



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF AGRICULTURE
235 Promenade Street, Room 370
Providence, Rhode Island 02908

To: Janet L. Coit, Director
From: Ken Ayars, Chief, Division of Agriculture
Date: April 17, 2019

RE: Response to oral and written public comments pertaining to proposed amendment to ***Rules and Regulations for Enforcement of the Farm, Forest and Open Space Act.***

Notice for amendment to ***Rules and Regulations for Enforcement of the Farm, Forest and Open Space Act*** was posted on the Rhode Island Secretary of State's website on September 24, 2018. The comment period whereby the Department of Environmental Management (DEM) would receive written comments pertaining to the aforementioned proposed rules and regulations ended at noon on October 24, 2018; and the public hearing was held at 5:00 o'clock P.M. on October 17, 2018.

Oral comments regarding ***Rules and Regulations for Enforcement of the Farm, Forest and Open Space Act*** were provided by Andrea Panciera, representing Russet Valley Farm, Rupert Friday, representing the Rhode Island Land Trust Council, Bill Stamp, representing the Stamp Farms, Paul Roselli, representing the Burrillville Land Trust, Loren Thurn, representing Our Kids Farm, Tess Brown-Lavoie, representing Land For Good, and Charlene Randall representing the RI Tax Assessors.

COMMENT 1: Andrea Panciera, representing Russet Valley Farm, commented that it is not clear whether farmland on which development rights have been sold would be eligible under this program, and commented that the regulation should allow dual use on land on which the development rights have been sold.

DEM RESPONSE: The DEM Division of Agriculture (Division) appreciates and has considered the comment. It is the opinion of the DEM that the dual use designation is inconsistent with the covenant for the purchase of farmland under the development rights purchase program.

COMMENT 2: Andrea Panciera, representing Russet Valley Farm, commented that although the regulation addresses wind and solar as secondary uses, it contains no language to address other energy options that may be developed in the future.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 3: Andrea Panciera, representing Russet Valley Farm, commented that dual use regulations in other states specifically allow the use of land underneath the structures for plants that aid agricultural production, such as plants that will attract bees to produce honey. However, this regulation does not reference such uses.

DEM RESPONSE: The Division appreciates and has considered the comment to the proposed amendment to these rules and regulations. The Division believes this usage exists in the definition of land, which means land which is "actively devoted to agricultural or horticultural use," and the definition of agricultural operations includes usage similar to the example given in the comment, including horticulture, floriculture

and bees. The Division agrees that additional clarification is needed and therefore has added “beekeeping” to Section 1.4(A)(1).

COMMENT 4: Andrea Panciera, representing Russet Valley Farm, commented that although the regulation contains requirements regulating the height of dual use structures, it does not contain requirements regulating the strength and durability of dual use structures.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 5: Rupert Friday, representing the Rhode Island Land Trust Council, suggested a revision to the definition of “farmland” in Section 1.4(A)(12) to include a definition of “conservation plan.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations at this time, since “conservation plan” is defined in Section 1.4(A)(5), and “Farm, Forest and Open Space” is used with “conservation plan” as a descriptive term referring to these Rules and Regulations.

COMMENT 6: Rupert Friday, representing the Rhode Island Land Trust Council, commented that although the definition of “farmland” in Section 1.4(A)(12) requires land have a conservation plan “consistent with U.S. Department of Agriculture standards,” he is not aware of any standards set by the USDA for Farm, Forest, Open Space conservation plans. Furthermore, USDA does not monitor or inspect farmland to ensure compliance with Farm, Forest Open Space requirements. Accordingly, he suggests that the Division adopt minimum standards for conservation plans in the Farm, Forest, Open Space program that establish annual monitoring to ensure compliance.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year. The Division believes that the reporting requirements specified in Section 1.6(D)(5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division however will annually inspect and monitor all approved dual use farm designations for compliance with the rules.

COMMENT 7: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that the definition of “generation unit” in Section 1.4(A)(15) should be deleted because there is already a definition of “dual use generation unit” in Section 1.4(A)(9) that is used throughout the rules.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations as suggested since the definition of “generation unit” is included to add clarity to the definition of “dual use generation unit.”

COMMENT 8: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that the regulation should include a definition of “renewable energy system” because it is used in Section 1.5(A) and is otherwise undefined.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations. The Division believes that “renewable energy system” is a term for which a definition is not needed in the regulations at this time, and is already reflected in state statute and regulations.

COMMENT 9: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that Section 1.5(A) should be clarified to specify that the “20% of the total acreage of land” referenced therein refers to the 20% of the existing land before any renewable energy system has been installed. In other words, a landowner cannot convert 20% of the acreage to renewable energy one year, and then convert an additional 20% of the remaining acreage to renewable energy the following year and still receive the tax incentive.

DEM RESPONSE: The Division appreciates and has considered the comment in reference to Section 1.5(A) but has decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes the language is clear in that it references “20% of the total acreage of land which is actively devoted to agricultural or horticultural use,” and that subsequent conversion of land was not the intent of the regulation.

COMMENT 10: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that Section 1.6(D)(5)(d) should include a requirement that the farmer submit a statement annually certifying that they are operating consistent with their conservation plan.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)(5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division however will annually inspect and monitor all approved dual use farm designations for compliance with the rules.

COMMENT 11: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that Section 1.6(D)(5)(e) should be deleted because compliance with fire and building codes is covered under existing Section 1.6(D)(5)(f). Numerous other existing codes with which farmers must comply could be listed here as well, and singling out fire and building codes implies that other existing codes need not be complied with. In addition, the final sentence stating that solar systems are no longer required to be built on crushed stone is unnecessary because a “dual use system,” by definition, cannot be built on crushed stone.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to delete the referenced text but agrees that clarification is needed in this subsection. Therefore, subsection 1.6(D)(5)(e) is being revised by adding to the end of the paragraph the text, “and all other applicable laws and regulations.”

COMMENT 12: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that Section 1.6(D)(5)(g) should be revised to explicitly state implementation of the farm conservation plan.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)(5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division however will annually inspect and monitor all approved dual use farm designations for compliance with the rules.

COMMENT 13: Rupert Friday, representing the Rhode Island Land Trust Council, suggested that Sections 1.9 and 1.10 should include a provision for either RIDEM or the conservation districts to notify the tax assessors whenever a farm in the Farm, Forest, Open Space Program is not implementing its conservation plan.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 14: Bill Stamp, representing Stamp Farms, commented that allowing a maximum of only 20% of the total acreage land to be exempt from the land use tax change is insufficient.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time, and the referenced 20% limitation is set by statute.

COMMENT 15: Paul Roselli, representing the Burrillville Land Trust, commented that he would like to see some technical changes made to the regulation to ensure that land trusts, conservation organizations, and other non-profit organizations can obtain the same benefits of this regulation as private landowners, such as

clarifying the definition of “owner” in Sections 1.4(A)(18) and (19) to ensure that a land trust or conservation organization is included within those definitions.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make changes to the proposed amendment to these rules and regulations. The DEM has reviewed the definitions of “owner” and “person” and believes that the current definitions address the concerns expressed in the comment.

COMMENT 16: Paul Roselli, representing the Burrillville Land Trust, commented that the regulation should include language to ensure that the Farm, Forest, Open Space Act is not used to undermine a restrictive covenant, such as a general statement that, “all other applicable state and local conservation restrictions also apply within the Farm, Forest, Open Space Act.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to amend the language in the proposed amendment to these rules and regulations. It is the opinion of the DEM that the dual use designation is inconsistent with the covenant for the purchase of farmland under the development rights purchase program.

COMMENT 17: Loren Thurn, representing Our Kids Farm, suggests that Section 1.5(A) should be clarified to determine whether a farmer with a farm consisting of both forested land and agricultural land would be entitled to the tax exemption for 20% of the total acreage of his entire farm, or only 20% of the total acreage of the agricultural area.

DEM RESPONSE: The Division appreciates and has considered the comment in reference to Section 1.5(A) but has decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes the language is clear in that it references “20% of the total acreage of land which is actively devoted to agricultural or horticultural use,” which would include forested land.

COMMENT 18: Loren Thurn, representing Our Kids Farm, suggests that in Section 1.6(D)(5)(d), the first use of the word “herd” in the first sentence of that section appears to be a typographical error.

DEM RESPONSE: The Division appreciates and has considered the comment in reference to Section 1.6(D)(5)(d) and believes that a change is not needed, since use of the word “herd” refers to the reporting requirement for livestock.

COMMENT 19: Tess Brown-Lavoie, representing Land For Good, suggests that due to the scarcity of farmland in Rhode Island, solar development should be restricted on “prime farmland.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes that the requirements of the proposed regulation provide for conservation of land where dual use activity would occur.

COMMENT 20: Tess Brown-Lavoie, representing Land For Good, suggests that because this regulation benefits only farmers who are landowners, the regulation should include a benefit to farmers who rent, but do not own, their farmland.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

Written comments regarding ***Rules and Regulations for Enforcement of the Farm, Forest and Open Space Act*** were provided by Bruce Ahern; Kate Sayles, representing the Northern RI Conservation District Board of Directors; Gina Fuller; Seth H. Handy, representing Handy Law, LLC; Charlene Randall, representing the Town of West Greenwich; Amy Moses, representing the Conservation Law Foundation; Rupert Friday, representing the Rhode Island Land Trust Council; Topher Hamblett, representing Save the Bay; Tess Brown-Lavoie, representing Land for Good; Meg Kerr, representing the Audubon Society of Rhode Island; Nathan L’Etoile, representing the American Farmland Trust; Heidi Quinn, representing the

Rhode Island Farm Bureau; Sara Churgin, representing the Eastern RI Conservation District; and Kendra Beaver, representing Save the Bay.

COMMENT 21: Bruce S. Ahern commented that the following additional wording should be incorporated into the proposed rule: “Freshwater Wetlands, including 50-Foot Perimeter Wetlands (PW) and 100 or 200-Foot Riverbank Wetlands (RBW), cannot be disturbed (in any manner) for construction or operation of generation units without first obtaining a proper Permit from the DEM, Office of Water Resources. This includes any Wetland, including PW and/or RBW, which has been allowed to be farmed either by historical use or through the “farmer exemption” as outlined in the Freshwater Wetlands Act and its associated Rules and Regulations.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to add the referenced text but agrees that clarification is needed in the proposed rules and regulations. Therefore, subsection 1.6(D)(5)(e) is being revised by adding to the end of the paragraph the text, “and all other applicable laws and regulations.”

COMMENT 22: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the definition of “Actively devoted to agricultural or horticultural use” should include associated forestland or woodlot, as it applies to lands included for consideration in the Farms portion of the rule. Forested lands associated with agricultural operations should be included in the calculation and therefore should be defined in the regulation.

DEM RESPONSE: The Division appreciates and has considered the comment but has decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes the language in Section 1.5(A) is clear in that it references “20% of the total acreage of land which is actively devoted to agricultural or horticultural use,” which would include forested land.

COMMENT 23: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the definition of “Conservation plan” in Section 1.4(A)(5) is confusing for farmers. She suggests that the definition should reflect that the conservation plan shall be applied to farmland or active agricultural land and should be a consistent definition through the entire rule. She further suggests that either Farm Conservation Plan or FFOS Farm conservation plan would be better to use as a defined term rather than “conservation plan.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations at this time, since “conservation plan” is defined in Section 1.4(A)(5), and “Farm, Forest and Open Space” is used with “conservation plan” as a descriptive term in Section 1.4(A)(12) referring to these Rules and Regulations.

COMMENT 24: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that she is aware of no official U.S. Department of Agriculture standards, as it is referenced in the definition of “Conservation plan” in Section 1.4(A)(5). She suggests that agencies should set best management practice standards, that minimum BMP standards should be outlined in this rule, and that such minimum standard BMPs should be required to be included in any submitted plan.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 25: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that instead of defining “Conservation plan” in Section 1.4(A)(5), the rules should define specific “RIDEM standards,” thereby requiring DEM to establish standards rather than put the burden on NRCS.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will

not be addressed at this time. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 26: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the rule should include some guidance and a standard operating procedure for the District and the Director to approve the Farm Conservation Plan, as required pursuant to the definition of “Conservation plan” in Section 1.4(A)(5).

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 27: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the definition of “Farmland” in Section 1.4(A)(12) is different from the definition of “Conservation plan” in Section 1.4(A)(5). She suggests that since this section refers only to a conservation plan on farmland, the language should reflect this.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations at this time, since “conservation plan” is defined in Section 1.4(A)(5), and “Farm, Forest and Open Space” is used with “conservation plan” as a descriptive term in Section 1.4(A)(12) referring to these Rules and Regulations.

COMMENT 28: Kate Sayles, representing the Northern RI Conservation District Board of Directors, questions whether the RIDEM Division of Agriculture intends to determine whether a Farm, Forest Open Space conservation plan is compliant with U.S. Department of Agriculture standards, as referenced in in Section 1.4(A)(12).

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to revise the proposed amendment to these rules and regulations. The conservation plan approval process pursuant to Farm, Forest and Open Space rules is contingent upon a written signature of attestation by the local Conservation District that the plan meets USDA standards, upon which the Director approves the application, and does not require independent verification by DEM. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 29: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that Section 1.5 should be clarified to determine whether forested portions of a farm should be included in the “20% of the total acreage” calculation. She asks, as an example, “If I have an agricultural operation (ex. Mixed vegetable and horse farm) on 10 acres of my 100 acre area property (the rest is forested), can I put a 20 acre solar array on the property under the 20% tax change rule, or does this apply to the 10 acre portion only?” She further suggests a clarification specifying that, “forestland, wetlands, and wastelands” shall not be “included with the agricultural/horticultural areas and should not be factored into the 20% rule.”

DEM RESPONSE: The Division appreciates and has considered the comment in reference to Section 1.5 but has decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes the language is clear in that it references “20% of the total acreage of land which is actively devoted to agricultural or horticultural use,” which includes forested land.

COMMENT 30: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the conditions listed in Section 1.6(D)(5) should include limitations on the construction of a dual use generation unit on prime or statewide important soils.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes that the

requirements of the proposed regulation provide for conservation of any land where dual use activity would occur.

COMMENT 31: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the conditions listed in Section 1.6(D)(5) should prohibit damage to and removal of topsoil.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes that the requirements of the proposed regulation provide for conservation of land where dual use activity would occur.

COMMENT 32: Kate Sayles, representing the Northern RI Conservation District Board of Directors, commented that the Farm, Forest, and Open Space brochure/publication should be updated to reflect the new rules and to update the contact information.

DEM RESPONSE: The Division appreciates and has considered the comment, and may amend, if necessary, such documents in order to carry out the rule that is in effect.

COMMENT 33: Gina Fuller commented that the “Findings and Policy” section of the regulation should not be removed.

DEM RESPONSE: The Division appreciates the comment and understands the public’s concern regarding the removal of certain language from state regulations. However, this type of language, although relevant, is considered non-regulatory, and therefore is being removed from all state regulations as part of the recodification process pursuant to the Rhode Island Administrative Procedures Act.

COMMENT 34: Gina Fuller commented that the definition of “Conservation plan” in Section 1.4(A)(5) should be revised to state as follows: “A written plan which incorporates landowners objections for farm, forest, or open space properties with the best management practices to encourage voluntary conservation of the State’s natural resources while achieving the landowner objectives. ‘Stewardship Plans,’ ‘Management Plans,’ ‘Farm Plans,’ and ‘Farm Conservation Plans’ may serve as a ‘Conservation Plan.’ To qualify, a plan must meet minimum criteria established in the Department’s ‘A Citizen’s Guide to the Farm, Forest, and Open Space Act.’”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the proposed definition of “Conservation plan” already allows for inclusion of aspects in a plan that may be relevant to each operation. In reference to the publication ‘A Citizen’s Guide to the Farm, Forest, and Open Space Act’, the Division may utilize and amend, if necessary, such documents in order to carry out the rule that is in effect.

COMMENT 35: Gina Fuller commented that the definition of “Farmland” in Section 1.4(A)(12) should be revised to remove any reference to U.S. Department of Agriculture standards because such standards require a time line for implementation of practices and standards which are too specific for the purposes of this program.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested changes to the proposed amendment to the regulation. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 36: Gina Fuller commented that the definition of “Forest stewardship plan” or “management plan” in Section 1.4(A)(14) should be revised to replace the requirement that plans must meet the minimum criteria in the listed Department guidance documents with a requirement that the plan must instead meet the minimum criteria in the Department’s guidance document titled, “A Citizen’s Guide to the Farm, Forest, and Open Space Act.”

DEM RESPONSE: The Division appreciates and has considered the comment. However, the Division has decided that the document titled “A Citizen’s Guide to the Farm, Forest, and Open Space Act” is not appropriate for this purpose; instead, Section 1.14 will remain in the regulation in response to the comment.

COMMENT 37: Gina Fuller commented that the references to the documents entitled “Application for Designation of Farmland or Forestland” and “Forest Stewardship Plan Requirements for Enrollment in the Farm, Forest, and OpenSpace Program” in Sections 1.7(C) and (D) should be replaced with references to the document entitled “A Citizen’s Guide to the Farm, Forest, and Open Space Act.”

DEM RESPONSE: The Division appreciates and has considered the comment. However, the Division has decided that the document titled “A Citizen’s Guide to the Farm, Forest, and Open Space Act” is not appropriate for this purpose; instead, Section 1.14 will remain in the regulation in response to the comment.

COMMENT 38: Seth H. Handy, representing Handy Law, LLC, commented that the definition of “actively devoted to agricultural or horticultural use,” as set forth in Section 1.4(A)(1), should be clarified in two ways. First, it should be reworded to reflect the understanding that land “actively devoted to agricultural or horticultural use” includes all land classified as farmland, not just portions of farmland that are being “actively farmed” in the common understanding of the phrase. Second, the definition should explicitly reference apiculture (beekeeping) as a permissible farming activity.

DEM RESPONSE: The Division appreciates and has considered the comment and agrees that additional clarification is needed in reference to beekeeping as a permissible farming activity, and therefore “beekeeping” has been added to Section 1.4(A)(1) of the proposed amendment to these rules and regulations. The Division has decided not to make the requested change regarding the definition of “actively devoted to agricultural or horticultural use”, since farmland includes all land classified as farmland.

COMMENT 39: Seth H. Handy, representing Handy Law, LLC, commented that he disagrees with the testimony provided by Rupert Friday at the October 17, 2018 public hearing that the definition of “generation unit” as set forth in Section 1.4(A)(15) should be eliminated for redundancy in light of the definition of “dual use generation unit” set forth in Section 1.4(A)(9). He further comments that both definitions are necessary because dual use is a distinct method of renewable energy use under the regulation. The regulation permits eligibility for the agricultural tax benefit where up to 20% of farmland is used exclusively for renewable energy; it does not restrict eligibility by percentage of farmland used as “dual use generation.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations, and is keeping within the definition of “generation unit” and “dual use generation unit”.

COMMENT 40: Seth H. Handy, representing Handy Law, LLC, suggested adding the following section at the end of Section 1.5(A): “The restriction against using more than 20% of an active farm exclusively for renewable energy is intended solely to address eligibility for preferential tax treatment afforded by these rules and is not intended as a more general guideline for municipal renewable energy siting restrictions.”

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The commenter’s interpretation is also the DEM’s understanding of the rule.

COMMENT 41: Seth H. Handy, representing Handy Law, LLC, commented that the words “Dual use” should be inserted for clarity before the words “generation unit” in each subsection (a) through (c) of Section 1.6(D)(5).

DEM RESPONSE: The Division agrees with the comment and has made the decision to revise the proposed amendment to these rules and regulations by adding for clarity the words “Dual use” before the words “generation unit” in subsections (a)-(d) and (f) of Section 1.6(D)(5).

COMMENT 42: Seth H. Handy, representing Handy Law, LLC, commented that Section 1.6(D)(1) should be rewritten as follows, in order to clarify which farming practices are eligible for dual use: “Pursuant to R.I.

Gen. Laws § 44-27-2(1)(iii), farmland shall be taxed according to agricultural use, defined as: 1. Land “actively devoted to agricultural or horticultural use” as defined in Section 1.4(A)(1); 2. Farmland/Renewable Energy Dual Use, in accordance with the following conditions... [include rest of section on dual use as a subset of section 2]”

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 43: Seth H. Handy, representing Handy Law, LLC, commented that the regulation should be revised to include specific standards to be used in evaluating a dual use application so that farmers will know what sorts of dual use arrangements the Department will accept. He further comments that the regulation should allow farmers the opportunity to amend applications for supplemental reconsideration before a final approval or rejection is issued.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The DEM agrees with the comment, and indicates that an application will be created, and the application process will include standards and criteria, in accordance with the regulation, that will be used to determine whether to approve a dual use application. The application process will allow farmers the opportunity to amend applications for supplemental reconsideration before a final approval or rejection is issued.

COMMENT 44: Amy Moses, representing the Conservation Law Foundation; Rupert Friday, representing the Rhode Island Land Trust Council; Topher Hamblett, representing Save the Bay; Tess Brown-Lavoie, representing Land for Good; Meg Kerr, representing the Audubon Society of Rhode Island; Nathan L’Etoile, representing the American Farmland Trust (hereinafter collectively referenced as the “non-profit organizations”), commented that the final regulations should clarify the definition of “farmland” in Section 1.4(A)(12) to explicitly state the requirements of a conservation plan.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations, since the definition of “Conservation plan” is included in this section. Conservation plans as stated and defined by the rules must incorporate best management practices consistent with USDA standards, and be approved by the District and Director. The Division will ensure compliance of dual use designated farms with conservation plan requirements and the continued viability and designation of the property as a farm through the application process and annual monitoring. The Department is working to review and vet conservation plan requirements and effectuate any necessary changes to the regulation by the end of the year.

COMMENT 45: The non-profit organizations commented that the final regulations should clarify and define “renewable energy project” in Section 1.6(D)(5)(g).

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations, as details about types of projects can be found in the definition of dual use generation unit, and “renewable energy projects” are otherwise defined by existing state statute/regulation.

COMMENT 46: The non-profit organizations commented that the final regulations should include in the definition of “farmland” minimum standards for conservation plans to qualify for FFOS taxation and require a periodic monitoring of the implementation of those plans.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)(5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division however will annually inspect and monitor all dual use designated farms for compliance with the rules.

COMMENT 47: The non-profit organizations commented that the term “generation unit” is not well defined and then not used in the rules. The final regulations should delete that term and use “dual use generation unit” throughout the regulations.

DEM RESPONSE: The Division agrees with the comment that the words “dual use” should be added and has made the decision to revise the proposed amendment to these rules and regulations by adding for clarity the words “Dual use” before the words “generation unit” in subsections (a)-(d) and (f) of Section 1.6(D)(5).

COMMENT 48: The non-profit organizations commented that the rules should be revised to clarify that the development of renewable energy systems on up to 20% of the total acreage of land actively devoted to agriculture without a land use conversion tax penalty can only occur once.

DEM RESPONSE: The Division appreciates and has considered the comment but has decided not to amend the language in the proposed amendment to these rules and regulations. The Division believes the language is clear in that it references “20% of the total acreage of land which is actively devoted to agricultural or horticultural use,” and that subsequent conversion of land was not the intent of the regulation.

COMMENT 49: The non-profit organizations commented that in order to avoid confusion and for clarity, the final regulations should consistently use the term “dual use generation unit.” That term should replace “generation unit” in Sections 1.6(D)(5)(a); 1.6(D)(5)(b); and 1.6(D)(5)(c) of these rules.

DEM RESPONSE: The Division agrees with the comment and has made the decision to revise the proposed amendment to these rules and regulations by adding for clarity the words “Dual use” before the words “generation unit” in subsections (a)-(d) and (f) of Section 1.6(D)(5).

COMMENT 50: The non-profit organizations commented that the final regulations should explicitly require that conservation plans are being implemented.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)((5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division will also annually inspect and monitor dual use farmland designations for compliance with the rules.

COMMENT 51: The non-profit organizations commented that the final regulations should add an additional condition to the FFOS taxation for Renewable on Farmland/Dual use Generation Units to ensure continued compliance.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)((5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division will also annually inspect and monitor dual use farmland designations for compliance with the rules.

COMMENT 52: The non-profit organizations commented that RIDEM should add a requirement that Dual Use projects’ continued eligibility for FFOS taxation is contingent on continued dual use for farming and energy generation.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)((5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations, in addition to annual inspection and monitoring by the Division of dual use designated farms. The underlying requirement in the Farm, Forest and Open Space rules that landowners maintain eligibility to be designated a farm is not changed by dual use designation.

COMMENT 53: The non-profit organizations commented that the final regulations should include a requirement that system design plans be filed and recorded with the RIDEM.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time. However basic system design plans will be a component of the dual use application submitted to DEM.

COMMENT 54: The non-profit organizations commented that the references to applicable Fire Safety Code Board of Appeal and Review regulations and State Building Code Regulations in Section 1.6(D)(5)(e) should be deleted.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to delete the referenced text but agrees that clarification is needed in this subsection. Therefore, subsection 1.6(D)(5)(e) is being revised by adding to the end of the paragraph the text, “and all other applicable laws and regulations.”

COMMENT 55: The non-profit organizations commented that the final regulations should clearly state in Section 1.6(D)(5)(f) that solar installations built on crushed stone surfaces are not qualified as dual use facilities.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that Section 1.6(D)(5), subsections (a)-(g) include applicable requirements for continued viability of the farmland, and will not allow for nor will the Division permit crushed stoned surfaces be qualified as dual use facilities.

COMMENT 56: The non-profit organizations commented that the final regulations should include provisions in Sections 1.9 and 1.10 that provide for Conservation Districts to notify RIDEM and tax assessors when a farm enrolled in FFOS is out of compliance with their conservation plan.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 57: The non-profit organizations commented that the final regulations should include performance standards for appropriate siting of dual use installations.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time. However as specified in the rules proposed dual use facilities must be consistent with a conservation plan, not interfere with the continuous use of the land beneath or around the dual use facility for agriculture purposes, and not interfere with the designation of the property as a farm.

COMMENT 58: The non-profit organizations commented that certain terms in the proposed regulations are unclear and should be defined or redefined in the final regulations.

DEM RESPONSE: The Division appreciates and has considered the comment and has made the decision to revise the proposed amendment to these rules and regulations by adding for clarity the words “Dual use” before the words “generation unit” in subsections (a)-(d) and (f) of Section 1.6(D)(5).

COMMENT 59: The non-profit organizations commented that the final regulations should adjust the required annual gross income to qualify as “farmland” for purposes of FFOS taxation, as set forth in Section 1.4(A)(12)(b), to a more meaningful contemporary standard.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 60: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that the height of fencing around dual use systems should be considered on a case-by-case basis.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the proposed amendment to these rules and regulations does not contain fencing requirements.

COMMENT 61: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that herbicides should not be explicitly banned for ground mount solar projects as part of the vegetative management plan.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the proposed amendment to these rules and regulations does not ban herbicide use.

COMMENT 62: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that pollinator friendly plant species should be utilized whenever possible for vegetative management plans for ground mount projects proposed in residential and farmland zones.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make changes to the proposed amendment to these rules and regulations, and that such vegetative management practices may be part of a conservation plan according to the regulation.

COMMENT 63: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that municipalities should not be encouraged to consider limiting a farm to solar below the 20% allowed on farmland participating in the FFOS program (without land-use tax change).

DEM RESPONSE: The Division appreciates the comment and agrees; the DEM will not be engaged in encouraging limitations on farmland participation in dual use below the allowed percentage of land.

COMMENT 64: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that it is more practical to allow topsoil removed from the solar array location to be relocated onto the property, to enrich another on-site location, rather than attempt to retain it in a pile which will be affected by erosion over the lifetime of the solar array.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the standards for the implementation of dual use projects will not allow for the removal or transport of topsoil to other locations.

COMMENT 65: Heidi Quinn, representing the Rhode Island Farm Bureau, commented that the requirement that ground mounted solar accessory solar energy systems shall not exceed the height of the principal structure or twenty feet should be reconsidered.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 66: Sara Churgin, representing the Eastern RI Conservation District, commented that Section 1.6(D)(5)(g) of the regulation should be revised to require applicants to not just submit a “current conservation plan,” but to “implement” said plan as well.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the reporting requirements specified in Section 1.6(D)(5), subsections (d) and (g), would allow the operator to demonstrate compliance with the proposed regulations. The Division will also annually inspect and monitor all approved dual use farm designations for compliance with the rules.

COMMENT 67: Sara Churgin, representing the Eastern RI Conservation District, commented that the regulation should include a requirement that a farm already in the FFOS program seeking to install a dual use generation system must have a certified conservation planner prepare a conservation plan that includes the dual use generation system, and must present said plan to the local district.

DEM RESPONSE: The Division appreciates and has considered the comment and determined that the requested change is outside the scope of the proposed amendment to these rules and regulations and will not be addressed at this time.

COMMENT 68: Kendra Beaver, representing Save the Bay, commented that the definition of “farmland” in Section 1.4(A)(12) should be revised to clarify whether subparts (a) – (d) are all part of the definition of “farmland” and whether the requirements in all four subparts must be satisfied in order to meet the definition.

DEM RESPONSE: The Division appreciates and has considered the comment and has modified the proposed rules to reflect that any one of the four subparts may be satisfied in order to meet the definition.

COMMENT 69: Kendra Beaver, representing Save the Bay, commented that the references to “campground” and “golf course” in Section 1.11(A) should not be removed from the regulation, and asked whether campgrounds and golf courses are still considered inconsistent with forestland.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make the requested change to the proposed amendment to these rules and regulations. The Division believes that the specific language that was removed was only a list of examples which was not intended to be an exclusive list. The text was removed in order to avoid any further confusion. Removal of the referenced text would not affect the applicability of the regulation.

COMMENT 70: Kendra Beaver, representing Save the Bay, commented that the regulation should be revised to clarify whether dual use will allow land that was once designated as protected farmland to be used as a solar facility with only minor agricultural use.

DEM RESPONSE: The Division appreciates and has considered the comment and decided not to make changes to the proposed amendment to these rules and regulations. It is the opinion of the DEM that the dual use designation is inconsistent with the covenant for the purchase of farmland under the development rights purchase program.

COMMENT 71: Charlene Randall, representing the RI Tax Assessors, asked to confirm that this Act would exempt land previously classified as farm, forest, and open space land from the land use change tax if the landowner converts no more than 20% acreage to install a renewable energy system – that these changes only pertain to farmland.

DEM RESPONSE: The Division concurs.

COMMENT 72: Charlene Randall, representing the RI Tax Assessors, asked if a landowner converts no more than 20% of total farm designated land to commercial renewable energy – no land use penalty applies.

DEM RESPONSE: The Division concurs.

COMMENT 73: Charlene Randall, representing the RI Tax Assessors, asked if the assessment of that 20% (or less) converted land is then determined by the assessor and the recommended value no longer applies.

DEM RESPONSE: The Division concurs, and within the proposed regulation is a new category 5 under Section 1.6(D) upon which farmland shall be taxed according to agriculture use which it titled “Renewable on Farmland/Dual Use Generation Units, in accordance with the followed conditions”, and shall be set by the tax assessor.

COMMENT 74: Charlene Randall, representing the RI Tax Assessors, asked if the farm is considered one whole application even if it includes multiple lots (even if those lots have different owners).

DEM RESPONSE: The Division of Agriculture and FFOS program stipulations allow for additional lots and parcels to be added to a farmland designation, but ultimately the tax assessor has jurisdiction on whether additional lots under different ownership are on the same or different tax bills.

COMMENT 75: Charlene Randall, representing the RI Tax Assessors, asked if dual use would be the continuation of an agricultural use beneath or around the renewable energy components.

DEM RESPONSE: The Division concurs; the land surrounding the renewable energy system must continue to meet program criteria for farmland designation whether that means the continuation of an existing use or an alternative but acceptable agricultural use.

COMMENT 76: Charlene Randall, representing the RI Tax Assessors, asked if the recordkeeping portion of any changes is the responsibility of the assessor, and if DEM will notify the assessor of dual use approvals.

DEM RESPONSE: The Division concurs.

COMMENT 77: Charlene Randall, representing the RI Tax Assessors, asked if dual use land still has to be assessed at the recommended values.

DEM RESPONSE: It still must be assessed at the farmland rate by assessors recognizing as stated in response to Comment 73 the regulations allow for a new rate to be developed which is reflective of the dual usage.

COMMENT 78: Charlene Randall, representing the RI Tax Assessors, in reference to the question of whether dual use land does still have to be assessed at the recommended values as referenced in Comment 77, asked where it states that and why. Ms. Randall also stated that the renewable energy companies are currently willing to pay increased land taxes, and questioned why that revenue stream should be removed from the communities.

DEM RESPONSE: See responses to Comments 73 and 77.

COMMENT 79: Charlene Randall, representing the RI Tax Assessors, asked regarding Dual Use whether a clover or wild flower crop for bees would qualify. Ms. Randall questioned whether any farmer attempting to grow any crop that would require a tractor would be able to maneuver amongst the panels, or would spend the extra money to raise the panels up for cattle. Ms. Randall stated that goats would jump on them so they would be out, but that sheep grazing may be a possibility. Ms. Randall asked what other uses DEM foresees.

DEM RESPONSE: Dual usage is a new area but being actively explored and researched. DEM does not know what agricultural uses will emerge and prove viable under this scenario but is promulgating these regulations to help find health and balance and between renewable energy and agricultural needs and development in Rhode Island and to be protective of long term investments in protecting agricultural land. We believe the agricultural and renewable energy sectors will be developing dual usage scenarios which are viable.

COMMENT 80: Charlene Randall, representing the RI Tax Assessors, asked if a landowner converts no more than 20% of the total acreage of land which is actively devoted to agriculture or horticulture to install a renewable system, whether that means 20% can be converted this year, and 20% can be converted the following year from the rest of the actively devoted land, or whether it is a one-time deal.

DEM RESPONSE: The Department's interpretation of the statutory and regulatory language is that no more than 20% of the total acreage of land which is actively devoted to agriculture or horticulture use prior to any renewable energy system being installed can be converted to dual use pursuant to these regulations and still retain the tax benefits set forth in R.I. Gen. Laws § 44-27-10.1(a).

COMMENT 81: Charlene Randall, representing the RI Tax Assessors, asked if DEM would consider changing the language in the proposed regulation from "20% of the total acreage of land actively devoted to...", to suggested better wording being "20% of the total acreage of land originally certified as".

DEM RESPONSE: DEM must abide by the original language in the enabling statute and cannot make the requested change which is inconsistent with statutory language.