



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

Kathleen Leyden
Maine Department of Agriculture, Conservation, and Forestry
93 State house Station William Pavilion
Augusta, ME 04333-0093

Dear Ms. Leyden: 

Thank you for the Maine Department of Agriculture, Conservation, and Forestry's January 14, 2016, request that changes to the land use districts and standards used by the Land Use Planning Commission (LUPC) be incorporated into the Maine Coastal Management Program. You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's *Program Change Guidance (July 1996)*.

The state's submission was received on January 15, 2016. The response from the Office for Coastal Management's response, originally due on February 16, 2016, was extended to March 4, 2016.

Based on our review of your submission, we concur that the changes are RPCs and we approve the incorporation of the changes as enforceable policies of the Maine Coastal Management Program. Federal Consistency will apply to the approved changes to enforceable policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4) and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and please send a copy of the notice to the Office for Coastal Management.

CHANGES APPROVED

See enclosed list of the changes incorporated into the Maine CMP.

QUALIFICATION

The following standard qualification applies to all program changes approved by the Office for Coastal Management.

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no referenced policy

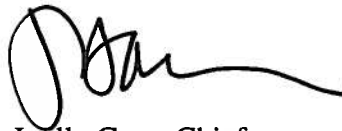
in these approved enforceable policies may be applied for federal consistency unless that referenced policy has been separately approved by the Office for Coastal Management.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management received no comments on this RPC submission.

Thank you for your staff's cooperation with this review. Please contact Becca Newhall at (978) 281-9237, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle Gore', with a long horizontal flourish extending to the right.

Joelle Gore, Chief
Stewardship Division

Enclosure(s): Policies Approved and Incorporated into the Maine Coastal Management Program

Enclosure to the Office for Coastal Management's February 29, 2016, Approval of the Incorporation of Changes to the Maine Coastal Management Program			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:		mm/dd/yyyy	mm/dd/yyyy
Enacts a definition of "high mountain area", with reference to pertinent LUPC zoning	CMR 01-672, ch.10.02(89)	LUPC zoning or permit	7.24.15
Enacts a definition of "persistence" as concerns the on-going, self-sustaining nature of wetlands	CMR 01-672, ch.10.02(152)	LUPC zoning or permit	7.24.15
Enacts a definition of "protected natural resource" for consistency with the NRPA	CMR 01-672, ch.10.02(167)	LUPC zoning or permit	7.24.15
Establishes a criteria and a procedure by which the LUPC may designate "areas of cultural or special significance"	CMR 01-672, ch.10.25(E)(3)	LUPC zoning or permit	5.29.15
Establishes an alternative buffer standard under the LUPC's subdivision rules that may be used in lieu of the general standard under CMR 01-672, ch. 10.25(L)(2)	CMR 01-672, ch. 10.25(L)(3)	LUPC zoning or permit	12.7.15
Provides an exception to dimensional lot standards for certain public recreational facilities, such as boat launches, campsites, and trailheads that are within or surrounded by land protected by a conservation easement or other legally binding provisions that prohibit incompatible land uses, provided the facility would be adequately sized for its intended purpose	CMR 01-672, ch. 10.26(G)(18)	LUPC zoning or permit	7.25.15
Adopts detailed vegetative clearing standard comparable to that under DEP-administered land use laws; deletes superseded language	CMR 01-672, ch. 10.27(B)(5)	LUPC zoning or permit	5.29.15
Adopts standard for new or expanded clearing allowed for a recreational lodging facility; renumbers paragraphs	CMR 01-672, ch. 10.27(Q)(5)	LUPC zoning or permit	5.29.15
MODIFIED:			
Amends definition of "coastal wetlands" for consistency with the Natural Resources Protection Act (NRPA) and to use the highest astronomical tide for NOAA's National Tidal Datum Epoch to determine to determine areas subject to tidal action	CMR 01-672, ch. 10.02(29)	LUPC zoning or permit	7.24.15
Amends the definition of "flowing water" for consistency with the NRPA	CMR 01-672, ch.10.02(76)	LUPC zoning or permit	7.24.15
Amends the definition of "freshwater wetland" for consistency with the NRPA	CMR 01-672, ch.10.02(82)	LUPC zoning or permit	7.24.15
Makes technical corrections to the definition of "motorized recreational gold prospecting"	CMR 01-672, ch.10.02(133)	LUPC zoning or permit	7.24.15

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Makes technical corrections to the definition "non-tidal water bodies"	CMR 01-672, ch.10.02(139)	LUPC zoning or permit	7.24.15
Amends definition of "normal high water mark of coastal wetlands" for consistency with the revised definition of "coastal wetlands". See above.	CMR 01-672, ch.10.02(140)	LUPC zoning or permit	7.24.15
Clarifies the definition of "normal high water mark of non-tidal water bodies"	CMR 01-672, ch.10.02(141)	LUPC zoning or permit	7.24.15
Makes technical correction	CMR 01-672, ch.10.02(144)	LUPC zoning or permit	5.29.15
Amends definition of "residential campsite"	CMR 01-672, ch.10.02(177)	LUPC zoning or permit	5.29.15
Amends definition of "transient occupancy"	CMR 01-672, ch.10.02(208)	LUPC zoning or permit	5.29.15
Clarifies the definition of "shoreline"	CMR 01-672, ch.10.02(192)	LUPC zoning or permit	7.24.15
Amends definition of "water-dependent uses" to incorporate the term "coastal waters." See above.	CMR 01-672, ch.10.02(219)	LUPC zoning or permit	7.24.15
Clarifies existing exemption from LUPC land use regulation for archeological excavation	CMR 01-672, ch.10.07	LUPC zoning or permit	7.24.15
In accordance with a statutory change (see PL 2011, c. 682(13)), removes the requirement that a proposed land use district satisfy a demonstrated need in the community or area	CMR 01-672, ch. 10.08(A)(2)	LUPC zoning or permit	12.7.15
Amends the provision regarding the treatment of nonconforming structures located in a designated area of cultural or special significance and to specify that such a structure: <ul style="list-style-type: none"> • may be expanded in accordance with the basis for the designation (1)(c); • may be replaced or reconstructed as specified in section (2)(f) and that boathouses so located may also be replaced (2)(d); and • may be relocated on the lot (3). 	CMR 01-672, ch.10.11(C)	LUPC zoning or permit	5.29.15
Clarifies that lapsed uses in a designated area of cultural or special significance may be resumed	CMR 01-672, ch.10.11(D)(3)	LUPC zoning or permit	5.29.15
Amends provision regarding the treatment of non-conforming lots by clarifying the circumstances under which the LUPC may permit development of such a lot and allowing permanent structures for the storage of personal property on certain lots	CMR 01-672, ch. 10.11(E)(3-4)	LUPC zoning or permit	7.24.15
Amends language describing areas covered under the "shoreland protection sub-district" (P-SL) to incorporate use of terms "coastal wetlands",	CMR 01-672, ch. 10.23(L)(2)	LUPC zoning or permit	7.24.15

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"flowing water", and "freshwater wetlands." See above.			
Amends language listing uses requiring a permit in a P-SL zone to use term "coastal wetlands."	CMR 01-672, ch. 10.23(L)(3)(c)(22)	LUPC zoning or permit	7.24.15
Amends language listing use regulated by the Maine Forest Service in a P-SL zone to use term "coastal wetlands"	CMR 01-672, ch. 10.23(L)(3)(e)(4)	LUPC zoning or permit	7.24.15
Clarifies the language describing areas included in the wetland protection subdistrict (P-WL) in accordance with revised definitions and other changes for consistency with the NRPA	CMR 01-672, ch. 10.23(N)(2)(a)(1)	LUPC zoning or permit	7.24.15
Clarifies the language describing land uses allowed without a permit, subject to standards, in the wetland protection subdistrict (P-WL) in accordance with revised definitions and other changes for consistency with the NRPA	CMR 01-672, ch. 10.23(N)(3)(b)(6, 10, and 12)	LUPC zoning or permit	7.24.15
Clarifies the language describing land uses requiring a permit in the wetland protection subdistrict (P-WL) to incorporate the revised definition of "coastal wetlands"	CMR 01-672, ch. 10.23(N)(3)(c)(15)	LUPC zoning or permit	7.24.15
Amends language listing use regulated by the Maine Forest Service in a P-WL zone to use term "coastal wetlands"	CMR 01-672, ch. 10.23(N)(3)(e)	LUPC zoning or permit	7.24.15
Amends the requirements for a subdivision to allow the maximum sustained grade of Class 1 roadways to exceed by 5% the generally applicable grade standard subject to specified conditions	CMR 01-672, ch. 10.25(D)(4)(e)	LUPC zoning or permit	12.7.15
Amends the requirements for a subdivision to clarify the type of soil survey required for various types of developments to meet soil suitability requirements, with exceptions to address special circumstances	CMR 01-672, ch. 10.25(G)(1 - 3)	LUPC zoning or permit	12.7.15
Amends the requirements for a subdivision to clarify the requirements for development of a phosphorous impact analysis and control plan and related erosion control and maintenance requirements	CMR 01-672, ch. 10.25(L)(2,4)	LUPC zoning or permit	12.7.15
Makes a number of changes to the review standards for determination of no unreasonable impact under the renamed "Protected Natural Resources" land use standards for consistency with the NRPA, including principally: <ul style="list-style-type: none"> clarification of the applicability of this section and its review for "no unreasonable impacts" on protected 	CMR 01-672, ch. 10.25(P)(1)	LUPC zoning or permit	7.24.15

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<p>natural resources (1) ;</p> <ul style="list-style-type: none"> • clarification of the meaning of the term "mitigation" (c); • inclusion of consistency with state water quality as an approval criterion (e); • incorporation of DMR's role under the NRPA in reviewing proposed coastal dredging activities (h); and • renumbering and technical changes 			
<p>Makes a number of changes to the section regarding alterations to wetlands and water bodies under the renamed "Protected Natural Resources" land use standards for consistency with the NRPA, including principally:</p> <ul style="list-style-type: none"> • repeal of an outdated transition provision (former (2)(1)); • clarification of the method for delineation of wetlands (a)(1) ; • clarification of the affected area-based thresholds for levels (tier 1, 2, or 3) of wetlands review (a)(2); and • clarification that season factors may affect determination of an activity's effect on a resource (a)(3); • clarification of general land use standards regarding avoidance of wetlands impacts that apply to all projects based on the level of review required (b)(1); • clarification of general land use standards' wetlands compensation requirements (b)(3); • clarification of the "no unreasonable impact" standard as applied to projects that require tier 2 or tier 3 review (b)(4); • articulation of the LUPC's standards for provision of wetlands compensation when required (c); • specification of how "mitigation banking" may be used when wetlands compensation is required (d); • description of the types of terms and conditions that the LUPC may require to ensure this section's requirements are met (e); and • specification of submission requirements (f) 	<p>CMR 01-672, ch. 10.25(P)(2)</p>	<p>LUPC zoning or permit</p>	<p>7.24.15</p>
<p>Specifies that the NRPA-derived review standards under section 10.25.P.1 also apply to proposed</p>	<p>CMR 01-672, ch. 10.25(P)(3)</p>	<p>LUPC zoning or permit</p>	<p>7.24.15</p>

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alterations of "high mountain areas"			
Amends the requirements for layout and design of a subdivision to increase from 15% to 20% the maximum slope of a building envelope, where practicable	CMR 01-672, ch. 10.25(Q)(3)(d)	LUPC zoning or permit	12.7.15
Amends the requirements for a cluster development subdivision to increase from 15% to 20% the slope of land which is considered unbuildable	CMR 01-672, ch. 10.25(R)(2)	LUPC zoning or permit	12.7.15
Clarifies applicability of minimum shoreline frontage requirements to campsites and residential campsites	CMR 01-672, ch. 10.26(B)(1)(a) and (2)(a)	LUPC zoning or permit	5.29.15
Clarifies applicability of minimum road frontage requirements to campsites and residential campsites	CMR 01-672, ch. 10.26(C)(1)(a)	LUPC zoning or permit	5.29.15
Clarifies applicability of the maximum building height requirements to campsites and residential campsites	CMR 01-672, ch. 10.26(F)(2)(a)	LUPC zoning or permit	5.29.15
Amends the land use standard for construction and maintenance of roads to incorporate definitions of "coastal wetlands" and "freshwater wetland"	CMR 01-672, ch. 10.27(D)	LUPC zoning or permit	7.24.15
Amends the land use standard for filling and grading, within and beyond 250 feet from a wetland or water body to further consistency with setback distances in the rules' section on vegetation clearing (section 10.27.B)	CMR 01-672, ch. 10.27(F)	LUPC zoning or permit	7.24.15
Makes a number of changes to the land use standards applicable to motorized recreational gold prospecting to further their consistency with the NRPA and statutory changes, including primarily: <ul style="list-style-type: none"> • technical corrections and incorporation of the definition of "flowing water"; • specification that motorized recreational gold prospecting is prohibited in Class AA waters (6)(c); and • listing other waters closed to this activity (6)(e-m) to conform the rule to recent legislative changes 	CMR 01-672, ch. 10.27(G)	LUPC zoning or permit	7.24.15
Clarifies that the dimensional standards under 10.26 apply to trailored ramps and hand-carry launches	CMR 01-672, ch. 10.27(L)(5)(n)	LUPC zoning or permit	7.24.15
Amends the land use standard for permanent docking structures to incorporate definitions of "coastal wetlands" and "non-tidal water bodies"	CMR 01-672, ch. 10.27(O)(2 and 4)	LUPC zoning or permit	7.24.15

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Specifies that an ancillary structure may also be reconstructed when a permanent docking facility in a designated area of cultural or special significance is reconstructed (1)(a) and that a boathouse or floatplane hangar in such an area may be reconstructed	CMR 01-672, ch. 10.27(O)(1)(a) and (2)(b)	LUPC zoning or permit	5.29.15
Amends standards for recreational lodging facilities as follows: <ul style="list-style-type: none"> deletes superseded language regarding allowable clearing and provides definition of the term "clearing"(1); amends table A, which lists allowable clearing for various facility levels; clarifies language regarding "floor area" limitations (4); and amends provision which allows conversion of a recreational lodging facility under specified circumstances (8) 	CMR 01-672, ch. 10.27(Q)	LUPC zoning or permit	5.29.15
DELETED:			
Deletes the definition of "stream channel" which is subsumed in the revised definition of "flowing water." See above	CMR 01-672, ch. 10.02[subsection renumbered as amended – see redline for deleted language]	n/a	7.24.15
Deletes the definition of "tidal waters" which are covered under the revised definition of "coastal waters." See above	CMR 01-672, ch. 10.02[subsection renumbered as amended – see redline for deleted language]	n/a	7.24.15
Changes marked with an asterisk (*) are incorporated into the Maine Coastal Program, but do not contain enforceable policies that can be used for Federal Consistency.			