a 2-to-1 ratio for the following wetland impacts:   * + Direct impacts to wetland areas containing at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments and areas of wetland routinely altered by anthropogenic activities such as road ditches etc;   + Direct impacts to peatlands dominated by shrubs, sedges and sphagnum moss;   + Direct impacts to coastal wetlands;   + Direct impacts to freshwater wetland areas contained within an inland wading bird & waterfowl habitat (IWWH);   + Direct & indirect impacts to a shorebird habitat and associated buffers;   + Direct impacts to great ponds; and   + Direct impacts to freshwater wetland areas contained within a significant vernal pool habitat.   In the context of the DEP’s compensatory fee structure for impacting sensitive ecological areas, BNRG Dirigo finds Chapter 575’s 3X to 4X multiplier difficult to justify, particularly given the fees may apply to projects that are not impacting active farmland to begin with. Therefore, we urge DACF to incorporate an active or historic farmland requirement into the HVAL definition to address this issue.  Finally, we believe that Category 4 of the Compensation Tiers creates misguided incentives. If a project is not sited on farmland but incorporates dual use, it is still charged compensation fees. Rather, BNRG Dirigo believes a project that turns land into farmland should be eligible to avoid compensation altogether. By requiring compensation under this scenario, DACF is incentivizing either no solar development, or solar development completely outside of PF or FOSI land over the development of solar and new farmland together.  Finally, excluding the Locally Valuable Farmland category, the lowest multiplier a solar project can achieve is 1.5-to-1, assuming the site does not qualify as farmland, is not located in a higher compensation county, and dual use crop production on 50% - 75% of the land area. It is hard to envision utility scale solar projects being able to absorb compensation multipliers ranging between 1.5 and 8 and being able to deliver savings to Maine ratepayers. We expect projects to have to completely avoid HVAL to remain feasible. The combination of prohibitive compensation fees and the overlap of HVAL with most remaining solar opportunities in the state will be damaging to the future of grid-scale solar energy in Maine. Not only will this impact the state’s critical clean energy transition, but it will impede progress towards a more local, independent electricity generation mix and ratepayer savings. We therefore urge DACF to incorporate the definition feedback above and reduce the compensation multipliers to address this issue. | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a specific request for revisions to the draft Chapter 575 rules.  Per this comment and others, the definition of “HVAL” was revised and narrowed in V2. The term “locally valuable farmland” has been removed. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.” A new term, “forestland,” has been created and is exempt from the definition of “HVAL” (see section 2 for revised definitions).  Per this comment and others, in V2, conversion pressure was limited to only tier 4, the 8:1 ratio. Additionally, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it can be beneficial to site solar developments near the transmission network, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher land-use conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  As noted above on this page, the definition of “HVAL” has been revised. However, after careful consideration, DACF decided against limiting HVAL only to land in active agricultural production. Land may not be in active agricultural production for a number of reasons, such as a landowner 1) being ill and unable to work the land, 2) retiring from farming, 3) allowing the land to rest and recover, 4) lacking financial means to farm, and more. DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value.  Please see the response above regarding why land may not be in active agricultural production. Additionally, the P.L. does not give DACF the authority to require a permit for any form of development other than a solar energy development. Therefore, permitting other forms of development is outside of the scope of what the Chapter 575 rules can regulate.  While a solar energy development may be temporary, construction and decommissioning activities can disrupt the soil structure and cause soil compaction that can take years, if not decades, to restore. No changes were made in response to this comment.  Per this comment and others, the definition of “field-based survey” was revised in V2 to include language in which the land use assessment(s) and on-site structure inventory “*may be conducted by an environmental scientist, engineer, consultant, site evaluator, or an individual who is qualified to fulfill the requirements of these subsections*” (see section 2 for revised definition). Additionally, the definition of “field-based survey” was amended such that a soil scientist is not required to be the entity evaluating on-site structures or current/past site uses since it doesn’t require practicing soil science. Therefore, if the property is disqualified from being considered HVAL due to on-site structures or current/past site uses, then a soil scientist is not required to survey it.  Per this comment and others, compensation tiers were revised in both V2 and V3. More specifically, the HVAL compensation tiers now match the DEP compensation tiers with a 0.5:1, 1:1, 2:1, and 8:1 ratio. However, it's not the case that impacts to HVAL or habitats would trigger larger compensation requirements than impacts to wetlands. The 1:1 wetland compensation ratio is for restoration or creation of wetlands, not preservation. The ratio for preservation of wetlands is 8:1 (or 16:1 for wetlands of special significance). Furthermore, while the [in-lieu fee calculation](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fdep%2Fland%2Fnrpa%2FILF_and_NRCP%2FILF%2Ffs-in-lieu-fee.pdf&data=05%7C02%7CCaitlyn.Cooper%40maine.gov%7C6ea158665471422e196608dcd762f219%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638622067168298703%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=7wTnbr8qXEd7QEt9FwvoSa60jQAxmelgH%2BjurEgmElg%3D&reserved=0) for wetland impacts is calculated at 1:1 or 2:1, this calculation *accounts for the cost of wetland restoration*, which comprises almost the entirety of the fee calculation. For impacts to habitats and HVAL, the fee calculation would occur at a ratio between 0.5:1 and 8:1, but it would account *solely for the cost of land preservation* (not restoration) in the form of the appraised land value. Therefore, the fee amount for habitats and HVAL would amount to a tiny fraction of the fee amount required for wetland impacts, on a per-acre basis.  Please see the response above on page 98 regarding why land may not be in active agricultural production.  Please see the response above on page 98 regarding why land may not be in active agricultural production. As noted above on this page, compensation tiers were revised in both V2 and V3. More specifically, DACF has incorporated two new paths to achieve tier zero and, thus, zero compensation fee. Applicants could conduct a portion of the site as crop production and a portion as livestock grazing to meet the percentage threshold for tier zero. Additionally, applicants could conduct a portion of the site as livestock grazing and a portion as pollinator habitat to meet the percentage threshold for tier zero.  As noted above on page 98, the term “locally valuable farmland” has been removed and compensation tiers have been revised. The HVAL compensation ratios range from 0.5:1 to 8:1. The final adopted Chapter 575 rules only require an 8:1 ratio for projects 1) in a county with high conversion pressure, 2) that don’t meet the case of farm viability, 3) that engage in little-to-no dual-use, 4) that are on PF and FOSI, and 5) that are on active farmland. Per this comment and others, conversion pressure has been limited to only tier 4, the 8:1 ratio. | | | | | | | | | | | | | | | | | | | | |
| Hansen, Vincent City/Town: Seattle, Washington Date Received: 08/29/24 Method of Comment: Email Representing Organization: Teichos | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:**  Minimal Impact on Soils  Solar installations typically cause minimal disruption to soil structure compared to other forms of development. Solar panels are mounted on steel piles driven into the ground, requiring no concrete foundations or other permanent alterations to the land. Inverters can also be installed on elevated piles, further minimizing contact with the soil. These methods maintain the soil's integrity and preserve its agricultural productivity in the long term. The rule should acknowledge this to differentiate between solar developments and more intrusive land uses.  Solar as Protection Against Permanent Conversion  Solar energy development can act as a buffer against more permanent land conversions, such as real estate subdivision or industrial development. Unlike these types of development, which often involve substantial grading, paving, and building, solar installations can be removed at the end of their useful life, allowing the land to return to its original state. Solar development should therefore be viewed more favorably than other forms of development that permanently alter the land's use and its ability to support agricultural activities.  Reduced Risk of Land Fragmentation  Solar development often involves larger parcels of land and can help protect against fragmentation, a critical issue in many agricultural communities. By consolidating land under a single, relatively non-invasive use, solar projects can help maintain larger, contiguous parcels that could easily revert to farming in the future. The rule should consider the role of solar energy projects in preserving large blocks of agricultural land, especially in areas under pressure from more permanent forms of development.  Long-Term Reversibility and Land Restoration  At the end of a solar project's lifespan, all installations can be removed with relatively little effort compared to other forms of development, allowing the land to be restored to its pre-development condition. This reversibility is a unique aspect of solar energy projects, offering long-term flexibility in land use planning. The rule could include provisions recognizing this reversibility as a mitigating factor, potentially reducing compensation requirements or streamlining the permitting process for solar projects committed to land restoration.  Mitigation of Environmental Impact  Solar energy developments have a substantially lower impact on wildlife and soil compared to other forms of land use, such as residential, commercial, or industrial development. Solar projects often include measures to support local wildlife, such as creating pollinator habitats around the installations. The rule should acknowledge these environmental benefits and provide incentives for projects incorporating such measures, further promoting sustainable land use practices.  Limitations on Siting Large Solar Developments in Rural Areas  A factor that limits the development of larger solar projects in rural areas is the lack of existing transmission infrastructure and available capacity. Rural areas often lack the necessary proximity to transmission lines, making it costly and technically challenging to connect solar projects to the grid.  Furthermore, prime farmland in these regions is often isolated, making it impractical for large-scale agricultural use. As a result, restricting solar development on such lands could reduce viable opportunities for renewable energy projects without yielding substantial benefits for agricultural production. | | | | | **DACF Response to Comment**: Thank you for your comment.  While a solar energy development may be less damaging to farmland than other forms of development, construction and decommissioning activities can disrupt the soil structure and cause soil compaction that can take years, if not decades, to restore. Further, the P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL, in which evaluating “more intrusive land uses” is outside the scope or purpose of the Chapter 575 rules. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, regardless of the reversibility of solar energy developments, a true mitigating factor would need to be an action a developer takes. Otherwise, if all developers received a reduced compensation fee due to the inherent nature of constructing a solar energy development, then the fee reduction would become meaningless, which goes against the intent of the P.L.  Additionally, per 35-A M.R.S. §§ 3491 through 3496, solar energy developments are already required to remove all components of a solar energy development as part of decommissioning: “*For any portion of the development located on land classified as farmland any time within 5 years preceding the start of construction of the development, the [decommissioning] plan must provide for the restoration of that farmland upon decommissioning sufficient to support resumption of farming or agricultural activities.”* DACF considered the possibility of a fee reduction for projects that can show an improvement to the soil health and fertility of the site. However, if the soil health and fertility are not improved after a 30 to 40-year lease, DACF would not have any recourse to recoup the compensation fees. Therefore, this option was not incorporated into the final adopted rules. No changes were made in response to this comment.  All three versions of the Chapter 575 draft and final rules include incentives for projects incorporating dual-use measures such as dual-use crop production, livestock grazing, and pollinator habitat. This includes the potential to reduce or fully eliminate compensation fees depending on the size of the area where dual-use is implemented. No changes were made in response to this comment.  Per this comment and others, conversion pressure has been limited to only tier 4, the 8:1 ratio. Additionally, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near transmission infrastructure, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher land-use conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  Almost half the farms in the state are less than 50 acres (3,232 farms, or 46% of farms in Maine). While large, contiguous acres of HVAL are certainly beneficial for farming purposes, DACF feels that even one acre of HVAL is worth protecting. This is especially true considering the rapid loss of farmland and the small percentage of HVAL within the state. No changes were made in response to this comment. | | | | | | | | | | | | | | | | | | | | |
| Gazillo, Chelsea City/Town: -- Date Received: 08/29/24 Method of Comment: Email Representing Organization: AFT | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We would like to offer the following suggestions on DACF’s drafted routine technical rules regarding solar energy permitting definitions, administration, standards, delegation of authority, and enforcement to be adopted. At a high level, AFT encourages DACF to increase staff capacity to oversee this new program. Consistency in oversight and coordination with the Department of Environmental Protection (DEP) will ensure that this program is accurately administered. Additionally, coordination will boost both agencies’ capacity to tackle farmland-solar issues. Lastly, we would recommend hiring additional soil scientists to survey soil conditions and minimize delays in assessing potential solar sites.  AFT offers the following feedback below in response to P.L. 2023, Chapter 448.  **Definition of high-value agricultural land**  Concurrent with LD 1881’s directive to create a definition for High-Value Agricultural Land (HVAL), AFT applauds the agency for including prime farmland, soils of statewide importance, and a local designation to be created by DACF. As the memo states, this would cause developers to go through a permit process when siting on 13% of the land in Maine, leaving 87% of land available for development without this extra process. AFT sees this as targeted and reasonable. The inclusion of a locally valuable farmland designation ensures that a variety of factors, beyond soil type, are considered that make a farm viable.  That said, AFT recommends that the agency consider other factors including, but not limited to, the parcel’s proximity to an urban center or highly populated area and whether it is used to grow food for communities with high food insecurity rates. These factors, among others, should be considered when determining a farm’s overall viability, which is a critical part of the definition for HVAL.  Finally, echoing Maine Farmland Trust’s comments, we applaud the inclusion of PFAS-impacted land in the definition of HVAL. The exclusion of PFAS-impacted HVAL is in alignment with LD 1591 – An Act to Promote Economic Reuse of Contaminated Land Through Clean Energy Development. This important piece of legislation was signed into law by Governor Mills in 2023.  **Definition of dual-use agricultural and solar production**  AFT agrees with the definition of dual-use defined in the draft regulations, as it is similar to the definition used in other states including Massachusetts and New York. We also support requiring an annual management plan update to ensure the land stays in agricultural production.  As the use of solar arrays with agricultural production is an emerging field, AFT would recommend adding a definition for “agrivoltaics”. Dual-use has become an umbrella term that is often used to include, agrivoltaics, ecovoltaics, floatovoltaics arrays, etc. We recommend specifying and creating a separate definition for agrivoltaics that integrate active agricultural production with modified solar arrays on the same piece of land throughout the full life of the project.  Finally, we recommend the inclusion of metrics to meet the definition of an agrivoltaics project.  **Variable Compensation**  We were also pleased to see that values increase with an increase in adverse impact. It is apparent that the agency is making a good faith effort to require a mitigation fee for unavoidable impacts to agricultural lands.  Lastly, noting that implementation of the fee will be the responsibility of DEP, we recommend that the agencies each direct a point of contact to oversee the program.  **Tiers of high-value agricultural land with variable compensation amounts to be administered by DEP**  We appreciate that DACF’s proposed point system and resulting compensation tiers take soils, prior use, conversion pressure, and whether the high value agricultural land will remain in production into account. However, the current tiered point system, with four distinct categories, each based on type and percentage of project in dual-use, could create unintended, perverse incentives and a scoring system that could be misapplied or manipulated, undercutting the intended purpose of the legislation.  Specifically, the use of discrete tiers that result in a step-change in the mitigation fee multiplier will incentivize solar developers to do the bare minimum to stay below the point threshold that would put a proposed project into the next tier. For example, the difference of 4 points between dual-use crop production on 25% of the land area and 70% of the land area may be too small to affect which tier a project falls into, effectively giving developers zero incentive to increase crop production above 25% of land area if they cannot clear the 75% threshold for a given project.  To remedy this, AFT recommends that DACF create a continuous scale for Tiers 1-9 and Table 1 instead of the proposed discrete scale. Additionally, AFT recommends utilizing both point adders and subtractors in Table 1 to incentivize greater land utilization for projects that do not meet the 75% threshold to qualify for Tier 0. Noting that crop production is more costly and difficult to farm than grazing sheep, AFT encourages subtractors (i.e., negative points) in Table 1 for projects with crop production on between 50 to 75% of the land area. A project should only receive a cumulative total of zero points if there is crop production on over 75% of the project land area.  Outlining specific counties that have been identified as having high development pressures, we encourage the agency to create an explanation of criteria used to demonstrate high rates of conversion. These criteria could be informed by using reliable data sources such as the National Agricultural Statistic Services Agricultural Census, and other indicators that demonstrate high rates of development pressures. Conversion rates in a specific county or municipality may shift over time, so creating criteria that determine what constitutes a place having high rates of development would account for changes in land conversion pressures.  **Expedited Permit by Rule Process (PBR)**  AFT would recommend that behind the meter projects whose primary purpose is to power a farm (nameplate capacity is no more than 200% of the farm’s annual average energy usage) should go through the PBR process or be exempt from this permit process all together. AFT also recommends ensuring that the cap (currently proposed at 20 acres) aligns with the maximum size of community-scale projects in Maine.  **Develop standards for dual-use solar**  AFT is supportive of a 150MW pilot program to test the proof of concept for establishing a compensation mitigation fee. In an effort to move towards dual-use projects that consider keeping high value agricultural land in production, we’d recommend not including pollinator habitats in this pilot program. Pollinator vegetation can provide important biodiversity conservation and agriculture benefits but does not in and of itself constitute agricultural dual use as it does not directly support production of a marketable agricultural product.  We also recommend regular public reporting on the projects funded, successes, and lessons learned to add to the body of knowledge and enable external stakeholders to track and make further recommendations to achieve program success.  **Standards and conditions for delegating permitting authority to the Land Use Planning Commission (LUPC) and municipalities**  While this will be determined by DEP, AFT recommends mitigation funding be used to invest in permanent farmland protection as close as possible to the project or site within the host community. Maine boasts one of the best developed networks of local and regional land conservation organizations in the country, including Maine Farmland Trust, and there is sufficient capacity to make impactful use of increased farmland protection funds.  **Behind the Meter (BMP) Permits – Principle 2**  In the proposed PBR, there is a reference to a BMP management plan needing to be completed. It is unclear whether this is about protecting soil health and productivity/reducing compaction during construction, operation, and decommissioning. If this is the case, then we support this principle. However, if this is not the case, this requirement should also apply to applicants going through the individual permit process. We also recommend requiring such a BMP plan for any applicant seeking a permit through DACF. | | | | | **DACF Response to Comment**: Thank you for your comment. The P.L. established one limited-term position for an Environmental Licensing Supervisor to oversee the program. Increasing staff capacity would have to be done within a statute, which is beyond what the Chapter 575 rules can implement. Additionally, the onus is on the applicant to produce the results of a field-based survey. DACF plays no part in having a field-based survey conducted, and therefore, would not need additional staff soil scientists to conduct the field-based surveys. No changes were made in response to this comment.  Unrelated to this comment, the term “locally valuable farmland” was removed in V2. A new term, “blueberry barren,” has been created and incorporated into the definition of “HVAL.”  The proxy DACF uses for a parcel’s proximity to an urban center or highly populated area is conversion pressure, which is calculated by county. Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[9]](#footnote-9) Counties with a high level of impervious surface tend to be higher populated. Contrastingly, counties with the highest food insecurity rates are disproportionally rural.[[10]](#footnote-10) This seems to be true for Maine as well, since four of the six counties with the highest conversion pressure and four of the six counties with the lowest food insecurity overlap. In summary, because the two data categories contrast (populated area vs area with high food insecurity rate), it would be impossible to incorporate both without one negating the other. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the definition of “dual-use agricultural and solar production” was marginally revised while still incorporating the same themes as the first iteration (see section 2 for revised definition).  The P.L. directs DACF to define “dual-use agricultural and solar production,” hence why that term predominates throughout. No changes were made in response to this comment.  Without a more specific recommendation as to what type of metrics the commenter is referring to, DACF makes no changes in response to this comment. Currently, dual-use, crop production, livestock grazing, and pollinator habitat are all defined in section 2.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF will post the appropriate point of contact on their website. This will not be incorporated into the rules as it would be subject to change with staffing changes.  During the first comment period, DACF received significant public feedback that DACF’s and DEP’s compensation tiers should be more aligned. In V2 and V3 the compensation tiers were revised in which the HVAL compensation tiers now match the DEP compensation tiers with 0.5:1, 1:1, 2:1, and 8:1 ratios. After careful consideration, DACF decided against a continuous scale for the compensation tiers to stay better aligned with the DEP compensation tiers. However, per this comment and others, DACF revised the Table 1 compensation structure to create fewer bins for each dual-use category. This creates a greater spread of points between categories.  Per this comment and others, in V2, dual-use strategies were made into a point subtractor in the Table 1 compensation structure. Unrelated to this comment, the Table 2 compensation structure was added in V3, in which dual-use strategies have a point adder instead of subtractor. This was due to the lack of categories 1 and 2 in Table 2, which would eliminate a starting value to subtract from. Regardless of whether applicants use Table 1 or 2, applicants engaging in dual-use activities have the ability to lower the compensation tier, and thus, compensation fee.  Additionally, DACF recognizes that dual-use crop production can be more costly, difficult, and risky than dual-use livestock grazing. Therefore, due to its uncertainty of success and challenging nature, crop production was given a lower percent area requirement to achieve tier zero in V3. DACF also incorporated two additional avenues to achieve tier zero in the final adopted rule.  Per this comment and others, the definition of “conversion pressure” was revised in V2 and V3 to include more information about how conversion pressure would be calculated, what type of data sources may be used, and how often the list of counties with high conversion pressure would be updated. Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[11]](#footnote-11) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website, and state specifically what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated.  Per this comment and others, DACF incorporated a new “farm viability” category into the Table 1 compensation structure in V2. Solar energy development projects whose land area occupies 20% or less of the farm operation land in which the HVAL exists may be eligible for a seven-point deduction from their compensation score, which may lower their compensation tier and, thus, lower their compensation fee. DACF also incorporated the “farm viability” category into the Table 2 compensation structure in V3. Considering power usage can vary widely from year-to-year, DACF felt it was simpler to calculate what percentage of the farm operation land was occupied by the solar project rather than what percentage of energy produced by the solar project may be used by the farm operation.  DACF considered the possibility of including a farm viability option in a PBR as opposed to the Table 1 and 2 compensation structures. However, behind-the-meter projects where the primary purpose is to power a farm and additionally supplement income would likely already fall in the PBR category due to their typical size. Solar energy developments between 5 and 20 acres would already qualify for a PBR.  Since compensation fees are being calculated and collected by DEP under the Site Location of Development Law per 38 M.R.S. § 484-C, DACF decided to place the PBR cap at 20 acres. Per 38 M.R.S. § 482 (2), "*Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that: A. Occupies a land or water area in excess of 20 acres…”* According to the GEO, community-scale projects range from 0.5 to 5 megawatts (MW) alternating current (AC). On average, a solar energy development requires four to eight acres per one MW AC. Therefore, community solar projects may use anywhere from two to forty acres. DACF feels the 20-acre cap is a fair compromise that captures the average-size community solar project.  DACF agrees that pollinator habitat needs to produce an agricultural product to be considered dual-use. Therefore, DACF revised the definition of “pollinator habitat” in V2 in response to this comment. However, dual-use pollinator habitat is still included in the 150 MW dual-use pilot program.  While DACF intends to continually update and release guidance documents, the P.L. does not direct DACF to mandate public reporting with regard to dual-use projects. After careful consideration, this was not included in the Chapter 575 rules.  Per 38 M.R.S. § 484-C(5), “*A compensation project funded in whole or in part by a compensation fee or land designated for a conservation option under this section 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.*” No changes were made in response to this comment.  DACF intends to update its Best Management Practices (BMPs) for solar siting, but a current version of those BMPs exists within the technical guidance document titled “Technical Guidance for Utility-Scale Solar Installation and Development on Agricultural, Forested, and Natural Lands” (published in January 2021). Unrelated to this comment, a statement of how the applicant plans to meet the BMPs is no longer required. Instead, the applicant merely needs to agree to follow the applicable BMPs (see section 5(2)(E)). This is now required for both the PBR and Individual Permit applications in the revised Chapter 575 draft rules. | | | | | | | | | | | | | | | | | | | | |
| Lyons, Sherry City/Town: Alna Date Received: 11/28/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I believe that we should NOT put solar arrays on high value agricultural lands. They should be put on roofs of industrial and public buildings , both current and new construction. They should be built over every parking lot. See U Mass Amherst. They shelter cars from snow, rain, and sun, and create energy without using the land we need to grow our food. We need to be smart about this! | | | | | | | **DACF Response to Comment**: Thank you for your comment. The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar or solar over parking lots is outside of the scope of what the Chapter 575 rules can regulate. DACF makes no changes in response to this comment. | | | | | | | | | | | | | | | |
| Toothacker, Andrew City/Town: Holden Date Received: 11/30/24 Method of Comment: Email Representing Organization: Hart Farm | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment :** My name is Andrew Toothacker, owner and operator of MOFGA Certified Organic Hart Farm in the town of Holden. As a farm that currently utilizes solar to offset utility expenses, I do not believe that the draft rule as written does enough to protect Maine farmland from solar development.  A system that implements fines and asks developers to offset their impact by putting equivalent land in conservation may discourage development but ultimately not adequately protect valuable agricultural soils.  I would argue that we don't necessarily want to impede solar development, rather we should seek to ensure solar projects are taking place on low quality, unfarmable, or contaminated soils only. We should implement a moritorium on cleared areas with soils of any agricultural value. With such a small percentage of calories produced in Maine actually consumed in Maine, it is vitally important that we not take our limited amount of quality farmland out of circulation for current and future generations. A solar array does not care about the quality of soil it is built into. A carrot, however, cares quite a lot. Low quality soils not capable of producing nutritious food or growing valuable timber should be the development priority for solar companies even if it means clear cutting existing wood lots and vegetation with respect to waterways and erosion concerns. These areas are already well defined by soil maps and easy to distinguish. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The compensation fees solar developers will pay for constructing on HVAL will go into a compensation fund for farmland conservation and solar mitigation projects. An applicant may also choose to conserve other land for agricultural production instead of paying a compensation fee. In either instance, farmland conservation would protect HVAL from future development. DACF makes no changes in response to this comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, regulating solar development on *all* farmland is outside of the scope of what the Chapter 575 rules can regulate. However, the rules have a multi-tiered compensation fee approach, which places the highest fees on the agricultural land with the highest value. These fees are intended to deter solar energy development away from HVAL and towards low-quality, unfarmable, or contaminated soils. DACF makes no changes in response to this comment. | | | | | | | | | | | | | | | |
| Swackhamer, Linda City/Town: Veazie Date Received: 12/03/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** To whom it may concern, I am writing in opposition to this measure as it will encourage more destruction of soils, habitat, and future land for farming food. I think it's short-sighted and ironic that we are destroying habitat for "green" energy. It's misnamed "protection".  Somehow the notion of using forested or farmland instead of providing incentives for erecting power projects on paved-over, already existing industrial land is illogical. We have many dead or dying malls (Bangor). This parcel used to be farmland and is presently watershed for the Penobscot River. A brief 50 years later, and it is paved over, empty of commerce, but the habitat value is lost. Why is this example not a better alternative for incentivizing energy projects?  The panels would shade cars from the heat of summer and snow in winter. Roof arrays should be first considered instead of open land. We are industrializing the thing that makes Maine a special place. Let's practice wise use! In my town, Veazie, a large group of residents and land trust members are involved with encouraging recreation and maintaining trails and habitat. A clearcut recently destroyed a forest and a solar array was constructed. Now neighbors live next to an industrial park of solar panels and we have lost green space. Why not encourage roofs and parking lots for these projects? I am not in anyway against renewable energy! I am just for wise use of the earth for all inhabitants. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The Chapter 575 rules have a multi-tiered compensation fee approach, which places the highest fees on the agricultural land with the highest value. These fees are intended to deter solar energy development away from HVAL and towards other lands, such as existing industrial land. DACF makes no changes in response to this comment.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar or solar over parking lots is outside of the scope of what the Chapter 575 rules can regulate. DACF makes no changes in response to this comment. | | | | | | | | | | | | | | | |
| Stubbs, Edmund City/Town: West Newfield Date Received: 12/04/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** I have seen too much agricultural land become solar fields in York and Cumberland County. The dont produce anything edible for man nor beast of ANY KIND. They are usually fenced to keep man and beasts out. They line the pockets of wealthy people. Maines government forces ratepayers to pay for their development, while paying highest electric bills in country. Put Them on the interstate sides, rotaries, and ramps like they do in Augusta. Put them on rooftop and above parking areas. Stop ruining farm and wildlife land. | | | | | | | **DACF Response to Comment**: Thank you for your comment. The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, incentivizing rooftop solar or solar over parking lots is outside of the scope of what the Chapter 575 rules can regulate. DACF makes no changes in response to this comment. | | | | | | | | | | | | | | | |
| Donoghue, Eliza City/Town: Augusta Date Received: 12/20/24 Method of Comment: Email Representing Organization: MREA | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** MREA is pleased with several of the changes in this revised rulemaking. They include, but are not limited to, removing “forestland” and “locally valuable farmland” from the definition of “high value agricultural land” and changes to the definition of “start of construction”. Thank you to the Department for their responsiveness to our concerns and openness to our feedback.  Indeed, the rules have been markedly improved. However, several concerns remain, all of which are informed by our continued desire for policy that right-sizes the proposed solution with the actual problem. In a recent opinion piece to the Sun Journal, Professor Paul Stancioff from the University of Maine at Farmington and Cynthia Stancioff, MPA, wrote in response to the concern that solar energy will destroy food security: “The beauty of employing actual numbers and quantities in the context of our unfolding energy transition is that they are in general quite affirming and provide a foundation for optimism.1 Their piece goes on the share that in its 2020 Solar Futures Study, the U.S. Department of Energy states that the U.S. will need 10 million acres of photovoltaics, that the U.S. currently has around 880 million acres of farmland, and that 10 million acres of photovoltaics could occupy 1.2% of farmland–that is, if panels are sited solely on farmland (not rooftops, parking lots, lands unsuitable for other uses, etc.).  There is no data, to date, that shows the actual or predicted “footprint” of solar on Maine land. However, we can estimate based on the known megawatts of installed solar in Maine that ground-mounted solar occupies a maximum of 4,500 acres of Maine land.2 Forty-five hundred acres is in stark contrast to the 82,567 acres of farmland lost in Maine between 2017 and 2022.3 At absolute most (but highly unlikely, given that Maine arrays are known to be located on landfills, in industrial parks, and highway cloverleafs, as examples), 5% of lost farmland in Maine could be attributed to solar development.  Given the tenuous link between solar and loss of farmland and our continued concern that these rules will have a chilling effect on the solar development necessary to meet Maine’s climate and clean energy goals, we recommend that the Department, the Maine Department of Environmental Protection, and the Governor’s Energy Office continue to refine this rulemaking and other siting policies so that they adequately balance Maine’s conservation and renewable energy goals.  **Additional Comment and Concerns**   * The proposed rule’s “Alternatives Analysis” definition requires that individual permit applicants “[demonstrate] the need, whether public or private, for the proposed solar energy development”. MREA is concerned that this cannot be objectively assessed, is ripe for subjectivity, and that–to our knowledge–is a concept (“need”) that is not found in any other Maine environmental permitting standard. We recommend removing Section 2(4)(D) from the revised rules. * The rulemaking calls for a “list of the top six counties in Maine facing the highest development pressure”, as determined by calculating the percent acreage of terrestrial land use categories within a county that have been developed into impervious surfaces.” While MREA does not dispute the usefulness of this information generally, it is worth noting that solar arrays are not impervious and that, unlike all other forms of impervious development, are required by Maine law to be decommissioned (i.e., the area must return to its pre-development state). Furthermore, we are concerned that this list has yet to be posted (to our knowledge) and that the list may change at a frequency that introduces significant uncertainty to project development. Projects located in one of these counties may be subject to an 8:1 compensation ratio, which is a significant financial barrier that may render a project financially unviable. * We recommend modifying the definition of “HVAL” to exclude land with non-“manmade” site conditions that make it unfit for agricultural purposes, such as slope, as well as land that may otherwise be restricted from future farming due to, for example, that fact that the land may be in a water resource protection area. This may be achieved by excluding land that cannot be farmed in the future, regardless of whether that limitation is due to existing site features or other physical restrictions. * MREA believes that rules proposed Permit By Rule (PBR) process is not significantly distinguishable or more streamlined than its Individual Permit, which is not in keeping with the typical tenor of a PBR. Specifically, the proposed rule requires a field-based survey for PBRs, which is a significant expense and scope of work. Additionally, the proposed rule would allow the Department to approve a PBR with conditions. Any PBRs issued by the Maine Department of Environmental Protection with conditions are a standard set of conditions that apply to all projects or impact types. We recommend removing the requirement of a field based survey for PBRs, as well as creating a standard set of conditions. * It is our understanding that the Department of Environmental Protection is in the midst of considering how to handle dual-use solar projects with regard to stormwater regulations. The typical assumption is that meadow under panels should be mowed no more than twice a year in order to meet stormwater management permitting specifications. Such a mowing regime may not be compatible with crop production or grazing. This may deter projects from pursuing dual-use and, consequently, an avenue for reduced compensation requirements.   Finally, our concerns about the costs these rules will incur on solar energy development projects remain. At a time when awareness of increasing energy bills and their impact on vulnerable Maine people is at an all time high, decision-makers must be particularly attentive to policy changes that may increase energy costs. Renewable energy, with its readily available and free “fuel” sources (solar, wind, etc.), serves to stabilize energy costs, particularly compared to natural gas and other fuel sources that are vulnerable to global market fluctuations. Disincentivizing renewable energy deployment or increasing the cost of such development in Maine contradicts efforts to decrease energy costs. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a specific request for revisions to the draft Chapter 575 rules.  Per this comment and others, DACF removed the bullet “[*demonstrate] the need, whether public or private, for the proposed solar energy development*” from the definition of “alternatives analysis.”  Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[12]](#footnote-12) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website and state what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated. The six counties facing the highest conversion pressure at this time include the same six listed in V1: Androscoggin, Cumberland, Kennebec, Knox, York, and Sagadahoc. However, DACF understands the concern regarding the frequency at which this list will change and has updated the definition of “conversion pressure” to ensure the list is not updated more often than once every three years.  DACF acknowledges that the state’s solar decommissioning law requires the removal of all solar energy development components and that solar arrays are not impervious. However, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. Farmland in these areas is considered to be of a higher value due to the rapid rate at which it is getting converted. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  A property with characteristics that might inhibit the success of agricultural activities (steep slopes, surface stoniness, etc.) would not likely be categorized as HVAL after a field-based survey is conducted to verify the on-site conditions. DACF considered excluding land with non-manmade site conditions from the definition of HVAL, such as water resource protection areas. However, determining whether solar energy development should or should not be discouraged in a well-head protection area or water resource protection area is beyond DACF’s area of expertise and the purview of the rules. Wellhead protection areas fall more appropriately within DEP’s jurisdiction, local jurisdictions, and DHHS Safe Drinking Water programs. After careful consideration, no changes were made in response to this comment.  DACF believes that trying to identify HVAL without a field-based survey would lead to inaccurate results. Additionally, the results of a field-based survey is critical to the Department’s ability to evaluate a project. Therefore, DACF maintains the field-based survey requirement. However, DACF agrees to remove the PBR option of “approve with conditions” which limits the application to only “approve” or “deny.”  Currently, no DEP rulemaking is in progress to address this topic. However, DACF will continue to collaborate with DEP regarding dual-use solar projects. DACF makes no changes in response to this comment.  After the first public comment period, DACF revised the compensation tiers to better align with DEP’s tiers and incorporated additional strategies to achieve a lower compensation fee. The rules incorporate multiple opportunities to either lower or eliminate the compensation fee. DACF feels this framework allows renewable energy to be developed with affordable fees if the applicant takes appropriate steps to site the project responsibly, incorporate dual-use activities, or make a valid argument for farm viability. After careful consideration, DACF makes no changes in response to this comment. | | | | | | | | | | | | | | | |
| Megquier, Shelley City/Town: Belfast Date Received: 12/23/24 Method of Comment: Email Representing Organization: MFT | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** **Support for rules as revised**:   * MFT is supportive of the compromises made to narrow the definition of High-Value Agricultural Land (HVAL). For example, the removal of forested land underlain by agricultural soils from the definition and addition of more specificity around blueberry barrens are both reasonable. * We appreciate the added clarity on the definition of conversion pressure and description of how it’ll be updated regularly. The emphasis on the 6 counties with highest levels of development mean that compensation ratios will be higher there so developers will pay more in counties where valuable farmland is the scarcest. However, there are still mitigation strategies developers can take to substantially reduce or eliminate fees in these counties. * We support the addition of Tier 1 with an 8:1 compensation ratio (aligned with DEP’s ratios). The creation of Tier 0 and Tier 1 in this version is a significant improvement. This means that there is clarity around the situations in which no fees will be required (Tier 0) and that the highest levels of compensation (Tier 1) will **only** apply to projects that meet multiple specific characteristics concurrently. * Our assessment is that many scenarios in which farmland is being developed for solar would likely fall into the 2:1 ratio or 1:1 ratio, though also support the higher compensation ratio in the limited specific circumstances described in the rule. * These changes to HVAL definition and the tier point system all seem appropriate, aligned with parallel effort in DEP, and offer developers clear and generous options to reduce or even eliminate fees. Again, these fees clearly apply only to HVAL as defined not all farmland – which was the intent of the law.   **Constructive criticism:**   * The definition of “existing conditions” in Section 2. Definitions, Paragraph 21, needs revision. MFT is concerned that the definition of HVAL does not include “land with existing conditions such as impervious surfaces, gravel roads, asphalt roads, land that has been stripped of topsoil…” at the time of the permit application. The problem is not with the exclusion of land with those types of impacts (e.g. stripped of topsoil) but that “existing” is defined as at the time of permit application submittal to the Department. With this definition, there is no action the Department can take if a piece of land is significantly altered before the permit is submitted in order to avoid the designation of that land as HVAL. The National Land Cover Database could be checked against the field-based assessment that is included in the application to ensure that the farmland impacted by the project has not been altered prior to application submission. * We do not agree that dual-use livestock grazing on 75% or more of dual-use land area should result in a Tier 0 designation. Livestock grazing may not be the best agricultural use for some HVAL. Crop production should be more strongly incentivized since grazing, especially of small ruminants, is much cheaper and easier than crop production under and between solar panels but doesn’t necessarily have the same agricultural and environmental outcomes. We would instead advocate for a -8 point deduction for Dual-use livestock grazing on 75% or more of the dual-use land area and for maintaining the Tier 0 designation for dual-use crop production on 75+% of the dual-use land area. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Unrelated to this comment, the tiers have been reorganized, in which tier 4 is now the 8-to-1 ratio.  DACF agrees and changes the language in V3 to the following: “*For the purposes of this subsection, “existing” means at the time of permit application submittal to DACF and prior to the “start of construction.””* The definition of the “start of construction” includes securing site control, which is defined as “*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.*”  Therefore, with this revision any applicant with a documented interest in constructing a solar energy development at the site would be in violation of these rules if they were to begin site modification activities prior to permit application.  DACF agrees that dual-use crop production is a higher cost, risk, and effort than dual-use livestock grazing, as it hasn’t had as much widespread documented success as dual-use livestock grazing. However, DACF believes in giving the applicants the opportunity to meet the tier zero designation. Therefore, to ameliorate this discrepancy, DACF has revised the rules to lower the percentage threshold for dual-use crop production to meet tier zero from 75% to 50%. | | | | | | | | | | | | | | | |
| Paterson, E. & Levy, S. City/Town: -- Date Received: 12/23/24 Method of Comment: Email Representing Organization: AFT | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** This continued rulemaking reflects admirable, detailed thinking to get this policy right.  Based on AFT’s Smart Solar siting principles and [AFT Recommendations for State and Local Governments to Advance Smart Solar Policy](https://farmland.org/smart-solar-policy-recommendations/), AFT supports many of the draft rules for solar energy development on HVAL. AFT specifically applauds the proposed change that classifies both pollinator habitat and beekeeping as “dual-use pollinator habitat” only if there is a marketable agricultural product being produced. AFT also strongly supports including “Best Management Practices” (BMPs) as part of the application requirements, and DACF’s reference to separate guidance that can be updated when necessary. AFT recommends that the BMPs be amended as soon as practicable for DACF (and regularly thereafter) so that they read as clear best practices for the purposes of permitting rather than considerations or suggestions, and so that they continue to reflect the latest in conservation science.  AFT commends DACF for its efforts to strike the appropriate balance between advancing solar energy development, protecting HVAL, and preserving local farming and food systems. Below are AFT’s recommendations to DACF on this rulemaking to achieve these goals.  **Defining HVAL**  The definition of HVAL forms the basis for what the state aims to protect, and which lands will trigger the mitigation process. AFT recommends DACF take the following actions prior to finalizing this definition:   * **Make soil survey optional**. Prime soils have been defined as such by USDA soil scientists because of their *inherent* characteristics. Therefore, it does not seem necessary to have a soil scientist verify that every plot is prime before it is considered HVAL. Rather than making this a requirement in each application, AFT suggests offering applicants the *option* for additional verification by survey, but only if they request and pay an additional fee into a fund used for this purpose. * **Broaden requirements for HVAL qualification**. Allowing land to qualify as HVAL *only* if buildings do not substantially reduce the agricultural potential may be overly limiting. On-farm housing, processing, or other structures that are necessary to maintain a successful agricultural operation may disqualify land that would otherwise be considered HVAL. These and other structures that are not considered energy or farm infrastructure may not be accurately accounted for in the current definition. AFT recommends adding language to ensure there is sufficient flexibility to account for these cases. * **Close potential loopholes within the HVAL definition**. AFT also has concerns that the definition, as written, might incentivize alteration to the land, like the spreading of gravel, prior to application as a means to disqualify land from being considered HVAL. Language or processes (such as comparing the land with prior land use cover data or satellite imaging) should be added to ensure this does not happen.   **Mitigation Fee Structure**  Regarding the proposed structure for the mitigation fees, while it is difficult to comment without understanding what the per acre fee will be based on, AFT applauds DACF’s simplification of the tiers and ratios and the proposed change to *subtract* points for dual-use projects in this iteration of the rules. AFT looks forward to further opportunity to comment on the Department of Environmental Protection’s proposed program rules as it relates to actual per-acre fee amounts, and hopes there will be further opportunity to comment and shape this portion of DACF’s rules once DEP releases theirs. However, based on current understanding, AFT has critical recommendations to further improve the proposed mitigation fee structure:   * **Close potential loopholes in Tier One**. Having a mitigation category with a high per-acre fee for high-impact projects is essential to a well-designed mitigating program. This both disincentivizes high-impact projects and, if such projects still need to be built, allows the host community to recoup enough funding to mitigate impacts. AFT commends DACF for creating “Tier One” for this purpose and recommends **excluding** dual-use pollinator habitat from enabling an applicant to be disqualified from Tier One within criteria four. Without this change, it would be too simple for an applicant that meets all other Tier One criteria for high impact on conversion pressure, farm viability, and HVAL to then incorporate pollinator habitat on over 25% of the array to significantly reduce the mitigation fee they owe. * **Make changes to incentivize dual-use crop production**. Livestock, particularly sheep, grazing is easier and less expensive to integrate into solar arrays than specialty crop production.1 Unless tiered incentives (in the form of fee reductions) that are more significant for specialty crop production than livestock grazing are offered, the state will likely **only** effectively incentivize arrays that integrate livestock grazing or hay and will get few to no solar arrays that integrate specialty crops. To avoid this, AFT recommends:   1. Removing sheep grazing from Tier Zero and instead offering a larger (e.g., 8- point reduction) for grazing sheep on over 75% of an array. If *both* crop production and sheep grazing on over 75% of the array result in no fee owed, it is unlikely this will result in *any* projects that integrate specialty crop production or other more costly forms of dual use (like cattle grazing) into the array. Leaving the rules as proposed also runs the risk of providing a generous incentive that reduces mitigation funds collected for a practice that could already save developers money (they often replace the cost of landscaping with a solar grazer).  2. Further differentiating fee reductions for livestock grazing and crop production by offering *significantly* larger point reductions for specialty crop production than for livestock grazing in each point category. | | | | | | | **DACF Response to Comment**: Thank you for your comment.  DACF intends to update its Best Management Practices (BMPs) for solar siting, but a current version of those BMPs exists within the technical guidance document titled “Technical Guidance for Utility-Scale Solar Installation and Development on Agricultural, Forested, and Natural Lands” (published in January 2021). No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  While the USDA NRCS soil maps are useful for identifying a course boundary of PF and FOSI soils in a certain region, the data is not updated consistently across the state or to a scale necessary for permitting needs. DACF believes that trying to identify HVAL without a field-based survey would lead to inaccurate results. However, DACF agrees with providing an alternative option. DACF incorporated revisions in V3 allowing the applicant to by-pass the field-based survey requirement for an individual permit if they agree to pay a fee for the entire project land area (see section 7(8) for more details).  While DACF agrees with the need to elaborate on what type of structures constitute “agricultural infrastructure,” we feel this can be incorporated into a guidance document or the HVAL identification protocol rather than the rules. DACF feels that other structures that would not specifically be considered “agricultural infrastructure” would not be on land considered HVAL. DACF makes no changes in response to this comment.  DACF agrees and changes the language in V3 to the following: “*For the purposes of this subsection, “existing” means at the time of permit application submittal to DACF and prior to the “start of construction*.”” The definition of the “start of construction” includes securing site control, which is defined as “*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.*”  Therefore, with this revision any applicant with a documented interest in constructing a solar energy development at the site would be in violation of these rules if they were to begin site modification activities prior to permit application.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF agrees that dual-use pollinator habitat is an easier form of dual-use to achieve than crop production and livestock grazing from a cost, risk, and effort perspective. However, DACF believes in giving the applicants the opportunity to avoid the 8-to-1 ratio by conducting dual-use activities. Therefore, to ameliorate this discrepancy, DACF has revised the rules to raise the percentage threshold for dual-use pollinator habitat in tier 4 (the 8-to-1 ratio) from 25% to 75%.  DACF agrees that dual-use crop production is a higher cost, risk, and effort than dual-use livestock grazing, as it hasn’t had as much widespread documented success as dual-use livestock grazing. However, DACF believes in giving the applicants the opportunity to meet the tier zero designation. Therefore, to ameliorate this discrepancy, DACF has revised the rules to lower the percentage threshold for dual-use crop production to meet tier zero from 75% to 50%. Additionally, DACF considered incorporating more specific dual-use types such as specialty crops and cattle grazing but finds the current framework to be a simple and straightforward approach. If dual-use activities were to become a more widespread practice in Maine, a more complex framework may be warranted. However, for now, DACF maintains the three dual-use categories as-is.  Per this comment and others, DACF revised the Table 1 compensation structure to create fewer bins for each dual-use category. This creates a greater spread of points between categories to further differentiate fee reductions. | | | | | | | | | | | | | | | |
| Bourgoine, Lindsay City/Town: Montville Date Received: 12/24/24 Method of Comment: Email Representing Organization: Revision Energy | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We appreciate the Department’s consideration of previous comments and clear incorporation into the revised draft—multiple improvements have been made. However, we remain concerned about multiple provisions (both previous provisions and new language in the updated draft), and therefore we believe additional changes are necessary.  Prior to outlining such concerns, we remind the Department to ground such a rulemaking in the reality of the intersection of solar energy development and agricultural production. Section 1 of the preamble identifies the rule’s necessity given the primary benefit of farms and farmland is regional food security. Such a statement presumes that solar energy, then, while important in our state’s achievement of its climate goals, is directly resulting in significant land conversion, threatening our state’s food security. In 2022, the United States Department of Agriculture reported that Maine lost 82,000 acres of farmland due to conversion in the past five years (since 2017). In looking at the Maine Governor Energy’s Office statistics on total installed solar capacity in the state, it is estimated that the state has approximately 3,500 acres of solar, or 0.02% of Maine’s total land area. If one assumes that all such capacity was installed on farmland, solar would be responsible for approximately 4% of the conversion. We therefore highly recommend that the Department evaluates, addresses, and focuses on the factors that have contributed to the remaining 96% of acres lost. Solar energy development is clearly not the driving factor in farmland loss.  **Section I: Valued Updates**  As noted, ReVision was pleased to see multiple changes made in the updated draft rule:   * + - We very much appreciate the removal of ‘Forestland’ and ‘Locally Valuable Farmland’ from the definition of High Value Agricultural Land (HVAL).1     - We appreciate the changes in the definition of ‘Start of Construction,’ and specifically appreciate the multiple points in the updated draft indicating the rule will be applicable only to developments whose construction begins after the effective date of the rule.     - We appreciate the additional clarity regarding the length of the ‘Alternatives Analysis’ and that it should be only one to three pages and should include evaluation of “if, to the extent practicable, the project is located on the least agriculturally productive portions of the parcel[s].” (Page 6)     - We appreciate the reference to guidance documents2 for the ‘Field Based Survey’ and the understanding that if one part of the survey indicates that the land does not meet the qualifications of HVAL, the remaining portions of the survey are not required.     - We appreciate the minimization of the Annual Update Requirements for qualifying as ‘Dual-Use.’ (Page 22)   **Section II: Updates Requiring Further Change**  Additionally, we appreciate improvements in the following sections but have remaining concerns:   1. We appreciate the reduced compensation ratios, though note that for projects that fall within the six counties identified by the Department subject to the greatest development pressure, compensation ratios up to 8.0 still exist. 2. Within the Permit by Rule (PBR) application, we appreciate the opportunity to include how a project may be sited on a portion of the total land area that is the least productive, and to describe such siting with an addition to the application. However, while the requirement to include an affidavit is helpful, the lack of criteria to judge such a statement objectively remains ReVision’s primary concern, which we will outline in detail in Section III. While we understand the intention of the addition that a permit may be denied if “DACF determines that the [project] is not proposed to be constructed on the least agriculturally productive portions of the parcel[s],” there is no such corresponding criteria that says a permit must be approved if it is in fact constructed on the least agriculturally productive portions.   **Section III: Areas Requiring Change**  Prior to adoption, we respectfully request that the Department reviews these additional concerns  and considers making substantive changes to the rule:   1. In the ‘Alternatives Analysis’ (Page 6), new text is added to denote project “need.” It requires applicants “[demonstrate] the need, whether public or private, for the proposed solar energy development.” This statement appears to be in direct conflict with the preamble for the rule, which notes “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.” (Page 4) If such a preamble is true, it seems in direct conflict to then require the applicant to prove why the project is necessary in the first place, as the rule itself outlines the need for renewable energy to meet our state’s codified climate goals. Even more, such a determination by the Department, on whether the project is warranted or not, would be incredibly subjective. Given this section is both unnecessary and subjective, we ask the Department to remove it in its final publication of the rule. 2. Additionally, the rule calls for the Department to actively develop “a list of the top six counties in Maine facing the highest development pressure” for use in increasing compensation ratios. Given this list is not currently developed (to our knowledge), and appears it will be revised frequently, we are concerned that it lends itself to considerable regulatory uncertainty.   Even more, we remind the Department of existing decommissioning laws for solar development in the state that require the land to be returned to its pre-development state, with even stricter requirements for projects impacting farmland. Conversion, therefore, is not permanent in the same manner as other forms of development. Lastly, it is important to point out that the benefits of distributed generation increase the closer the generation is to serving load. Locations facing development pressure, then, may also be areas with high demand and thus increasing load. Considering grid infrastructure, these counties may in fact be the best place for solar development to be the most beneficial to the grid. For these multiple reasons, we recommend removal of this portion of the rule.   1. The updated rule moves ‘PFAS-Impacted HVAL” into the definition of HVAL, but in the definition of PFAS-Impacted HVAL itself, it is noted that such lands “would otherwise be qualified for HVAL” (as defined under HVAL). We find this confusing and express the concern that we should not be limiting what can built in such locations at a time in which public policy—from both the legislature and Public Utilities Commission—focus on streamlining solar siting on these very lands.   While we understand that the compensation score for impacts to such areas is zero, a developer must still conduct a Field Based Survey and Alternatives Analysis which remain expensive barriers in both cost and time. For that reason, we suggest exempting PFAS-Impacted HVAL from the Field Based Survey (once PFAS contamination is identified) and Alternatives Analysis. It simply does not make sense to require an applicant to showcase how they could avoid impacts to such lands when there is, in fact, an incentive to site solar in such locations. The developer should only be required to show that PFAS contamination exists.   1. Finally, as noted, ReVision continues to remain significantly concerned that the PBR process is onerous, exposed to considerable subjectivity, and misaligned with the intention of a PBR. While we appreciate the goal of expediting permitting for smaller projects, we again ask the Department to ensure the process is in fact a true permit by rule, which requires outlining clear standards a project must meet to automatically receive a permit. The current proposal yet again includes significant discretion, and a true permit by rule instigates denial only if the project does not meet such criteria.   Not only does the proposed rule allow the Department to deny permits without clear criteria, it also allows the approval of permits with unknown and/or potentially inconsistent conditions. Again, we appreciate the addition for the developer to include “a statement describing how… the solar energy development is proposed to be constructed on the least agriculturally productive portions of the parcel[s],” (Page 16) but again, given the lack of specific criteria the Department must follow to evaluate such a statement, the decision to approve remains entirely subjective. To that end, we appreciate the addition within ‘Conditions for PBR Denial’ (Page 17, 18) that indicates a permit could be denied if “solar energy development is not proposed to be constructed on the least agriculturally productive portions of the parcel to the extent practicable.”While this attempts to redress the concern that landowners seeking the opportunity to diversify economically would be penalized, it creates criteria for permit denial in the absence of criteria for permit approval. We therefore recommend the inclusion of specific criteria for permit approval as we outlined in previous comments and share again today (in italics). We believe this is a reasonable compromise as we noticed the sentiment of such comments, which propose a percentage threshold of total acreage, was applied in the updated rule to the Individual Permit process (Page 25).  *If the project is located on more than 5 acres of HVAL that is active farmland (as defined below), the landowner shall be permitted to utilize a PBR to develop no greater than 20% of the total HVAL acreage on the property (including the subject tax parcel and any contiguous parcels owned by the same landowner).*  *If the project is located on more than 5 acres of HVAL that is not active farmland (as defined below), the landowner shall be permitted to utilize a PBR to develop no greater than 40% of the total HVAL acreage on the property (including the subject tax parcel and any contiguous parcels owned by the same landowner). This directly addresses the fact that HVAL may be found in open space on properties owned by municipalities, schools, or businesses—landowners that have no intention of utilizing the land for agricultural production. However, solar projects enable revenue diversification for these entities, too, and therefore they should have similar access to such a PBR.*  *For the purposes of this PBR, we recommend utilizing the definition of farmland from the Farm and Open Space Tax Law (34 MRS §1102(4)) to define active farmland as any tract or tracts of land, of at least five contiguous acres, that meets the following criteria: “Farming or agricultural activities on the tract or tracts have contributed to a gross annual farming income of at least $2,000 per year from the sale value of agricultural products as defined in Title 7, section 152, subsection 2 in one of the 2, or 3 of the 5, calendar years preceding the date of application. The farming or agricultural activity and income derived from that activity may be achieved by either the owner or a lessee of the land.”* | | | | | | | **DACF Response to Comment**: Thank you for your comment**.** No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. does not give DACF the authority to require a permit for any form of development other than a solar energy development. Therefore, regulating other forms of development are outside of the scope of what the Chapter 575 rules can regulate. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.    After the first public comment period, DACF revised the compensation tiers to better align with DEP’s tiers and incorporated additional strategies to achieve a lower compensation fee. The rules incorporate multiple opportunities to either lower or eliminate the compensation fee. DACF feels this framework allows renewable energy to be developed with affordable fees if the applicant takes appropriate steps to site the project responsibly, incorporate dual-use activities, or make a valid argument for farm viability. After careful consideration, DACF makes no changes in response to this comment.  The definition of “agricultural productivity” is “*the successful production or cultivation of agricultural products*.” The onus is on the applicant to show which portions of the parcel are the least agriculturally productive. DACF chose not to incorporate specific criteria on judging agricultural productivity to provide sufficient flexibility for an applicant to make their case. However, DACF decided to incorporate grounds for permit approval in V3, which are simply the opposite of the grounds for permit denial.  Per this comment and others, DACF removed the bullet “[*demonstrate]* *the need, whether public or private, for the proposed solar energy development”* from the definition of “alternatives analysis” in V3.  Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[13]](#footnote-13) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website and state what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated. The six counties facing the highest conversion pressure at this time include the same six listed in V1: Androscoggin, Cumberland, Kennebec, Knox, York, and Sagadahoc. However, DACF understands the concern regarding the frequency at which this list will change and has updated the rules accordingly to ensure the list is not updated more often than once every three years.  In V2, conversion pressure was limited to only tier 4, the 8:1 ratio. Additionally, farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near transmission infrastructure, it can also be beneficial to protect farmland near these developed areas. Agriculture may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  PFAS-impacted HVAL was always incorporated in the definition of “HVAL”, it was just moved from a different paragraph of the definition in V3. However, DACF agrees that the definition is confusing and has updated the definition of “PFAS-impacted HVAL” accordingly.  PFAS contamination levels often vary throughout a parcel. A site might have areas with high levels of contamination and areas with little to no contamination. Further, the definition of “PFAS-impacted HVAL” is synonymous with the definition of “HVAL” with the exception of the PFAS contamination. There would be no way to confirm if the land is PFAS-impacted HVAL or just PFAS-impacted farmland without a field-based survey to confirm the on-site conditions. DACF would not be able to properly evaluate projects by removing the field-based survey or alternatives analysis requirement.  DACF believes that trying to identify HVAL without a field-based survey would lead to inaccurate results. Therefore, DACF maintains the field-based survey requirement. Additionally, DACF would not be able to properly evaluate projects by removing the field-based survey or alternatives analysis-type statement from PBR applications. However, DACF agrees to remove the PBR option of “approve with conditions” which limits the application to only “approve” or “deny.”  Please see the response on page 115 above regarding agricultural productivity and grounds for permit approval.  Please see page 54 for DACF’s responses to the comments that were provided by Lindsay Bourgoine on 08/29/2024. | | | | | | | | | | | | | | | |
| Kelshaw, Rodney City/Town: Yarmouth Date Received: 12/24/24 Method of Comment: Email Representing Organization: MAPSS | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** We acknowledge the hard work and extensive time that has been put into crafting this legislation. We are pleased to know that some of MAPSS previous input has helped develop the latest version of this document. We offer two ideas for changes to the final wording.  **First:** Multiple sections of the current Chapter 575 wording state that verification of the soil conditions will be a field-based survey conducted by a licensed soil scientist (LSS) in accordance with the DACF guidance document *Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine* (Protocol). This document details a procedure for determination of “Prime Farmland Soil” and “Farmland of Statewide Importance”.  MAPSS supports the use of a protocol for LSS to perform the on-site soil inventory/assessment and agrees it should be referenced in this Chapter. That way there is a repeatable methodology being used by all LSS to help provide predicable results. However, we strongly suggest that the language be revised to say, “***The most current version*** of the document *Determining Prime Farmland Soils and Soils of Statewide Importance for Siting Solar Projects in Maine* **as *developed jointly by the DACF and MAPSS***”. That way, if it is determined that edits or revisions should be made to the Protocol it would:   * Be understood that this is a “living document” that can/will be updated by a joint effort between the DACF State Soil Scientist and the MAPSS Executive Committee, and * When changes are made to the Protocol it will not need to go through a Rule Making process or require changes to Chapter 575.   Examples of additions or edits to the current document are to incorporate standards for scale of map units or limiting inclusions, which will likely be similar to what are currently in the MAPSS Class B High Intensity Soil Survey (HISS) protocol. It should also include a “rapid assessment” process to use at sites where a full HVAL determination can be performed without the need for a soils mapping.  **Second:** MAPSS supports an option that allows an applicant to assume that an entire impact area meets HVAL and pay the respective compensation fee. We understand that there could be situations where an applicant would prefer to pay the fee for impacts to HVAL soil without having the on-site evaluation completed. This could be for various reasons, such as they are submitting applications during winter and the ground is frozen and covered in snow so performing a seasonally appropriate on-site soil evaluation is not possible. If the applicant chooses to assume the entire impact area meets the HVAL definition they could pay the fee without having the on-site soil confirmation performed. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF agrees, and revised the definitions of “prime farmland,” “farmland of statewide importance,” and “HVAL” accordingly in V3.  DACF will release more specific guidance regarding the protocol for identifying HVAL at a later date. DACF will work closely with MAPSS and the state soil scientist to create this guidance. No changes were made in response to this comment.  Per this comment and others, DACF has incorporated revisions in V3 allowing the applicant to by-pass the field-based survey requirement for an individual permit if they agree to pay a fee for the entire project land area (see section 7(8) for more details). | | | | | | | | | | | | | | | |
| Smith, Rowan City/Town: -- Date Received: 12/25/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Hello, I'd like to submit a comment on the rules for permitting solar on high-value agricultural land. I do not think forestland should be excluded from these rules since forestland is just as important to preserve as agricultural land, particularly with regard to the potential for carbon storage and wildlife habitat protection. It is backwards to have solar panels take the place of forest since it would be destroying an important carbon sequestration area. And by discouraging solar development on agricultural land, it will increase the pressure on forestland conversion unless this land use type is also included in the rules. Additionally, forestland can be used for certain types of crops, such as mushrooms and high value woodland medicinal plants (and some edibles). In sum, I hope that forestland will be added back into the rules as high-value agricultural land. | | | | | | | **DACF Response to Comment**: Thank you for your comment. DACF received substantial public comment during the first comment period stating that forestland should be excluded from the definition of “HVAL.” Further, forestland will be protected by DEP’s Chapter 375 rules under the umbrella of large undeveloped habitat blocks. While DEP’s rulemaking is still ongoing, their draft rules also incorporate protections for deer wintering areas, habitat of rare, threatened, or endangered species, and important wildlife corridors. DEPs Chapter 375 rules, DEPs Chapter 379 rules, and DACFs Chapter 575 rules are all created at the directive of P.L. 2023, Chapter 448), *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.* Therefore, removing forestland from the definition of “HVAL” doesn’t automatically mean that forestland would lack any protection. | | | | | | | | | | | | | | | |
| Knapp, Dale City/Town: Portland Date Received: 12/25/24 Method of Comment: Email Representing Organization: Walden | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** The rules as drafted utilize a tiered permitting structure, similar to the tiered permitting structure of the Natural Resources Protection Act, which utilizes Tier 1, Tier 2, Tier 3, and Individual depending on the level of impact and the type of resource being affected. I would recommend the Chapter 575 rules be modified to mirror this existing structure, where the lower tiers are associated with lesser impacts. As drafted currently, the proposed rules use Tier 1 as the highest level of impact, this could create confusion and I would recommend adopting the same approach already used in Maine environmental permitting, where the higher number tiers are associated with a higher level of impact. I would also suggest eliminating Tier 0 and starting with Tier 1, and ascending from there.  The current version of the rules does not seem to provide any incentive for mid-scale scale (25-75%) dual use in the proposed compensation structure and the rule still results in scenarios where projects would be required to compensate for converting non-active farmland into a dual use agricultural solar project. So, in essence the dual use qualifier means that, if not for the development of a solar project proposing dual use agriculture, no agricultural activity would be occurring on this land. The following are two examples that are based on real projects as well as a developed example. We hope the rules can be modified to allow for such activities to occur without requiring the need for compensation. I have appended to these comments the detailed breakdown of each scenario.   * Proposed scenarios for the farmland at our 20MW projects in Sanford (Mousam Project) or Leeds utilized either a 2:1 compensation ratio or no compensation required with more than 75% qualifying as dual use. Where compensation is required, the required amount is the same for both projects, whether you do not utilize any dual use agriculture, or if you create dual use up to 75% of project area. Which seems to disincentivize ANY dual use under 75%. From our perspective, even 50% of a project area qualifying for dual use would provide some agricultural benefit, but this is not reflected in the rules. As currently proposed, there does not seem to be any way to get to the lower compensation Tiers using dual use when a project is proposed on active farmland because the project accrues so many points just from being farmland and HVAL. Projects are left with two options, propose all dual-use with 75%+ of project area being considered dual use and pay $0 (which seems infeasible for most projects) or the project offers no dual use and simply pays the total fee. We do not see any partial reduction in the middle, and this seems contradictory to the legislated intent of the rules. * Additionally, it appears the only possible way to access the lower compensation tiers is to be on land that is comprised of HVAL soil but is not active farmland. Please see the general example spreadsheet attached. Again, if you are creating dual use on land that isn't currently active farmland, you are in essence, creating a farm that would not exist if not for the proposed solar facility. An example of a commonly proposed scenario would be a solar project being sited on a fallow field that hasn't been farmed in years but has good HVAL soils. If the project proposes to do no dual use in this scenario, the requirement will be to pay a 1:1 compensation ratio. If the project proposes dual use between 50-75% of project area this would reduce the tier to a 0.5:1 compensation ratio, so the project would be granted a 50% reduction in the compensation required. This provides some incentive, but thinking about the bigger picture here, the solar project is still being penalized for creating an agricultural operation. It would be worth carving out an exemption for this type of scenario, where dual use of non-active farmland is excluded from compensatory payments, to further incentivize dual use.   Another comment to consider would be cross departmental coordination on stormwater treatment, as far as we know the Maine Department of Environmental Protection (MDEP) still has not finalized an approach to dual-use solar projects with regard to stormwater regulations. MDEP has been on record in webinars and other public discussions that the accepted best management practice (BMP) for stormwater treatment is that a meadow buffer under panels should be established, maintained, and mowed no more than twice a year in order to meet stormwater management requirements. This could potentially be complicated by livestock grazing and crop production. If proposing to do grazing or crops will MDEP require additional engineered stormwater controls? The need for these armored, engineered, and expensive structures could easily serve as another disincentive that increases construction costs, and ultimately reduces the likelihood that projects would propose to create dual use projects. The MDEP should be consulted on creating stormwater exemptions or clear guidelines on how stormwater will be evaluated for sites with livestock grazing or crop production proposed so projects can evaluate the viability of dual use. If significant stormwater controls are required for dual use projects, this may deter projects from pursuing dual use which seems counterintuitive to the intent of this rule. This could create competing directives from different state agencies that may serve to reduce the number of projects that would pursue dual use, which seems to also run counter to the intent of the legislation.  The rulemaking calls for a “list of the top six counties in Maine facing the highest development pressure”, as determined by calculating the percent acreage of terrestrial land use categories within a county that have been developed into impervious surfaces.” This list has not been posted (to our knowledge) and it appears this list could very well change at a frequency that introduces significant uncertainty to renewable project development. Projects located in one of these top 6 counties may be subject to an 8:1 compensation ratio, which is a significant financial barrier that could easily render a project financially unviable. Especially considering development timelines, this could have major effects on a project. The development cycle for a renewable energy project is in excess of 5 years, if a proposed project executes a land agreement for a solar project in a county that is not in the top 6 counties and base project budgeting assumptions on a 2:1 comp ratio at worst, but it takes 3 years to resolve interconnection issues to a point where the developer is ready to start permitting. Though during that time period, development pressure has changed, and the county is now in the top 6, and project could be subject to 8:1 ratio which is a significant increase compared to the assumption that has required 3 years to complete and informed project spending decisions in that time. We would recommend that the project be subject to the list that is current at the date when land control is obtained for the project. The development would then be “grandfathered” by the conditions at the point of lease execution which could easily be confirmed by documentation submitted by an applicant to DACF.  Also, it is worth noting here that solar projects are most beneficial when located nearest to the demand for power, which directly contradicts with this approach.  The rule should be modified to change the definition of “HVAL” to exclude land with site conditions that make it unfit for agricultural purposes, such as slope, cover type (stones/boulders), as well as land that may otherwise be restricted from farming for some other reason. The definition should exclude land that cannot be farmed, regardless of whether that limitation is due to existing site features or other physical restrictions as determined by a Maine Licensed Soil Scientist.  The rule should consider the option for a proposed project to simply “opt in” without the need to complete detailed soil surveys and consider the footprint of the project proposed to be on HVAL and be placed into the appropriate tier accordingly. The department should create this option that allows an applicant to assume that an entire impact area meets HVAL and pay the respective compensation fee. We believe that there could be situations where an applicant would prefer to pay the fee for impacts to HVAL soil without having the on-site evaluation completed. If the applicant chooses to assume the entire impact area meets the HVAL definition they could pay the fee without having the on-site soil confirmation performed.  In closing I would encourage the DACF to provide credit, where credit is due, and if land that is unsuitable for farming purposes is improved by the installation of an energy facility with a defined operational end date with a term lease, the rules do not penalize the long-term environmental and agricultural benefits of such a project. Balance our current needs with the land we have available, and if a 50-acre array on a farm provides an annuity that supports the economic viability of the farm, allow this, without penalty. These large solar fields will be the most productive soil available to us in 40 years, view these developments as banking land for future use while trying to curb the fossil fuel dependence of today. Perhaps consider a firm decommissioning date to be included in project permits as a means to reduce or eliminate the need for compensation. Such that if, at the end of the project’s useful life, the underlying land is returned to agricultural use no fees would be required. This could be achieved through a contractual mechanism and if the directive is not complied with, a penalty payment would be triggered. This would also seem to me to meet the intent of the rules. | | | | | | | **DACF Response to Comment**: Thank you for your comment. DACF agrees that this could cause confusion and has reorganized the tiers accordingly in V3.  Land may not be in active agricultural production for a number of reasons, DACF has concluded that land meeting the qualifications of PF, FOSI, and blueberry barren is still of high agricultural value, even if it is not currently producing economic value. However, per this comment and others, DACF revised the Table 1 compensation structure to create fewer bins for each dual-use category. This creates a greater spread of points between categories. Additionally, DACF revised the threshold requirements of dual-use and added two new strategies to achieve tier zero: only 50% of the dual-use land area has to be in crop production instead of 75%; a new strategy combines crop production and livestock grazing on at least 60% of the dual-use land area; a new strategy combines livestock grazing and pollinator habitat on at least 85% of the dual-use land area.  Active farmland is given a high point value in Table 1 because it is considered to be of a higher value and the intent is to disincentivize construction on HVAL that is currently in active agricultural production. Further, the P.L. states “*The compensation fee may be reduced by the department, in consultation with the Department of Agriculture, Conservation and Forestry, if the applicant proposes mitigation strategies, including, but not limited to, dual-use agricultural and solar production”* (underline added).The P.L. also states “*The rules must establish variable compensation amounts based on the value of the habitats and high-value agricultural land affected and the degree of adverse effect caused by the development and must establish mitigation strategies that may reduce or otherwise alter any compensation fee, including but not limited to the use of wildlife-friendly fencing and dual-use agricultural and solar production”* (underline added). Ultimately, the P.L. requires DACF to establish mitigation strategies but does not require DACF to enforce them for all situations. DACF’s mitigation framework is designed to lower compensation fees for certain scenarios. In the scenarios described by the commenter, the applicant can still eliminate their compensation fee by implementing dual-use activities to a certain threshold, which DACF does not feel is “contradictory to the [legislative] intent of the rules.”  Currently, no DEP rulemaking is in progress to address this topic. However, DACF will continue to collaborate with DEP regarding dual-use solar projects. DACF makes no changes in response to this comment.  Currently, the six counties facing the highest conversion pressure were calculated using NOAA Coastal Change Analysis Program Impervious Cover Data.[[14]](#footnote-14) However, data availability can change from year to year. Therefore, DACF will list the six counties facing the highest conversion pressure on their website and state what data was used to make that conclusion. Keeping the specific nature of the data separate from rulemaking reduces the administrative burden of conducting rulemaking every time the list of counties needs to be updated. The six counties facing the highest conversion pressure at this time include the same six listed in V1: Androscoggin, Cumberland, Kennebec, Knox, York, and Sagadahoc. However, DACF understands the concern regarding the frequency at which this list will change and has updated the definition of “conversion pressure” to ensure the list is not updated more often than once every three years. Additionally, the conversion pressure county list would only be consulted once, at the time of permit application submittal to DACF.  Farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near the demand for power, it can also be beneficial to protect farmland near these developed areas. Agriculture may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise.  A property with characteristics that might inhibit the success of agricultural activities (steep slopes, surface stoniness, etc.) would not likely be categorized as HVAL after a field-based survey is conducted to verify the on-site conditions.  Per this comment and others, DACF has incorporated revisions in V3 allowing the applicant to by-pass the field-based survey requirement for an individual permit if they agree to pay a fee for the entire project land area (see section 7(8) for more details).  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Land that is unsuitable for farming purposes, as confirmed by a field-based survey, would not be considered HVAL and would not be subject to the Chapter 575 rules.  DACF considers a permitting scheme in which fees could be pending or reversible for a period of many decades to be untenable. No changes were made in response to this comment. | | | | | | | | | | | | | | | |
| Wilcox, Carl City/Town: Minot Date Received: 12/26/24 Method of Comment: Email Representing Organization: -- | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** Background: I’m in my 60s and farmed 120 acres of land in New Gloucester for several decades, leasing out replacement heifer pasture, raising beef, growing pumpkins and squash commercially, cut flowers and at the end leasing land to the Somali community for 46-family garden plots. My father and I owned the land for a combined 64-years.  My living memory on my New Gloucester farm extends back nearly 60-years. The damp lands that the State considers to be wetlands to be protected are not worth a whole lot. They are low productivity for agriculture and forestry. Their highest and best use if for solar panels. Besides small birds that love the brush provided by the damp lands, there is not much wildlife because the land is too wet in the spring or after heavy rains which are becoming more prevalent. Deer do enjoy the dense brush cover in summer but come out at night to graze in my hay fields. They don’t winter in the damp lands because the forest canopy is thin not holding the heat in as well as more dense upland woods which are being consumed for housing. Deer certainly do not spend April or May in the damp lands. They don’t want to stand in a couple inches of water.  Divorce in 2023 combined with the land appreciation in southern Maine made it financially difficult to keep the farm. The farm was sold with the proceeds split with my ex-wife who bought a home in Hawaii. The new owner subdivided the farmhouse and barn buildings into a 10-acre lot to make it conforming with the secondary mortgage market which requires lots to be 10-acres or less in size. The remaining 110-acres was retained with a house built on what was cropland. Except for having horses, it appears the new owner has no intention of farming the land.  I tell you this because I’m sure other farmers have financial difficulties at times which result in the sale of farmland with it no longer being farmed. The ability to have income from solar farms on low value land, which is currently considered wetlands by the State of Maine, would result in a source of farm income and farmland preservation  Shortly, prior to the divorce there was much interest in a portion of the farmland for solar development. I was receiving offers of between $1,000 to $2,000 annual rent per acre from solar developers. Unfortunately, the timing was too late with respect to the divorce and there was concern about the ability to obtain a power interconnection agreement. If solar development had occurred, there would have been sufficient cash flow to keep the farm and to continue farming.  The solar developers were interested in the crop land even though there is a considerable amount of waste damp land on the property. The farm portion consisted of about 120 acres of which more than 40-acres are “wetland” as defined by the State. This “wetland”, better described and henceforth called damp land, is typically dry by late June or early July and remains dry until the fall rains unless there is a couple inch rainstorm. A portion of it is in succession forest and a portion of it is field. It was good grazing land in all but the wettest of years. In dry years it was great for growing hay. In wet years it was not good hay land with the ground being too damp to dry hay. Except for pasture, it was undependable land to farm.  I retained a separate 20-acre upland wood lot in New Gloucester that was originally with the farm. It has about 5-acres of forested damp land. The forested damp land is wet in April and May but dries as evapotranspiration ramps up in June. If you walk across the damp lands in sneakers in April or May you will get wet sneakers. In a typical July, your sneakers will be dry. On neither the farm property nor the wood lot, is there open water or emergent wetland vegetation, no frogs, no turtles, no ducks, no open water except the standing water in April and early May, and no MDEP mapped wetlands of special significance (WOSS). I have no doubt the soil is a hydric soil due to the spring wetness. However, per the US Supreme Court 9-0 ruling in Sackett vs EPA, wetlands that are not are contiguous with Waters of the United States are no longer considered federal wetlands. In my case, none of the “wetlands” damp lands on my property are contiguous to waters of the United States and I suspect that to be the case for most of Maine’s “wetlands”. I contend that the vast majority of Maine’s “wetlands” are forested upland damp lands that are not federal wetlands and thus no longer Waters of the United States.  Directly across the road from where I formerly lived in New Gloucester there is at least a 30-acre forested upland “wetland”.  Maine’s “wetlands” are a result of the 2-mileas of ice that sat on the ground up glacial rock below that with the glacial pressure became low permeability basal 􀆟ll. Runoff from the surrounding uplands saturates the low permeability lowlands.   * “Fully, 25 percent of Maine's land area is wetlands, four 􀆟times the wetland area of the other five New England States combined”. Maine DEP website. * Maine is 22.6 million acres in size. * Thus, there are approximately 5.6 million acres of “wetland” in Maine. * I have downloaded the Maine DEP wetlands of special significance (WOSS) kwi file and imported it into Google Earth. I don’t know the sum of that acreage which includes the 250 -foot WOSS wetland setback buffer, but it is by no means 25% of the State. * I do not disagree with Maine DEPs assessment that the wetlands they have mapped as WOSS are indeed wetlands of special significance. They are wetlands that I consider to be true wetlands and which the typical Maine citizen would consider to be wetlands. They have open water and/or emergent wetland vegetation. Unlike, the vast majority of designated wetlands in Maine which are forested wetlands and do not have the characteristics of a wetland to the typical citizen. * In comparison to the nearly 5.6 million acres of Maine that are phony wetlands better termed damp lands, following is the State’s farmland acreage per the Maine Agricultural Overview September 5, 2023 by the Department of Agriculture and Forestry. * 1,300,000 acres of total farmland with the following breakdown. * 472,508 acres of cropland. * 62,369 acres of pastureland * 685,529 acres of woodland * 87,207 acres of other (no description of other is provided). * To be noted from above is that more than half of the farmland is woodland of which probably about 25% is damp forestland. * The true farmland which is cropland and pastureland combined is 534,877 acres or about 10% of the amount of damp lands in Maine that are considered wetlands by the State. * It is ludicrous to continue to protect the non-federal wetlands that comprise about 25% of the state from solar development. Solar development on damp lands is a like a gift from God. * The current state and local government policy is to protect all these damp lands and cram all other societal needs, housing, roads, places of work, recreation, energy production onto the remaining 75% land area is ludicrous. * The forested damp lands grow trees much slower than uplands and are of generally lower value species. * From solar developers I was receiving offers of $1,000 and $2,000 per acre per year for my farmland. From my perspective it would have been much preferable to clear some of my 30- acres of lowland forested damp land that the State designates as wetland. * In the case of New Gloucester, zoning allows 1,500 SF of residential solar panels to be installed on wetlands. However, commercial solar installations are not allowed in any quantity on “wetlands” – damp lands. * The result is the only commercial solar development in New Gloucester constructed to date has consumed about 15 acres of upland high value cropland. It was nice rock free flat land. It was also next to the Royal River if irrigation was desired by a future farmer. * An additional benefit of allowing solar development on damp lands is unlike farm fields that are largely visible from roads because settlers built are roads and then farmed the higher drier uplands, much of the damp lands are largely out of sight of the public which avoids the number one public complaint – visibility of the solar farm.   Converting either pastured or forested “wetlands” to solar does not functionally change the wetland. Yes, the wildlife habitat changes but at 25% of the state being wetland there is no shortage of that habitat. Functionally, when rain falls to an extent to saturate the adjacent upland soils, water runs down to the lower damp lands. Rain that falls on the solar panels runs off to the ground below. From my observation the land under solar panels grows grass which will infiltrate at a similar rate to a forested damp land.  The SCS runoff curve numbers (CN) for class D group soils are equal or lower for a mowed meadow than a forest, 78 versus 79 to 86 (varies with forest stand quality), respectively. The lower the CN number the lower the runoff and the greater the water retention.  Stormwater runoff storage is not reduced in a forest damp land when converted to solar production. The cross-sectional area of solar panel supports are less than that of the tree and brush cross sectional area. Thus, peak runoff is not increased. Additionally, conversion from a forest to a solar development will decrease the transpiration rate from the land resulting in higher soil moisture that will result in more groundwater discharge to the receiving watershed maintaining the base flow in the days and weeks after spring runoff or a major rain event.  In addition to the previously stated items, solar development on damp lands is self-regulating by the  solar industry. A damp land that is truly wet will be too wet to construct solar panels on and will not be built upon. Chapter 575 should be revised such that solar developments can’t underdrain or ditch lands to enhance their storm drainage. That solves the peak runoff concern.  To promote the conservation of valuable farmland, Chapter 575 should be revised to allow, if not to promote, the construction of solar farms on damp lands that the federal government has previously considered to be wetlands but are no longer per the US Supreme Court Sackett vs EPA ruling. It is presumed that all of Maine’s wetlands of special significance con􀆟nue to be federally protected wetlands due to their open water nature being Waters of the United States or contiguous to Waters of the United States.  Additionally, Chapter 575 should be revised to prevent community zoning from taking land by preventing solar development on damp lands or other lands that are otherwise suitable for solar development. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  The P.L. only gives DACF the authority to establish a permitting program for solar energy developments on HVAL. Therefore, regulating wetlands or “damp lands” is outside the scope of what the Chapter 575 rules can regulate. Further, land that is unsuitable for farming purposes, as confirmed by a field-based survey, would not be considered HVAL and would not be subject to the Chapter 575 rules. Wetland regulation and compensation for impacts to wetlands is handled by DEP under Natural Resources Protection act, not Site Location of Development Law where the provisions of the P.L. can be found. No changes were made in response to this comment.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.”  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” Additionally, in V2, “forestland” was removed from the definition of “HVAL.”  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” Additionally, as noted on page 123 above, “forestland” was removed from the definition of “HVAL” in V2. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” Additionally, as noted on page 123 above, “forestland” was removed from the definition of “HVAL” in V2. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Maine's Stormwater Management Law regulates stormwater drainage, ditching, and runoff and establishes stormwater standards for projects that propose more than one acre of disturbed area. As Maine DEP already regulates this activity, creating different regulatory standards would contradict existing state statutes and rules. Therefore, no changes were made in response to this comment.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” No changes were made in response to this comment.  Please see the response on page 122 above regarding the regulation of wetlands or “damp lands.” No changes were made in response to this comment. | | | | | | | | | | | | | | | |
| Gundrum, F. & Nuzzo, K. City/Town: Falmouth & Gray Date Received: 12/26/24 Method of Comment: Email Representing Organizations: Audubon & TNC | | | | | | | | | | | | | | | | | | | | | | |
| **Abridged Comment:** ***Define high-value agricultural land (HVAL)***  The new definition of HVAL is key to the implementation of this new mitigation program. **Our organizations suggested that forest land should *not* be included in the initially drafted definition of HVAL and we appreciate that this change was implemented.** We continue to believe the mitigation requirements should be tied to the current use of the land, and therefore the  actual impact to that resource.  Additionally, we support the elimination of “locally valuable farmland” as a category within HVAL. The initial definition was too vague and undefined. We support adding in “Blueberry Barrens” as a category because of their importance to Maine agriculture. This specificity helps strengthen the rules.  ***Dual-use agricultural and solar production***  LD 1881 specified that a compensation fee could be reduced if the project proposed dual-use. We believe dual-use or agrovoltaics projects are an exciting evolving area that has the potential to provide ecological, economic, and community benefits in addition to clean energy. This type of development inherently attempts to address the challenges with balancing necessary renewable energy development while minimizing loss of productive agricultural land and should be further explored and incentivized in our state. We understand from conversations with developers in Maine and elsewhere that dual-use or agrovoltaics projects are often costly and complicated and that more research through pilot projects and incentives are needed.  **Our organizations suggested shifting the way dual-use is accounted for to see a true benefit and reduction in, or elimination of, their overall compensation fee. We support the adjustments made in this version of the draft rule.** The new structure provides incentives for developers to take on the most challenging types of dual-use (e.g., crop production and livestock grazing), while projects that propose little-to-no dual-use would have no impact (adding or subtracting) on their total score. In this way, developers are not penalized if they are unable to take on a dual-use project, but those who can are rewarded by offering them opportunities to shift into a lower tier and perhaps a lower compensation fee.  ***Calculating compensation tiers – Conversion Pressure & Farm Viability***  Mitigation requirements for the use of high-value agricultural land for renewable energy development should be based on the quality of the agricultural land being developed, and the manner in which it is developed. **Our organizations initially opposed including “Conversion Pressure” as a category when calculating compensation and we continue to believe that it should be excluded.** This recommendation stems from concerns that by increasing compensation values in areas facing higher conversion pressure, renewable energy development would be pushed into areas with less development across the state. Siting renewable energy assets closer to established transmission infrastructure, population loads, and existing development is a preferred outcome that becomes more difficult to achieve when conversion pressure is used as a metric. Given the focus of these collective rules on solar and wind energy development and high-impact electric transmission lines, we also believe that the inclusion of “Conversion Pressure” as a category allows other forms of development to drive up compensation values that renewable energy developers would ultimately need to pay, without necessarily slowing the conversion of agricultural lands.  **We support the addition of “Farm Viability” as a category for calculating the compensation tiers and the ability for points to be deducted for projects that contribute to the ongoing viability of a farming operation.** We suggested this in the first round of comments and the concept was supported by both the Maine Renewable Energy (MREA) Association and Maine Farmland Trust (MFT) with an emphasis on ancillary areas and direct partnership between the farmer and the solar developer.  ***PFAS-impacted farmland***  Our organizations originally suggested exempting PFAS-impacted farmland and similarly contaminated lands from mitigation fees altogether. We continue to support this exemption and the ability for these types of projects to apply through the expedited permit-by-rule (PBR) process. This will make it easier for these types of properties to be used for other purposes while DACF’s PFAS Response Team continues their work researching remediation science and identifying mitigation strategies.  ***Permit-by-rule***  The administrative process for permitting should be clear, consistent, and common sense. We find the permit-by-rule (PBR) option for some projects a favorable inclusion. **However, we suggest streamlining the proposed PBR option by not requiring an “alternatives analysis” or a soil survey as part of developers’ PBR applications.** These proposed requirements go beyond what is expected in a typical PBR. | | | | | | | **DACF Response to Comment**: Thank you for your comment. No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  Farmland in counties with a high conversion pressure is at a greater risk of being converted to non-farm uses, even if that use is temporary. While it is beneficial to site solar developments near established transmission infrastructure, population loads, and existing development, it can also be beneficial to protect farmland near these developed areas. Agriculture in higher conversion locations may have better access to markets, support community food access, have a reduced carbon footprint, and more. DACF feels that limiting conversion pressure to apply only to tier 4 (the 8-to-1 ratio) is a fair compromise. Additionally, the scope of the P.L. is only on renewable energy development on agricultural land and wildlife and fisheries habitat. Therefore, regulating other forms of development is outside of the scope of what the Chapter 575 rules can regulate.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  No changes were made in response to this comment as it does not specify a request for revisions to the draft Chapter 575 rules.  DACF believes that trying to identify HVAL without a field-based survey would lead to inaccurate results. Therefore, DACF maintains the field-based survey requirement. Additionally, DACF would not be able to properly evaluate projects by removing the field-based survey or alternatives analysis-type statement from PBR applications. However, DACF agrees to remove the PBR option of “approve with conditions” which limits the application to only “approve” or “deny.” | | | | | | | | | | | | | | | |

1. The number of comments was determined by the number of materially unique comments. For example, public comments submitted jointly by two or more parties are considered one comment unless those parties also provided comments separately at the hearing that materially differed. Further, commenters who provided comments both orally at the hearing and written via email were considered one comment if the comment was materially the same. [↑](#footnote-ref-1)
2. Click on the name of the commenter to skip directly to the comment within the document. [↑](#footnote-ref-2)
3. Click on the name of the commenter to skip directly to the comment within the document. [↑](#footnote-ref-3)
4. Click on the name of the commenter to skip directly to the comment within the document. [↑](#footnote-ref-4)
5. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-5)
6. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-6)
7. Perrott, Roy, Herklots, Geoffrey A.C., Synge, Patrick Millington, Janick, Jules. "horticulture". Encyclopedia Britannica, 17 Jan. 2025, https://www.britannica.com/science/horticulture. Accessed 24 February 2025. [↑](#footnote-ref-7)
8. https://www.nrel.gov/docs/fy21osti/78678.pdf [↑](#footnote-ref-8)
9. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-9)
10. https://www.feedingamerica.org/research/map-the-meal-gap/overall-executive-summary [↑](#footnote-ref-10)
11. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-11)
12. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-12)
13. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-13)
14. NOAA Coastal Change Analysis Program (C-CAP) 2020-2021 CCAP Version 2 Impervious Cover State of Maine. Data collected 2020-2021 : National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management. Data accessed at https://coast.noaa.gov/digitalcoast/data/ccaphighres.html [↑](#footnote-ref-14)