Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry

BASIS STATEMENT AND SUMMARY OF COMMENTS FOR

PROPOSED CHAPTER 2 AND CHAPTER 10 RULE REVISIONS: SOLAR RULEMAKING PHASE II: SITING AND ACTIVITY STANDARDS FOR SOLAR ENERGY GENERATION FACILITIES

November 12, 2025

STATUTORY AUTHORITY: 12 M.R.S. §§ 685-A(3); 685-A(7-A); and 685-C(5)

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENTS

The primary objective of this rulemaking is to revise the Commission's rules regarding solar energy generation facilities and battery energy storage system (BESS) facilities. These amendments help improve efficiency and clarity in siting, evaluating, and permitting solar energy generation facilities and BESS facilities. Key changes in this rulemaking include clarification of definitions for solar energy generation facilities and creation of a definition for BESS facilities in Chapter 2, and in Chapter 10, revising Land Use Subdistricts that allow solar energy generation facilities, specifying which land use subdistricts will allow BESS, and creating standards for solar energy generation facilities and BESS facilities including decommissioning.

PUBLIC NOTICE OF RULEMAKING

Staff presented the draft rule revisions to the Commission at a meeting held on June 11, 2025. The Commission voted to initiate rulemaking and post the revisions for public comment, with a 45-day public comment period and an additional 14-day rebuttal period.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on July 2, 2025. In addition to the legal notice, the Commission posted notice by email through the State's GovDelivery system to all individuals wishing to be contacted regarding any proposed rule changes or solar energy development. Notice of the proposed revisions was also posted on the agency's rulemaking webpage. Additionally, staff emailed the GovDelivery notice to the individuals who had previously participated in the rule development process, expressed an interest in the update, or provided comments during initial outreach.

The record remained open until August 18, 2025 to allow interested persons to file written statements with the Commission, and for an additional 14 days until September 2, 2025, to allow interested persons to file written rebuttal comments.

COMMENTS AND RESPONSES

The Commission received written comments from one individual, three non-governmental organizations, and Commission staff. One comment was received during the rebuttal period.

1. Topic: Comments generally supporting the proposed update

Several comments were made in support of the proposed update items:

- Adding "or off-site use" to the definition of small-scale solar energy generation facility.
- Introducing use listings by special exception for BESS Facilities on prime agricultural soils in the D-CI, and D-RD subdistricts
- Introducing a use listing by special exception for small-scale solar energy generation facilities in the D-RS subdistrict.
- Requiring consideration of wildlife movement for solar development

Commenter(s): A. Farnham, Maine Farmland Trust; F. Gundrum and S. Haggerty**,** Maine Audubon

Response: The Commission appreciates the comments and additional information provided.

Action(s): No action taken.

2. Topic: Comments regarding the definition of "battery energy storage system" and "battery energy storage system facility"

One commenter stated support for definitions distinguishing between accessory and co-located BESS or standalone projects but suggested removing the phrase "or the grid" from the BESS definition because it suggests a co-located or standalone facility, rather than an accessory facility with output mainly supporting a primary use, or behind the meter. The commenter suggested using a threshold of output that serves load behind the meter where the project is located, such as the threshold in statute for tax purposes or "50% or more of the project's input services load behind the meter where the project is located" (P.L. 2025, ch. 467). Additionally, two commenters noted an omission of "34" from the reference to statute in the definition of BESS Facility.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: It is the Commission's intention to include all BESS sizes and types in the BESS definition, which broadly defines BESS technology. The distinction for facilities that would require a permit, which may include "behind the meter" or co-located facilities, is made in the BESS **Facility** definition. The Commission is concerned with potential impacts from BESS development, which include noise generation from HVAC systems, high risk components that require 24/7 monitoring or fire suppression systems, or projects with a capacity that require decommissioning through state statute (35-A, chapter 34-D-E) and therefore does not want to exclude from permit requirements "behind the meter" facilities that may have these characteristics. The Commission appreciates the identification of the citation error and corrected the error.

Action(s): Revise section 2.02 as follows (additional changes made since the proposed rule text was

posted to public comment are highlighted).

##. Battery Energy Storage System Facility.
A battery energy storage system large enough to require one or more internal systems such as heating, ventilation and cooling, fire suppression, monitoring systems that are remotely monitored, or is required to decommission in accordance with 35-A M.R.S. Chapter 34-E.

3. Topic: Comments regarding BESS and solar facility use listings in the commercial industrial development (D-CI) subdistrict

Two commenters recommended that BESS use listings Section 10.21,A,3,c include language indicating the presence or absence of prime farmland soils, as designated by the U.S. Department of Agriculture (USDA) and that BESS use listings in Sections 10.21,K,3,d need to be revised to read the USDA rather than the Department of Energy. Additionally, one commenter suggested including farmland of statewide significance and blueberry barrens as a consideration for a special exception permit for solar and BESS facilities, which are included in the DACF Ch. 575 rules**.** One commenter suggested including incentives for siting solar energy generation facilities on previously impacted or developed areas, or as dual-use agricultural and solar energy production facilities, in a similar way to the proposed changes in the D-RD subdistrict.

Commenter(s): Staff Comments; A. Farnham, Maine Farmland Trust

Response: The Commission agrees that BESS on prime farmland soils should be an allowed use by special exception. Facilities on prime farmland soil will need to consider soils for decommissioning aspects of the application process. However, additional determinants for special exception permits and incentives for dual use agricultural and solar or BESS facilities are outside of the scope of this rulemaking but could be considered in future rulemaking. The Commission added language to indicate USDA prime farmland soils.

Action: Revise Section 10.21,A,3 as follows (additional changes made since the proposed rule text was posted to public comment are highlighted):

10.21,A,3,c

c. Uses Requiring a Permit

The following uses, and related accessory structures, may be allowed within D-CI subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. §685-B, subject to the applicable requirements set forth in Sub-Chapter III:

…

(2) Battery energy storage system facilities not located on soils recognized by the U.S. Department of Agriculture as prime farmland soils;

…

d. Special Exceptions

The following uses, and related accessory structures, may be allowed within D-CI subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S. §685-A(10), the criteria of Sections 10.24,B,3 and 9, and the applicable requirements set forth in Sub-Chapter III:

…

(1) Battery energy storage system facilities located on soils recognized by the U.S. Department of ~~Energy~~ Agriculture as prime farmland soils.

4. **Topic: Comments regarding the siting of large-scale solar energy generation facilities in the Resource Dependent Development (D-RD) Subdistrict**

Two commenters suggested increasing the allowed siting distance in the D-RD subdistrict from "within one mile" from a point of interconnection to "within five miles" for facilities not located on preferred locations and from "up to three miles" to "greater than five miles" for facilities located on preferred locations. Commenters suggested that increasing siting distances from a point of interconnection would avoid unduly limiting the opportunity for large-scale solar energy generation facilities. One commenter highlighted the "Three Corners Solar" project, which is partly in the Commission's service area, and has a 5-mile generator lead line.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: The D-RD subdistrict may be designated outside of primary locations and so potentially could be located in places far from municipalities and related infrastructure. The locational criteria included in the D-RD are intended to establish where, outside of primary locations, is suitable for the development activities allowed in the subdistrict (including mid-scale and large-scale solar). Requiring facilities to be located as close as possible to a point of connection with transmission infrastructure minimizes the need for long generator lead lines, which could lead to fragmentation in undeveloped areas. Allowing mid-scale and large-scale solar in the D-RD provides a much wider range of potential locations eligible for rezoning for the purpose of developing a solar farm, and therefore already provides flexibility. Since its creation, two solar facilities have rezoned to the D-RD subdistrict, and both are located within one mile of the point of interconnection.

Rezoning to a D-CI subdistrict is allowed in primary locations in the Commission's service area, which are located within seven miles of the boundary of a rural hub and within one mile of a public road. The D-CI allows large-scale and mid-scale solar facilities, and it accommodates longer generator lead lines. Areas within primary locations are potentially suitable for rezoning for commercial and industrial development, and the potential for fragmentation is less of a concern than in undeveloped areas outside of primary locations. The "Three Corners Solar" project was rezoned to the Commercial Industrial Development (D-CI) subdistrict rather than the D-RD subdistrict.

Action: No action taken.

5. **Topic: Comments regarding solar energy generation facilities sited on "preferred locations" in the resource dependent development (D-RD) subdistrict**

Three commenters suggested further clarifying what "preferred locations" include. Commenters suggested including clarifying language such as "other disturbed areas" and "PFAS Impacted Land". One commenter suggested defining preferred locations in Chapter 2 of the Commission's rules (see below) and this approach was supported by one rebuttal commenter. One commenter suggested strengthening language encouraging integration of agriculture and solar beyond 'co-locating', as proposed in the draft redline, by further defining dual-use agriculture and solar production in a similar way to the Department of Agriculture, Conservation, and Forestry's (DACF) Ch. 575 rules for solar development of high value agricultural land. One commenter suggested including the language "in-part" to allow a solar facility to be sited partially in a preferred location and another commenter

suggested that "entire" projects should be sited in preferred locations. Additionally, one commenter highlighted a missing "2" from a reference.

> **Suggested Definition for "Preferred Locations":** Areas where solar energy generation facility and BESS facility siting is preferred, which include but are not limited to brownfields; landfills; sand and gravel pits; rooftops; roadway medians and edges; idle or industrial or commercial sites; areas where co-location with active agriculture uses are possible; and otherwise disturbed, developed, or degraded lands.

Commenter(s): E. Donoghue, Maine Renewable Energy Association (comment and rebuttal comment); A. Farnham, Maine Farmland Trust; F. Gundrum and S. Haggerty, Maine Audubon

Response: Clarifying what is included in preferred locations is important for developers as well as the Commission. However, the description of preferred locations should also be left open-ended to allow for changing conditions and provide additional flexibility for creative redevelopment scenarios. It is the Commission's intention to include undesirable areas that can be reused for solar development, including but not limited to brownfields, landfills, gravel pits, and per- and polyfluoroalkyl substances (PFAS) impacted land. It is also the Commission's intention to include areas where solar can be co-located, also termed dual use, with compatible uses including, but not limited to, active agricultural land, industrial and commercial sites, and parking lots. Appropriate re-use and dual-use locations would need to meet the applicable development standards, such as dimensional requirements, and be large enough to fit the entire solar facility. The Commission modified language to further clarify "preferred locations" and could consider further defining preferred locations, or a similar approach, in a future rulemaking.

Action (s): Revise Section 10.21,K,2,a,(4),iv as follows (additional changes made since the proposed rule text was posted to public comment are highlighted):

> (iv) Notwithstanding Section 10.21,K,~~1~~2,a,(4),(iii), the Commission may allow a distance of up to three miles from the proposed point of interconnection if the proposed facility will be sited on preferred locations, which include land that is undesirable for other uses such as brownfields, landfills, or sand and gravel pits or ~~the facility will co-locate with~~ land areas appropriate for co-location with another active use such as agricultural ~~uses~~ production or parking lots, and~~,~~ ~~unless~~ the applicant demonstrates that redistricting an area no more than three miles from the point of interconnection would result in a project location that is compatible with current land uses and does not expand the pattern of development beyond already developed areas.

6. Topic: Comments regarding BESS facility use listings in the Resource-Dependent Development (D-RD) Subdistrict

One commenter suggested adding BESS Facilities to the purpose statement of the D-RD subdistrict (10.21,K) and two commenters suggested allowing stand-alone BESS facilities in the D-RD subdistrict. One rebuttal commenter supported the suggestion to allow BESS facilities in the D-RD subdistrict. One commenter and staff comments noted that BESS use listings in the D-RD subdistricts (10.21,K,3,c and d) should include language indicating the presence or absence of prime farmland soils, as designated by the U.S. DOA. Additionally, one commenter suggested including farmland of statewide significance and blueberry barrens as a consideration for a special exception permit for solar and BESS facilities, which are included in the DACF Ch. 575 rules**.**

Commenter(s): P. Williamson, Key Capture Energy; A. Farnham, Maine Farmland Trust; F.

Gundrum and S. Haggerty, Maine Audubon; E. Donoghue, Maine Renewable Energy Association (Rebuttal Commenter)

Response: The D-RD subdistrict allows for resource-dependent development in locations near natural resources that would not be suitable for other types of commercial development. It is the Commission's understanding that BESS facilities do not need to be located near natural resources but are often co-located with solar energy generation facilities, which are an allowed use in the D-RD subdistrict. The Commission could reevaluate allowing standalone BESS facilities in the D-RD subdistrict at a future rulemaking, once more is known about the technology. BESS use listings should be consistent with solar use listings in the D-RD subdistrict, but adding consideration of farmland of statewide significance and blueberry barrens to the special exception permit criteria would be outside of the scope of this rulemaking. The Commission added language requiring consideration of the presence of USDA-identified prime farmland soils to the special exception criteria in the D-RD. The suggestion to also include farmland of statewide significance and blueberry barrens as considerations for a special exception permit could be incorporated into a future rulemaking.

Action: Revise Section 10.21,K,3 as follows (additional changes made since the proposed rule text was posted to public comment are highlighted):

10.21,K,3

c. Uses Requiring a Permit

The following uses, and related accessory structures, may be allowed within D-RD subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. §685-B, subject to the applicable requirements set forth in Sub-Chapter III:

…

(2) Battery energy storage system facilities associated with solar energy generation facilities and not located on soils recognized by the U.S. Department of Agriculture as prime farmland soils;

d. Special Exceptions

The following uses, and related accessory structures, may be allowed within D-RD subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S. §685-A(10), the criteria of Sections 10.24,B,3 and 9, and subject to the applicable requirements set forth in Sub-Chapter III:

(1) Battery energy storage system facilities associated with solar energy generation facilities and located on soils recognized by the U.S. Department of Agriculture as prime farmland soils; and

7. Topic: Comments regarding activity specific standards for solar energy generation and BESS facilities.

The following comments are organized by the section in 10.27,U implicated by the commenters. Comments, commenter(s), and the Commission's response are kept together. Any actions associated with responses are summarized together and below the comments. Responses that generate an action include a note to that effect.

A. **Section title (10.27,U).** One commenter highlighted that the Commission assigned the letter U to the new section in Chapter 10, Section 10.27, for activity-specific standards for solar and BESS facilities. They presume that the Commission meant to assign the letter T to the new section in 10.27.

Commenter(s): F. Gundrum and S. Haggerty, Maine Audubon

Response: In addition to solar rulemaking, several other rulemakings are underway. The Commission recently adopted activity-specific standards for short-term rentals as a new section in Chapter 10 section 10.27,T. The Commission has drafted the new activity-specific standards to reflect these changes. The Commission unintentionally assigned 10.28 to the new section rather than 10.27 and has corrected this error. (See "Action" below)

B. **Change Section heading (10.27,U,1)**. One commenter suggested changing "All Energy Generation" to "Solar Energy Generation" to avoid confusion.

Commenter(s): E. Donoghue, Maine Renewable Energy Association

Response: Section 10.27,U covers both solar energy generation and BESS facilities. The standard regarding emergency response plans in Section 10.27,U,1,a applies to both uses covered by the section. To clarify, Section 10.27,U,1,a was modified to be "all facilities" and provisions that follow 10.27,U,1,a pertain to solar facilities or BESS facilities, respectively. (See "Action" below)

C. **Interconnection Agreements (10.27,U,1,a)**. Two commenters suggested removing the requirement for a completed interconnection agreement prior to permit approval. One commenter stated that it would be an unnecessary and disproportionate risk to acquire an executed interconnection agreement prior to the issuance of a final permit because there is significant financial and administrative commitment to acquire an agreement without any assurance that a project would be approved for a specific location. Two commenters suggested that the interconnection agreement process should proceed independently of the permit process to prevent limiting renewable energy development in the Commission's service area. One commenter stated that there is no material risk to LUPC if the permit is issued without an interconnection agreement because a project could not proceed without one.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon.

Response: The Commission originally introduced the requirement for an interconnection agreement (IA) because permit review for a solar facility requires significant staff time and resources, and having the interconnection agreement up front provides some assurance that the applicant has the capacity to implement any permit approvals. The process to get an interconnection agreement identifies whether there is enough grid capacity for the proposed location of development and can sometimes identify additional development requirements for connecting to the grid (e.g., sub-station or other upgrades), which could result in the need for permit or SLC amendments in the future, and before anything is actually built. However, the Commission acknowledges that the interconnection process entails substantial financial and administrative effort on the part of the developer. The Commission removed the IA requirement at this time, but will continue to research this topic and may revisit this issue in future rulemakings. (See "Action" below")

D. **Emergency Response Plans (10.27,U,1,b).** One commenter suggested that the Commission only require emergency response plans for mid- and large-scale solar energy generation facilities. They stated that small-scale facilities typically only produce electricity for on-site use.

Commenter(s): E. Donoghue, Maine Renewable Energy Association

Response: Emergency response capacity for the Commission's service area is limited; therefore, it is important that departments responsible for emergency response have access to the best

information available to plan an appropriate response. However, the Commission agrees that small-scale solar energy generation facilities (with sizes between 750 square feet and one acre) are less likely to have complicated layouts and require less electrical infrastructure; therefore, emergency response plans are not necessary for these facilities. The Commission removed small-scale solar energy generation facilities from the requirement. (See "Action" below")

E. **Glare (10.27,U,2,a).** One commenter recommended removing the standard requiring anti-reflective coatings or surfaces and orienting to minimize glare. The commenter stated that most solar panels have anti-glare coating or surfaces to reduce wasted emissions and increase panel efficiency and noted that modern panels have a maximum reflection of 2%, which is lower than 3% reflection from most residential windows. The commenter also stated that the Federal Aviation Administration has existing standards for facilities near airports. One commenter stated that they appreciate the inclusion of an activity standard for glare because of the unknown impact on wildlife.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: The Commission found mixed reports on glare from solar panels, with some stating that glare is not a concern, and others stating that glare can be reduced with proper zoning and land use standards. While most solar panels use anti-reflective coatings or textures to reduce glare, independent sources recommend angling solar panels properly near visually sensitive areas, such as scenic views.[1] The Commission added language regarding scenic views to clarify when a facility should consider orientation to minimize glare. (See "Action" below")

F. **Vegetative Visual Screening (10.27,U,2,b).** Two commenters suggested that vegetative visual screening standards be consistent with the existing standards for Rural Businesses (10.27,R,3), or 15 ft. in width on side and rear property lines.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: The Commission agrees that maintaining a consistent approach to buffering for uses that are similar would be valuable. Fifteen-foot-wide buffers are already required for different types of development in the D-RB subdistrict (10.27,R,3), and along side and rear property lines in prospectively zoned areas (10.25,B,2,b). Vegetative buffers can provide visual screening as well as sound buffering. Solar facilities can have a large footprint and include inverter fans that generate sound, so screening consistent with the current requirements for side and rear property lines in prospectively zoned areas is an appropriate standard. Having a consistent buffer width for side and rear property lines across different standards is also easier for the Commission staff to administer. The Commission modified the standard to align with commenter suggestions and the sections highlighted above. (See "Actions" below)

G. **Wildlife Movement (10.27,U,2,c).** One commenter recommended removing the standard regarding wildlife movement and entrapment. They stated that accessory, small-, and mid-scale solar energy generation facilities are typically not fenced and already use mesh on the back of panels to meet National Electric Code standards. They also stated that large-scale projects are subject to site law permitting with the Department of Environmental Protection (DEP), which already requires accommodating wildlife movement, consistent with Maine Department of Inland Fisheries and Wildlife comments. Another commenter recommended modifying the wildlife

[1] Penn State Extension (2024). Solar Panel Glare: Is it an Issue? https://extension.psu.edu/solar-panel-glare-is-it-an-issue

movement standard to provide exceptions for simultaneous solar energy and agriculture production. One commenter supported the inclusion of a wildlife movement standard when fencing is required to prevent disruption to wildlife.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; A. Farnham, Maine Farmland Trust; F. Gundrum and S. Haggerty, Maine Audubon

Response: While the Commission understands that fencing is not always used for solar energy generation facilities, it is important that wildlife movement is considered when it is used. As currently drafted, the standard for wildlife movement would only apply if fencing were included in the design of a facility. It is also important to note that large-scale facilities under 20 acres would not require a site law permit with the DEP. Regarding dual-use agriculture and solar facilities, the language includes an exception for consideration of wildlife movement if movement is not a concern. For example, movement through a facility may need to be restricted in cases where animal husbandry shares space with a solar facility. Large mammal release plans would still be required if animal husbandry is a consideration because large mammals such as deer could get trapped in a facility. (No action taken)

Actions: Revise Section 10.27,U as follows (additional changes made since the proposed rule text was posted to public comment are highlighted):

10.2~~8~~7 ACTIVITY-SPECIFIC STANDARDS

…

U. SOLAR ENERGY GENERATION FACILITIES AND BATTERY ENERGY STORAGE SYSTEM FACILITIES

…

1. Standards for All ~~Energy Generation and Storage System~~ Facilities.

~~**a.** Energy facilities producing or storing energy that is distributed through an electrical grid must provide an interconnection agreement prior to permit approval.~~

~~**a.**~~**b. Emergency Response Plans.** The facility operator of a mid- or large-scale solar energy generation or battery energy storage system facility must submit an emergency response plan, including but not limited to details on facility staffing and associated roles, off-site emergency response organizations, emergency response strategy, facility safety systems, potential hazards, emergency training, and incident investigation and reporting.

2. Standards for Solar Energy Generation Facilities.

a. Glare.

(1) All solar panels must have anti-reflective coating or texture whenever possible.

(2) Facilities that may impact scenic character, as described in Section 10.25,E, must be sited and oriented to reduce glare to the maximum extent possible.

b. Vegetative Buffering~~Visual Screening~~.

(1) All solar energy generation facilities are subject to the vegetation clearing standards of Section 10.27,B;

(2) Notwithstanding Section 10.27,B,4, the Commission may require revegetation of cleared openings legally in existence as of June 7, 1990 in accordance with standards of Section 10.27,B; and

(3) Mid-scale and large-scale solar energy generation facilities must maintain a vegetative ~~visual screening~~buffer, a minimum of 15 feet in width, on side and rear property lines to ~~the maximum extent possible.~~obstruct views of the facility. The Commission may require vegetative visual screening widths exceeding the minimum width, along with other screening as necessary, to ensure that a solar energy generation facility is adequately screened from view.

8. Topic: Activity specific standards for decommissioning of solar energy generation facilities and BESS facilities.

The following comments are organized by the section in 10.27,V implicated by the commenters. Comments, commenter(s), and the Commission's response are kept together. Any actions associated with responses are summarized together and below the comments. Responses that generate an action include a note to that effect.

A. **Section Title (10.27,V).** One commenter highlighted that the Commission assigned the letter V to the new section in Chapter 10, section 10.27, for activity specific standards for decommissioning. They presume that the Commission meant to assign the letter U to the new section in 10.27.

Commenter(s): F. Gundrum and S. Haggerty, Maine Audubon

Response: In addition to solar rulemaking, several other rulemakings are underway. The Commission recently adopted activity-specific standards for short-term rentals as a new section in Chapter 10 section 10.27,T. The Commission has drafted the new activity-specific standards to reflect these changes. (See "Action" below)

B. **Grading (10.27,V,1,d).** Two commenters recommended clarifying or modifying the standard by changing postconstruction grade to preconstruction grade. Both commenters discussed the environmental impacts of grading and suggested that returning a site to slopes that existed before facility development may increase erosion risk, costs, and project complexity.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: The Commission agrees that regrading to site conditions that existed prior to construction (preconstruction) could pose an unforeseen environmental risk. Therefore, postconstruction grade would be the appropriate term to use rather than preconstruction grade. Additionally, postconstruction is the term used in statute for both BESS and solar facility decommissioning.[2] The Commission removed some language from the standard to clarify the

[2] 35-A M.R.S §3491,1: Solar Energy Development Decommissioning and 35-A M.R.S. §3498,1: Battery Storage System Decommissioning

standard. (See "Action" below)

C. **Plan Update Timeline (10.27,V,1,h).** One commenter noted that the language is vague and should be modified to better align with the statute for decommissioning, which requires updating costs 15 years after the approval of the decommissioning plan and every five years thereafter.[3]

Commenter(s): E. Donoghue, Maine Renewable Energy Association

Response: The Commission agrees that the standard is beyond what is required in the state statute. Additionally, Chapter 10 Section 10.27,V,2, sufficiently covers updates required for the decommissioning plan and financial assurance mechanism. The Commission removed the standard. (See "Action" below)

D. **Requesting Plan Updates (10.27,V,2,c).** One commenter proposed allowing an update to the decommissioning plan "if there has been a material change in circumstances related to the facility" rather than "at any time."

Commenter(s): E. Donoghue, Maine Renewable Energy Association

Response: The suggested language provides sufficient guardrails for requiring decommissioning plan updates so the Commission added the suggested language to the standard. (See "Action" below)

E. **Emergency Decommissioning (10.27,V,3,a,(3)).** Two commenters recommended removing the standard because it is not applicable to any other land use in the Commission's service area and could be broadly construed to the detriment of facilities.

Commenter(s): E. Donoghue, Maine Renewable Energy Association; F. Gundrum and S. Haggerty, Maine Audubon

Response: The statute provides minimum requirements for decommissioning. The Commission has now applied and tracked decommissioning for several projects, including situations not adequately covered by the statutory requirements for decommissioning. For example, a portion of a wind energy generation facility was recently decommissioned in the Commission's service area due to unanticipated damage to the facility. Section 10.27,V,3,a,(3) was included to account for damage to all or a portion of a facility and to allow for decommissioning procedures to take place when necessary. The Commission added language to clarify the standard and provide protection for developers. (See "Action" below)

Actions: Revise Section 10.27,V as follows (additional changes made since the proposed rule text was posted to public comment are highlighted):

V. DECOMMISSIONING

…

1. Decommissioning plan. The Commission may not approve an application, unless adequate provision has been made for:

[3] 35-A M.R.S §3495,3: Solar Energy Development Decommissioning and 35-A M.R.S. §3499,3,D: Battery Storage System Decommissioning

…

d. ~~Returning site conditions to pre-development conditions to the maximum extent possible including g~~Grading to postconstruction grade and revegetation;

…

~~h. Updating decommissioning costs current throughout the lifetime of the development;~~

2. Procedures and Submission Requirements.

…

e. The applicant or the Commission may request an update to the decommissioning plan if there has been a material change in circumstances related to the facility ~~at any time~~.

…

3. Decommissioning Timeline.

a. Decommissioning is required for a portion or all of the development if:

…

(3) The development, or a portion of the development, is deemed, by the Commission, to pose a risk to public health, safety and general welfare due to a change in normal operations.