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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

Memorandum

To: Commissioners

From: Stacie Beyer, Senior Planner

Date: June 4, 2015

Re: Proposed Rule Revisions for Adoption:
NRPA Consistency and Recreational Gold Prospecting

Introduction

The Natural Resources Protection Act (NRPA, 38 MRSA § 480-E-1) delegates to the Maine Land Use Planning Commission (LUPC) authority to issue all permits under the article for activities located wholly within the LUPC's service area. In 2001, the Legislature amended NRPA to direct the Commission to consult with Department of Environmental Protection (DEP) and conduct annual reviews of LUPC land use standards to "ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the Commission's comprehensive land use plan." The primary objective of the proposed NRPA Consistency rulemaking effort is to review and update land use standards regarding certain protected natural resources to be consistent with the goals of NRPA. In addition, changes are included in Section 10.27,G to conform with recent legislative changes regarding the regulation of motorized recreational gold prospecting.

Process

At the November 2014 Commission Meeting, LUPC staff gave a brief presentation to the Commission that provided an update on the status of preliminary rulemaking efforts and an overview of some key revisions to Chapter 10 proposed in the preliminary draft rule for NRPA Consistency. At the January 2015 Meeting, the Commission directed the staff to post the draft NRPA Consistency and Recreational Gold Prospecting rule for a 30 day public comment period. The draft rule was posted in the Secretary of State's consolidated notice of rulemaking on February 25, 2015. The deadline for submission of public comments was March 27, 2015 and the deadline for submission of rebuttal comments was April 3, 2015.

Rule Revisions

Key changes included in the proposed rule revisions are as follows:

- Renaming Section 10.25,P, Wetland Alterations to Protected Natural Resources and reorganizing the section to better accommodate any future NRPA Consistency rulemakings.

- Incorporating the current LUPC Wetland Compensation Guidelines into the rule.
- Reducing the trigger for completion of a functional assessment and compensation from 20,000 square feet to 15,000 square feet.
- Adding critically imperiled (S1) and imperiled natural communities (S2) to P-WL1 wetlands of special significance.
- Clarifying what is meant by "no unreasonable impact" as it relates to P-WL1 wetlands and certain terms and conditions related to wetland compensation.
- Using a single term, "coastal wetland," for all tidal water, tidal lands and subtidal lands.
- Modifying the definition of "coastal wetland" and the "normal high water line of coastal wetlands" to reference the highest astronomical tide (NOAA HAT) instead of the maximum spring high tide level.
- Replacing the current definition of flowing water with the definition for river, stream, or brook that is used by NRPA, and replacing references to the term "stream channel" with "flowing water."
- Revising the standards for filling and grading as they relate to waterbody and wetland setbacks and slope.

Public Comments

A total of 11 interested persons commented on the draft rule, five relating to NRPA Consistency and six relating to Recreational Gold Prospecting. No rebuttal comments were received. Staff has reviewed and fully considered each of the public comments received on the draft rule, and as a result, has drafted the following documents for your review and consideration:

- Draft Basis Statement
  In accordance with state law, the attached Basis Statement summarizes the comments and presents draft responses. The Basis Statement is organized by parts of the rule, then by topic areas. A complete copy of all comments received in the public comment period is attached.

- Draft Rule
  This draft rule incorporates revisions that were posted for the public comment period, and revisions that are proposed in response to public comment.

Functional Assessment and Compensation Threshold

One comment in particular should be brought to the Commission's attention for consideration. A commenter raised concern about the proposed revision to reduce the trigger for a functional assessment and wetland compensation when impacting wetlands not of special significance from 20,000 square feet to 15,000 square feet of area altered. The commenter stated the change would increase the cost and burden to applicants and asked if there is a scientific justification for the change. The commenter noted consistency is a laudable goal in many respects, but argued alternation of 15,000 square feet of wetland in the organized parts of the state may be a lot more significant and justify a more rigorous review than alteration of the same amount of wetlands in the UT.

LUPC staff reviewed the legislative and regulatory history on the establishment of the 15,000 square foot threshold in NRPA. In 2005, the Legislature enacted a resolve directing DEP to work with interested parties to develop a proposal for a freshwater wetland compensation program for Tier 1 (i.e., smaller) projects. Resolves 2005, ch. 37. Concerns about cumulative wetland loss appear to have contributed to the resolve and subsequent legislation. In response to the directive, DEP prepared a report: "Resolve to Increase Wetland Protection by the Maine Department of Environmental Protection, A Report to the Maine Legislature's Joint Standing Committee on Natural Resources, February 2006." In this report, DEP found "…a more effective strategy to increase compensation for freshwater wetland impacts is to lower the regulatory threshold for mitigation to 15,000 square feet. Compensation at this level would mirror the

federal review by the U.S. Army Corps of Engineers for any project impacting 15,000 square feet or more." Acting on the recommendation of DEP, the Legislature enacted a law requiring DEP to amend its rules to reduce the threshold from 20,000 to 15,000 square feet. Public Law 2005, ch. 592, § 5. DEP made the required change in 2006, adopting rules establishing that projects altering 15,000 square feet or more of freshwater wetlands not of special significance trigger functional assessment and compensation.

In addition to the comment noted above, the LUPC received one letter from the Maine Association of Wetland Scientists (MAWS) after the close of the public comment period. Although the comments from MAWS were not received in time, staff note that the comments were in support of more consistency between the Maine DEP NRPA and the LUPC natural resource rules.

The question before the Commission is whether the trigger for wetland compensation used by DEP in NRPA, as well as by the Army Corps in its rules adopted pursuant to the Clean Water Act, should be applied by the LUPC in the unorganized and deorganized parts of the state. The draft basis statement includes language supporting a decision to change the threshold to 15,000 square feet to achieve consistency with the NRPA threshold and Army Corps requirements. However, whether a higher threshold remains appropriate in the generally more rural and less developed parts of the State served by the LUPC and whether this higher threshold, although not identical to the NRPA standard, is consistent with the goals of NRPA, are questions warranting the Commission's consideration.

Staff Recommendation

Staff recommends that the Commission adopt the NRPA Consistency and Recreational Gold Prospecting rule revisions and basis statement.

Attachments

Attachment 1: Draft Basis Statement
Attachment 2: Draft Rule
Attachment 3: Public Comments Received

NRPA CONSISTENCY AND RECREATIONAL GOLD PROSPECTING

Attachment 1

Draft Basis Statement and Summary of Comments, and
Draft Basis Statement Addendum:
Closed Areas Added in 2015

Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry

BASIS STATEMENT AND SUMMARY OF COMMENTS

FOR AMENDMENTS TO

CHAPTER 10: LAND USE DISTRICTS AND STANDARDS REGARDING

NRPA CONSISTENCY AND RECREATIONAL GOLD PROSPECTING

June 4, 2015

STATUTORY AUTHORITY:

12 M.R.S.A. § 685-A, Subsections (3), (5), (7-A);
12 M.R.S.A. § 685-C, Subsection (5); and
38 M.R.S.A. § 480-E-1

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

The Maine Land Use Planning Commission's primary objective for this proposed rulemaking effort is to review and update its Land Use Districts and Standards (Chapter 10) regarding certain protected natural resources to be consistent with the goals of the Natural Resources Protection Act (NRPA, 38 MRSA §§480-A—480-HH). This NRPA consistency rulemaking focuses on the permit requirements for activities in and around wetlands and water bodies. In addition, changes are included for Section 10.27,G, Motorized Recreational Gold Prospecting, to conform with Public Law 2013, Chapter 260 and Public Law 2013, Chapter 536 (enacting LD 1135, An Act to Provide Consistency in the Regulation of Motorized Recreational Gold Prospecting and LD 1671, An Act To Prohibit Motorized Recreational Gold Prospecting in Class AA Waters and Certain Atlantic Salmon and Brook Trout Habitats, respectively). Key changes to the rules include:

- *Coastal wetlands/tidal waters.* The Commission recommended using a single term "coastal wetland" for all tidal waters, tidal lands and subtidal lands. Removing a distinction between these terms results in a change in the application of standards, particularly those relating to vegetative clearing and building heights. Under the proposal, vegetative buffer strips may increase, vegetation clearing standards will apply, and building heights will be limited adjacent to coastal wetlands. Also, the P-SL1 zoning will apply adjacent to all coastal wetland areas. This will not affect mapping, as all coastal shorelines were mapped P-SL1. The use of a single term for coastal resources is intended to improve consistency with the way the

Department of Environmental Protection (DEP) regulates coastal resources, and to provide the same level of protection for coastal wetlands with salt tolerant vegetation as those without salt tolerant vegetation.

In addition, the Commission recommended changing the definition of coastal wetland and the normal high water line of coastal wetland areas to reference the "highest astronomical tide (NOAA HAT)" instead of the "maximum spring high tide level" or the "mean high water level." Important considerations in choosing a relevant elevation for establishing the boundary of a coastal wetland included whether the referenced level is included as a NOAA tidal datum with a published elevation, and the frequency that the elevation will change. "Maximum spring tide" is not defined by NOAA or included as a NOAA tidal datum, and the elevation changes on an annual basis. The predicted "highest astronomical tide" is published by NOAA and changes on a 19-year basis. Annual changes to data and maps depends on a substantial allocation of staff time. Also, setback distances that change on a year-to-year basis can be problematic in terms of the standards that apply to structures that do not conform with setback distances. According to the Maine Geological Survey, the vertical difference, in general, between the "maximum spring tide" and the "highest astronomical tide" is a matter of inches.

- *Flowing water*. The rule revisions change the definition of flowing water to the language used by NRPA to define a river, stream, or brook. With the revision, the term "stream channel" is no longer necessary, so virtually all references to stream channel were changed to flowing water. Some upper headwater channels in the LUPC service area will no longer be considered as regulated flowing waters with this revised definition. The intent is to improve consistency and simplify the application process for joint DEP/LUPC review projects.

- *Critically imperiled (S1) or imperiled natural communities (S2)*. S1 and S2 resources have been added to P-WL1 wetlands of special significance, consistent with NRPA. Currently, S1 and S2 communities are reviewed under the standards in Section 10.25,E, Scenic Character, Natural and Historic Features. Adding these resources to the list of P-WL1 wetlands will ensure activities that require permits in S1 or S2 communities have to meet the same level of review, avoidance standard, and compensation requirements as required by NRPA.

- *10.25,P Protected Natural Resources.* To allow for potential future rulemaking on significant wildlife habitat and sand dunes, the Wetland Alterations rule is being replaced with a Protected Natural Resources rule, and this rule has been reorganized with placeholders for wildlife habitat and sand dune sections. No substantive changes for wildlife habitat and sand dunes are proposed in the present rulemaking.

  In addition, the Commission's Wetland Compensation Guidelines have been incorporated into this rule, consistent with the level of authority provided for compensation in NRPA. Also to improve consistency with NRPA, the amount of freshwater wetlands not of special significance that triggers the need for a functional assessment and compensation has been reduced from 20,000 square feet to 15,000 square feet, language has been added to clarify what is meant by "no unreasonable impact" as it relates to wetlands of special significance, and language has been added to clarify certain terms and conditions that may be established for wetland compensation projects.

- *10.27,F Filling and Grading*. The revision includes changes to the standards for filling and grading activities. The prior standard required that filling and grading activities adjacent to wetlands and water bodies be set back certain distances based on the slope of the land. These setback distances conflicted, in some instances, with the distance used for vegetative buffer strips in Vegetation Clearing (Section 10.27,B). To address this conflict, the table of setbacks has been deleted, a new, consistent standard for setbacks has been added, and a requirement limiting filling and grading activities, allowed subject to standards and located within 250 feet of certain wetlands and water bodies, to slopes of 20% or less has been added.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on January 14, 2015, the staff presented to the Commission the draft rule revisions and requested to post the revisions to public comment. The Commission voted to post the revisions to public comment with a 30 day public comment period.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on February 25, 2015. The Secretary of State's notice appeared in the Bangor Daily News , Kennebec Journal, Portland Press Herald , Lewiston Sun-Journal, and the Central Maine Morning Sentinel. Written email notice was also provided to approximately 646 individuals. These include the Commission's mailing list of persons wishing to be contacted regarding any proposed changes to the Commission's rules; a mailing list of interested persons regarding the NRPA Consistency rulemaking initiative; the Rangeley Prospective Zoning list; and legislators serving areas within the Commission's jurisdiction. The notice of the rulemaking, the proposed revisions, and supplemental background material were also posted on the agency's web site.

The record remained open until March 27, 2015 to allow interested persons to file written statements with the Commission, and for an additional 7 days until April 3, 2015 to allow interested persons to file written statements in rebuttal of statements filed up to March 27, 2015.

COMMENTS AND RESPONSES:

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PART 1: PROPOSED WATER BODY AND WETLAND RULE CHANGES

The Commission received written comments from five interested persons in response to the proposed NRPA consistency rulemaking. Responses included numerous comments on various themes. In accordance with state statute and Commission policy, the Commission has summarized all testimony received. In order to fully consider the range of comments in the context of the comprehensive rule revision proposal, the Commission has organized the comments into two parts and 7 topic areas; some topics include sub-categories on the larger topic. Further, this document identifies various themes or core ideas, identifies the testimony involved, and a response to the comments.

I. OVER-ARCHING COMMENTS ON NRPA CONSISTENCY

1. Natural resources themselves are not different, and should be regulated similarly no matter where you are in the State of Maine.

   Commenter(s): Burman Land & Tree Company, LLC.

2. LUPC could streamline their regulations and permitting processes by fully adopting the DEP regulations regarding protected natural resources. Fully adopting the DEP rules would improve predictability and ease of planning for permit applicants. While the proposed rule change goes a long way towards consistency with DEP rules, there are still differences that make the LUPC process more difficult to navigate, without notable benefit to the environment.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: In accordance with the delegated authority granted to the LUPC by NRPA, the Commission strives to be consistent with the goals of the statute, and to be consistent with other aspects of the statute wherever possible. However, the Commission's role in serving the unorganized and deorganized areas of Maine includes both planning and permitting functions, and its rules address multiple purposes, including NRPA permit standards, shoreland zoning, and municipal planning. The LUPC's rules do not always look like the DEP rules or like a town ordinance. The agency makes adjustments for the context of the rural area that it serves, as well as its existing land use district and standards format. Given these factors, the Commission finds that fully adopting DEP regulations in format and content is not practicable in the context of the many purposes the rules need to address.

3. "Consistency" statewide is a laudable goal in many respects but the UT is a lot different than a town in Cumberland County. Alteration of 15,000 square feet of wetland in Scarborough may be a lot more significant and justify a more rigorous review than alteration of 15,000 square feet of wetland in T18 R10.

   Commenter(s): Seven Islands Land Company

Response: NRPA requires the Commission to ensure that the land use standards it adopts afford a level of protection consistent with the goals of the statute. The primary objective of this rulemaking effort is to update the Commission's standards to improve consistency with NRPA. NRPA currently affords a higher level of protection for freshwater wetlands not of special significance from impacts greater than 15,000 square feet. See the discussion of mitigation below for additional response to this comment.

Action(s): No action is recommended.

II. DEFINITIONS

A. Coastal Wetlands

1. The criteria "all areas below any identifiable debris line left by tidal action" should be removed from the definition of coastal wetland as it is variable and not able to be replicated in subsequent years.

   Commenter(s): Burman Land & Tree Company, LLC.

2. The currently proposed revision more clearly indicates that all defining characteristics in the coastal wetland definition should be taken into consideration equally.

   Commenter(s): Natural Resources Council of Maine

Response: The Commission agrees that the most accurate and reliable way to delineate the edge of a coastal wetland is by surveying the highest astronomical tide line. However, requiring a surveyed line for every project proposed by a coastal landowner would be overly burdensome for the landowner and the LUPC. For small projects, it is important to retain criteria that allow for on the ground observation including the presence of an identifiable debris line and salt tolerant vegetation. When all available data are considered against all of the separate criteria in the definition of the coastal wetland, the most restrictive criteria determines the location of the upland edge or normal high water line of the wetland.

Action(s): No action is recommended.

B. Flowing Water

1. The definition may not be sufficiently clear that regulated flowing water includes channels that may at times be dry.

   Commenter(s): Natural Resources Council of Maine and Maine Audubon

Response: The Commission does not believe that any clarifying language is needed to address intermittent stream channels. One of the characteristics included in the definition of flowing water states, "It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years." This characteristic recognizes that regulated flowing water can be intermittently dry and still be a protected resource.

2. It is fine that some upper headwater channels will not be regulated under the new definition. We'll still employ BMP's to protect them.

   Commenter(s): Seven Islands Land Company

3. The Commission should adopt the Maine Forest Service definition of stream channel in lieu of the proposed definition for flowing water in the draft rule. "Both the resource and the regulated community will be better served by a purely science-based definition."

   Commenter(s): Maine Forest Service

Response: In preparing the draft revisions to Chapter 10, the Commission gave considerable thought to how best to define flowing water. As background, the factors the LUPC considered in drafting the proposed definition of flowing water included:

- Consistency with Statute: Pursuant to 38 M.R.S.A. § 480-E-1, the LUPC is required to consult with the DEP and to ensure that the LUPC's land use standards afford a level of protection consistent with the goals of the NRPA. Since the definition of "river, stream, or brook" is a NRPA statutory definition, using that definition to classify flowing waters helps to ensure a consistent level of protection for flowing water resources.

- Consistency for Applicants: The Commission understands that adopting NRPA definition for these water bodies will be inconsistent with the definition currently used by the MFS. The LUPC values consistency, but unfortunately in this instance cannot be consistent with both DEP and MFS. The greatest conflict relating to flowing water resources has been in situations where permits are required from the DEP and certification is required from the LUPC for the same parcel and activity, and DEP and the LUPC have two different definitions for these water bodies. It has been confusing for landowners and environmental consultants preparing an application for both DEP and LUPC review. This is a result the Commission wants to avoid in the future and that the proposed rulemaking will address. By comparison, it is not common that the LUPC and MFS review the same application where what qualifies as flowing waters is material.

- Science: The NRPA definition adds certain science-based criteria that allows the LUPC to confirm the water body provides important water-related functions and values, such as having the presence of aquatic organisms or aquatic vegetation.

- Historical Success: The NRPA definition has been successfully applied in the field by the DEP since its adoption into law in 2001.

- Regulatory Burden: The proposed change to the definition of flowing waters will result in some drainages higher in the watershed no longer being regulated. Based on inquires the LUPC made with professionals in the field, the Commission does not believe any important ecological protections will be lost through the reduction in regulation. The Commission views such a reduction in regulation as a positive step forward.

Action(s): No action is recommended.

C. Non-tidal Water Body

1. There should be more to the definition here, especially regarding size and permanence of hydrology. The definition includes "all water bodies," but does not define "water body."

   Commenter(s): Burman Land & Tree Company, LLC.

Response: Water body is not defined in the statute or rules administered by the LUPC. In deciding what definitions a rule must contain, one consideration is whether or not the term has a special use or meaning in the rule or whether its use reflects the term's common usage. In Chapter 10, the use of the term water body reflects its common usage. For non-tidal water body, a defined term, it is also important to understand how the term is used in Chapter 10. Non-tidal water body is not individually listed as a protected natural resource. Each listed protected natural resource is individually defined. Non-tidal water body is used in a limited way to apply different standards collectively to those protected natural resources that also meet the definition of non-tidal water body (e.g., flowing

waters and bodies of standing water) from those resources that meet the definition of coastal wetland (e.g., tidal waters, and tidal and subtidal lands). Size and permanence of hydrology isn't relevant to the context.

Action(s): No action is recommended.

D. Normal High Water Mark of Non-Tidal Water Bodies

1. This definition is difficult to use in the field, particularly in drawing a line between aquatic vegetation, and wetland or upland vegetation, and in places where the normal high water mark cannot be easily determined. The definition should include a surveyable means of making this determination.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: The Commission understands the challenge of applying definitions of terms to the varying natural and man-altered conditions found in the field. The language used in the LUPC definition of normal high water mark of non-tidal water bodies is nearly identical to the language used in the statutory definition of normal high water line in NRPA, including "apparent from…changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land." The Commission has chosen to use the language for consistency. However, the Commission has discussed, will continue to discuss, and welcomes comments on ways to improve the clarity of this definition. In difficult situations, LUPC staff are available to assist in determining the location of the normal high water mark.

Action(s): No action is recommended.

III. USE OF TERMS

1. The term "flowing water" should be changed to "river, stream or brook."

   Commenter(s): Maine Audubon

Response: The Commission chose to use the term "flowing water" in lieu of adopting the NRPA term "river, stream, or brook," because the term "flowing water" is already included and referenced over 200 times in its existing rules.

2. The term "high mountain area" is not consistent with NRPA and, by using the term, mountain area protection subdistricts, as well as other sensitive high elevation habitat, may be precluded from protection under NRPA.

   Commenter(s): Natural Resources Council of Maine

Response: The term "fragile mountain area" was changed to "high mountain area" in response to comments on a preliminary version of the draft rule, and because the definition proposed for these resources is not exactly the same as the NRPA definition of fragile mountain areas. The Commission does not agree that changing the term "fragile mountain area" to the term "high mountain area" will preclude sensitive high elevation habitat from NRPA protections for two reasons. First, the proposed rules include high mountain areas as protected natural resources subject to the NRPA review criteria and standards in Section 10.25,P, Protected Natural Resources. Also, the proposed rule revisions include a definition for the term "high mountain area" that incorporates by reference all areas described in the mountain area protection subdistrict. Although the term "high mountain area" is not the identical term used in NRPA, the Commission believes the standards for protection of the resource are consistent with the goals of NRPA.

3. The term "bodies of standing water" should be changed to "non-tidal water bodies" in the freshwater wetland, protected natural resource, and shoreline definitions, as well as in the description of the Wetland Protection Subdistrict.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: "Body of standing water" is a defined term and used throughout Chapter 10 to describe water bodies that are non-tidal and without a perceptible flow. Non-tidal water bodies include both standing water (for example ponds) and flowing water (such as streams). The terms – "bodies of standing water" and "non-tidal water bodies" – have two distinct meanings and uses in the Commission's rules.

4. In Sections 10.23,N,2,a and 10.27,F, the term "water bodies" should be replaced with "non-tidal water bodies" in the description for the P-WL subdistrict and the standards for filling and grading, respectively.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: The term "water bodies" is used throughout Chapter 10 including in portions of the rule that are not included in this rulemaking. The use of the term reflects its common meaning and usage. Although use of non-tidal water bodies, which is a defined term in the rule, may be applicable and more accurate than use of the term water body, revision to only those portions of the rule currently under consideration would create incongruences in the rule. In lieu of possibly making the recommended change throughout the rule and having to repost the changes to public comment, the Commission will add this recommendation to its list of future rulemaking for potential consideration of a holistic change to the use of the term "water bodies."

Action(s): No action is recommended at this time.

IV. FRESHWATER WETLANDS

A. Legal Citation

1. The reference citation for freshwater wetlands in the proposed revisions to Section 10.23,L,2 for the P-SL2 subdistrict is not correct. The "and (c)" should be removed.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: The Commission has reviewed this citation. The referenced language "and (c)" designates the start of a new criteria in the P-SL2 description. However, in reviewing this comment, it was determined that there is an error in the citation. The reference that reads "Section 10.23,N,2,a,(1),(b), and (c) and (2) and (3)" should read "Section 10.23,N,2,a,(1),~~(b), and~~ (c) and (2) and (3). This correction has been made to the rule in response to the comment.

Action(s): Revise Section 10.23,L,2 for the Shoreland Protection Subdistrict (P-SL2) to read "Section 10.23,N,2,a,(1),~~(b), and~~ (c) and (2) and (3).

B. Functional Assessment and Compensation

1. Reducing the amount of impact that triggers a functional assessment and compensation to 15,000 square feet increases cost and burden on applicants and diverts agency time. Cumulative regulatory burdens influence land values, owners' rights and agency functions. What is the scientific justification and is the burden on landowners justified?

Commenter(s): Seven Islands Land Company

Response: The tiered approach for reviewing wetland alterations and the thresholds that trigger different levels of review for activities in wetlands is established in NRPA. According to NRPA, a Tier 2 review process applies to an activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre that is not in a wetland of special significance. In addition, under the application process for Tier 2 review (38 M.R.S.A. § 480-X(7)), applications for Tier 2 review must include a plan for compensating for lost functions and values, if required by rule. In 2006, DEP adopted rules establishing that projects exceeding the 15,000 square foot threshold trigger functional assessment and compensation; previously, DEP had applied a 20,000 square foot threshold. This DEP rulemaking and threshold reduction was mandated by the Legislature in 2005 Public Law, ch. 592, § 5. The basis for the legislative mandate was a February 2006 report to the Legislature prepared by DEP (as directed by Resolves 2005, ch. 37) in which DEP recommended reduction of the threshold to achieve improved wetland protection and increased compensation. Reducing the LUPC trigger for requiring a functional assessment and compensation plan from 20,000 to 15,000 square feet ensures that the LUPC standards establish a level of protection consistent with the goals of NRPA. In addition, this revision is not expected to significantly alter the regulatory burden for landowners in the LUPC service area (UT). Wetland alterations in the UT also fall under the jurisdiction of the Army Corps of Engineers. The Army Corps' Maine General Permit establishes that new fill/ excavation discharges, under the Army Corps' jurisdiction and including more than 15,000 square feet of inland wetland impact, require at least a category 2 level of review. Under that level of review, the Army Corps requires submission of an application and generally requires compensatory mitigation for any lost wetland functions and values. It is important to note that land management roads are not regulated by the Commission within wetland protection subdistricts and are exempt from Army Corps review.

2. Requiring protection for compensation projects in the form of deed covenants and restrictions is impractical because they are hard to track and administer. This is overkill for small projects.

Commenter(s): Seven Islands Land Company

Response: The LUPC's existing Wetland Compensation Guidelines have been applied in the Commission's review of wetland alterations since their adoption in February of 1998. Some of the revisions in this rulemaking are proposed to incorporate the provisions of the existing guidelines into rule. Incorporating the guidelines into rule changes the LUPC's level of authority to enforce the provisions, but not what the Commission requires in its project reviews. One example of this is the requirement for deed covenants to protect compensation projects. The requirement for protection of a compensation project is currently included in Section III, Page 5 of the Wetland Compensation Guidelines. Adequate protection of a compensation project ensures that permitted wetland impacts have been adequately mitigated and ensures the NRPA goal of no net loss in wetland functions and values is met for the long-term. Both the NRPA Wetlands and Waterbodies Protection Rules, and the Army Corps' Final Compensatory Mitigation Rule (33 CFR Parts 325 and 230) require long-term protection of compensation projects. Based on institutional memory, there have been very few projects located wholly in the LUPC service area for which wetland compensation has been required by the Commission, and these projects involved larger compensatory mitigation proposals.

3. Requiring functional assessments and compensation for, and applying the "no unreasonable impact" criteria to Tier 2 applications will be time consuming and expensive, and result in "a lot of unreasonable impact." What is the justification for these revisions applying in remote areas?

Commenter(s): Seven Islands Land Company

Response: Current LUPC Chapter 10 rules require that there be no net loss of wetland functions and values for Tier 2 projects. In order to meet that standard, a functional assessment has to be completed and, if any wetland functions or values will be lost or degraded as a result of a Tier 2 project, current rules allow for the Commission to require a compensation plan. This provision is consistent with NRPA. The "no unreasonable impact" criteria are the statutory decision-making criteria in NRPA, and NRPA requires that Tier 2 and 3 projects meet those criteria. Tier 1 reviews are required, under NRPA, to meet a subset of those criteria. The Commission has determined that for its standards to be consistent with the goals of the NRPA, the same review criteria need to apply to projects within the Commission's service area. There are standards in existing LUPC rule that currently apply to Tier 2 level projects that are similar in nature to the "no unreasonable impact" criteria, such as Section 10.24,C for fitting the proposal harmoniously into the existing natural environment; Sections 10.24,D and 10.25,M for erosion control; Section 10.25,E Scenic Character, Natural and Historic Features; Section 10.25,K Surface Water Quality; and Section 10.25,T Activities in Flood Prone Areas.

Action(s): No action is recommended.

C. Wetlands of Special Significance

1. Wetlands of special significance should include Significant Wildlife Habitat, 100-year flood zones wetlands, peatlands, and >20,000 square feet of aquatic vegetation to be more consistent with NRPA.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: The Commission's description of P-WL1 wetlands of special significance currently includes freshwater wetlands containing significant wildlife habitat, 100 year flood plains, peatlands, and >20,000 square feet of aquatic vegetation. The Commission is not proposing to remove or change these criteria in this rulemaking.

2. Adding S1 and S2 natural communities to wetlands of special significance will likely require more permits in that many small wetlands would be pulled out of Tier 1 review and into the more extensive and costly Tier 3 review. Is this justified?

   Commenter(s): Seven Islands Land Company

Response: According to the State Rarity Ranks as determined by the Maine Natural Areas Program (MNAP), S1 natural communities are critically imperiled in Maine because of extreme rarity (five or fewer occurrences or very few remaining individuals or acres) or because some aspect of their biology makes them especially vulnerable to extirpation from the State of Maine. S2 communities are imperiled in Maine because of rarity (6- 20 occurrences or few remaining individuals or acres) or because of other factors making them vulnerable to further decline. According to the Director of MNAP, these imperiled communities, both S1 and S2, represent very few acres of the LUPC service area (less than 3000 acres of an approximately 10.4 million acre area).

In the LUPC's current Land Use Districts and Standards, S1 and S2 communities are protected under the standards in Section 10.25,E, Scenic Character, Natural and Historic Features, which states if any portion of a subdivision or non-residential project site includes one of these communities, the applicant shall demonstrate that there will be no undue adverse impact on the community and include appropriate measures for the preservation of its values. Adding these resources to the list of P-WL1 wetlands of special significance is justified given their rarity and importance in maintaining Maine's biodiversity, and will ensure activities that require permits in S1 or S2 communities have to meet the same level of review, avoidance standard, and compensation requirements as required by NRPA.

Action(s): No action is recommended.

V. HARM TO HABITATS, DREDGING, FILLING AND GRADING, AND SUBMISSIONS

1. Regarding the text "adjacent upland habitat," added to the NRPA review criteria, harm to habitats, how far is "adjacent" from the habitat and is this addition justified?

   Commenter(s): Seven Islands Land Company

Response: The text "adjacent upland habitat" in the harm to habitats criteria, was initially proposed in the draft rulemaking posted for public comment in order to be consistent with NRPA, providing the Commission with the ability to protect significant upland wildlife habitat such as the critical terrestrial habitat around a significant vernal pool. The criteria to protect significant wildlife habitat is clarified by rule pursuant to NRPA for DEP jurisdiction in 06-096 CMR 335, Significant Wildlife Habitat. Adding this text now primarily would serve as a placeholder that could be further clarified in a future rulemaking for significant wildlife habitat resources. Although the Commission's objective is to be consistent with the goals of NRPA, the addition of "adjacent upland habitat" to the harm to habitat criteria would be more material in the context of any subsequent LUPC rulemaking related to significant wildlife habitat and vernal pools, and will be considered again at that time.

2. Is the new text in the rule outlining a procedure for the Commissioner of Marine Resources to hold a hearing for dredging projects in an appropriate location for public hearing procedures?

   Commenter(s): Seven Islands Land Company

Response: The LUPC considered whether it is appropriate to include the DMR public hearing procedures for dredging in LUPC rule and whether the review criteria for protected natural resources is the appropriate location for the procedures. Initially, it was thought, since NRPA includes the DMR public hearing procedures under its dredging standard, that the LUPC should include them in the same location to provide ease in reference between the requirements of the two jurisdictions. However, the Commission agrees the procedures should not be included in LUPC rule. The final rule does not contain the full text regarding DMR's assessment of proposed dredging and instead cross-references 38 M.R.S.A. § 480-D(9). These revisions do not include any substantive changes to the procedures included in NRPA or to the procedures that the Commission anticipates following. Additionally, referencing the statutory language will ensure that the LUPC rules are current and consistent with NRPA should the legislature make changes to these procedures involving DMR's role in reviewing dredging projects in the future.

3. The Filling and Grading section of Chapter 10 includes standards for wetlands, but does not limit the applicability of the standards to P-WL1 wetlands. The standards should only apply to P-WL1 wetlands.

   Commenter(s): Burman Land & Tree Company, LLC.

Response: The Commission's intent in adding the term "wetlands" to Section 10.27,F,2 was to improve consistency in the sentence structure, in that the standard later references both water bodies and wetlands, and the consistency with other standards in that section, in that 10.27,F,1 refers to both water bodies and wetlands. That being said, LUPC staff typically interpret the reference to "wetlands" in Section 10.27,F to mean mapped P-WL wetlands. This warrants further consideration and clarification. However, full consideration of this comment may result in revisions to portions of the rule not included in this rulemaking, and require reposting of the rule. In lieu of making the recommended change throughout Section 10.27,F and having to repost the changes to public comment, the Commission will add this recommendation to its list of future rulemaking for potential consideration of a holistic change to the use of the term "wetlands" in the section.

4. Some of the application submission requirements included in the Natural Resources Protection Act were not included in proposed changes to Chapter 10.

Commenter(s): Maine Audubon

Response*:* Some of the NRPA submission requirements such as the site characteristics report, activity description, and compensation plan are types of information that are typically included in LUPC permit application forms, not in rule. The Commission intends to include these submission requirements in our application form for activities requiring a permit.

Action(s):

- Revise Section 10.25,P,1 striking the words "or adjacent upland" as follows:

c. Harm to ~~h~~Habitats; ~~f~~Fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic ~~or adjacent upland~~ habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.

- Revise Section 10.25,P,1 replacing the DMR hearing procedures language with a reference to the corresponding section in NRPA as follows:

i. **Dredging.** If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable.

~~As provided in 38 M.R.S.A. § 480-D(9), the Commissioner of Marine Resources shall provide the Commission with an assessment of the impacts on the fishing industry of a proposed dredging operation in a coastal wetland. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the towns, townships or plantations in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if five or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If five or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the Commission must take into consideration the assessment provided by the Commissioner of Marine Resources.~~ In evaluating whether the applicant has made the required demonstration under Section 10.25,P,1,i, the Commission must request an assessment from the Commissioner of Marine Resources consistent with the assessment required by 38 M.R.S.A. § 480-D(9) and take into consideration any assessment timely provided by the Commissioner in response to this request. ~~The~~ Any permit issued by the Land Use Planning Commission must require the applicant to:

(1) Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

(2) Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and

(3) Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

VI. CLERICAL CORRECTIONS

1. Various non-substantive clerical corrections should be made.

   Commenter(s): Land Use Planning Commission Staff

Response: These items are non-substantive clerical corrections and the Commission should incorporate these and any others that are identified. The Commission will make the assorted clerical corrections.

Action(s):

- Revise 10.02,xx, Flowing Water, from "has ~~2~~ two or more of the following…"
- Revise 10.25,P,2,a,(2),(c), "as otherwise provided in Section 10.25,P,2,a,(2),(a),…"
- Revise 10.27,F,6, "than the following~~:~~: ~~and~~…"

PART 2: PROPOSED MOTORIZED RECREATIONAL GOLD PROSPECTING CHANGES

The Commission received written comments from six interested persons in response to the proposed update to the standards for recreational gold prospecting. In accordance with state statute and Commission policy, the Commission has summarized all testimony received. Written comments were either filed in general opposition or in general support of the proposed changes. Also, for future reference, the LUPC has created a table that provides further detail regarding the basis for adding areas closed to motorized recreational gold prospecting as an addendum to this basis statement.

I. TESTIMONY IN OPPOSITION

1. Commentors expressed concern about over regulation of the sport, and a belief that recreational gold prospecting has no impact on streams and rivers beyond what happens naturally each spring. No specific changes were recommended for the proposed rule.

   Commentors: Dennis Simard and Mark Kindlimann

II. TESTIMONY IN SUPPORT

1. Commentors expressed support for the rules and efforts to protect critical trout and salmon habitat and Maine's streams, some raising particular concern about the use of mechanized equipment. No specific changes were recommended for the proposed rule.

   Commentors: Bob Woodbury, Joy and Tom Clough, Forest Bonney, and Kathy Scott and David Van Burgel

Response: The Commission's intent in proposing revisions to the motorized recreational gold prospecting standards in Chapter 10 was to update the rules to conform with recent legislative changes. Besides updating the names of minor civil divisions, no changes are proposed to the regulation of motorized recreational gold prospecting beyond those made to ensure the Commission's rules are consistent with State law as enacted by the

Legislature in Public Law 2013, Chapter 260 and Public Law 2013, Chapter 536 (enacting LD 1135, An Act to Provide Consistency in the Regulation of Motorized Recreational Gold Prospecting and LD 1671, An Act To Prohibit Motorized Recreational Gold Prospecting in Class AA Waters and Certain Atlantic Salmon and Brook Trout Habitats, respectively).

Action(s): No action is recommended.

III. CLERICAL CORRECTIONS

1. Various non-substantive clerical corrections should be made.

   Commenter(s): Land Use Planning Commission Staff

Response: These items are non-substantive clerical corrections and the Commission should incorporate these and any others that are identified. The Commission will make the assorted clerical corrections.

Action(s):

- Revise Section 10.27,G,6,l,(3), "The Forks Plt"
- Revise Section 10.27,G,6,m,(1), "Greenlaw Chopping Twp,…"

RECREATIONAL GOLD PROSPECTING

CLOSED AREAS ADDED IN 2015

An Addendum to the Basis Statement for the Part II Recreational Gold Prospecting Rule Changes

June 3, 2015

COUNTY	RIVER OR STREAM SEGMENT	BASIS FOR CLOSURE
Aroostook County	Allagash River and all water bodies within 800 feet: T10 R12 WELS, T10 R13 WELS	Class AA Water
	St. John River: T11 R17 WELS	Class AA Water
Franklin County	Little Spencer Stream tributaries, including Kibby Stream	Salmon or Trout Habitat
	Sandy River: Madrid Twp	Class AA Water
	Bemis Stream and tributaries: Township D, Rangeley Plt	Salmon or Trout Habitat
	Carrabassett River and tributaries: Freeman Twp, Mount Abram Twp, Salem Twp	Salmon or Trout Habitat
	South Bog Stream: Rangeley Plt	Salmon or Trout Habitat
	Horseshoe Stream: Chain of Ponds Twp	Class AA Water
Hancock County	Sunkhaze Stream and its tributaries: T32 MD BPP	Class AA Water
Oxford County	Cupsuptic River and its tributaries: Seven Ponds Twp	Class AA Water
	Rapid River: Township C	Class AA Water
	Bull Branch of Sunday River and tributaries: Grafton Twp, Riley Twp	Salmon or Trout Habitat
	Magalloway River and tributaries, including Little Magalloway River: Bowmantown Twp, Lincoln Plt, Lynchtown Twp, Magalloway Plt, Oxbow Twp, Parkertown Twp, Parmachenee Twp	Salmon or Trout Habitat
	Abbott Brook and its tributaries: Lincoln Plt	Class AA Water
	Wild River: Batchelders Grant	Class AA Water
	Crooked River and its tributaries: Albany Twp	Class AA Water
Penobscot County	East Branch Penobscot River, all tributaries, the portions of which that are located in T3 R8 WELS and within the boundaries of Baxter State Park	Class AA Water

	Sunkhaze Stream and its tributaries: Greenfield Twp	Class AA Water
Piscataquis County	West Branch Penobscot River, those segments of any tributary that are in T2 R9 WELS and are also within the portion of Baxter State Park served by the Land Use Planning Commission	Class AA Water
Somerset County	Dead River: T3 R5 BKP WKR, Lower Enchanted Twp	Class AA Water
	Little Spencer Stream tributaries, including Kibby Stream	Salmon or Trout Habitat
	Kennebec River above junction with Dead River: Misery Gore, The Forks	Class AA Water
	Cold Stream tributaries, including Tomhegan Stream: Chase Stream Twp	Salmon or Trout Habitat
	Baker Branch St. John River: T5 R17 WELS, T6 R17 WELS, St John Twp, T7 R 16 WELS	Class AA Water
	Southwest Branch St. John River: T9 R18 WELS	Class AA Water
	Enchanted Stream: Upper Enchanted Twp, Lower Enchanted Twp	Salmon or Trout Habitat
Washington County	Dennys River: Cathance Twp, Edmunds Twp	Class AA Water
	East Machias River: Big Lake Twp, Berry Twp, T19 ED BPP	Class AA Water
	Venture Brook: Edmunds Twp	Class AA Water
	Cathance Stream: Edmunds Twp	Class AA Water
	Northern Stream: T19 ED BPP	Class AA Water
	Hobart Stream: Edmunds Twp	Class AA Water
	Creamer Brook: T19 ED BPP	Class AA Water
	Clifford Brook: Marion Twp	Class AA Water
	Machias River: Centerville Twp	Class AA Water

NRPA CONSISTENCY AND RECREATIONAL GOLD PROSPECTING

Attachment 2

June 4, 2015 Draft Rule Revisions

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

MAINE LAND USE PLANNING COMMISSION

Proposed Rulemaking: Natural Resource Protection Act and Recreational Gold Prospecting

PART 1: PROPOSED WATER BODY AND WETLAND RULE CHANGES IN CONFORMANCE WITH THE NATURAL RESOURCES PROTECTION ACT

June 4, 2015 Draft

The following revisions propose changes to Chapter 10, *Land Use Districts and Standards for Areas served by the Maine Land Use Planning Commission.*

Underlined text indicates additions and ~~stricken text~~ indicates deletions. Text relocated without changes was not tracked for the purposes of this draft.

Note: All references to the term "stream channel" or "stream channels" will be changed to "flowing water" or "flowing waters" respectively in the following sections of this chapter: 10.25,Q; 10.27,C; and 10.27,E.

All references to the terms "tidal water," "tidal waters," and "marine or tidal waters" will be changed to either "coastal wetland" or "coastal wetlands" in the following sections of this chapter : 10.11,A; 10.21,F; 10.26,B; 10.26,D; 10.26,F; 10.26,G; 10.27,A; 10.27, B; 10.27, C; 10.27,E; 10.27,F; 10.27, H; 10.27,Q and Appendix F

10.02 DEFINITIONS

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28. Coastal Sand Dune System: Reserved.

NOTE: The definitions from 28 to the end of Section 10.02 will be renumbered.

xx. Coastal Wetlands:
Tidal and subtidal lands, including any of the following: all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the ~~maximum spring tide level~~ highest astronomical tide for the current National Tidal Datum Epoch as ~~identified in tide tables~~ published by the National Oceanic and Atmospheric Administration (NOAA) ~~Service~~. Coastal wetlands may include portions of coastal sand dunes.

xx. Community Public Water System: Reserved.

xx. Community Public Water System Primary Protection Areas: Reserved.

xx. Flowing Water:
~~A surface water within a stream channel that has a perceptible flow and is substantially permanent in nature. Such waters are commonly referred to as rivers, streams, and brooks.~~A channel that has defined banks created by the action of surface water and has two or more of the following characteristics:

a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
b. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
d. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Such waters are commonly referred to as rivers, streams, and brooks. Flowing water does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

xx. High Mountain Area:
All mountain areas included in Mountain Area Protection Subdistricts (P-MA), as described in Section 10.23,G and shown on the Commission's Land Use Guidance Maps.

xx. Freshwater Wetland:
Freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils and not ~~part~~ below the normal high water mark of a ~~great pond~~body of standing water, coastal wetland, ~~river, stream or brook~~or flowing water.

~~**xxx. Mean High Water Level:**The shoreline of tidal waters; the average high tide level for the previous 19 years.~~

xxx. Motorized Recreational Gold Prospecting:
"Motorized recreational gold prospecting" means the operation of small-scale, motorized equipment for the removal, separation, refinement and redeposition of sediments and other substrates occurring below the normal high water mark of a stream for the noncommercial, recreational discovery and collecting of gold specimens. "Motorized recreational gold prospecting" includes, but is not limited to, the operation of a motorized suction dredge, sluice, pump, rocker box or winch, individually or together.

xxx. Non-Tidal Water Bodies:
All water bodies or portions thereof, which ~~do not~~ are not subject to ebb and flow as the result of tidal action.

xxx. Normal High Water Mark of ~~Tidal Waters~~ Coastal Wetlands:
That line on the shore of coastal wetlands ~~tidal waters~~ reached by the shoreward limit of the ~~rise of the medium tides between the spring and the neap, commonly referred to as the mean high water level. This line may be identified where appropriate by discerning the debris line left by tidal action.~~ highest astronomical tide for the current National Tidal Datum Epoch as published by the National Oceanic and Atmospheric Administration (NOAA). This is often referred to as the upland edge of the coastal wetland.

xxx. Normal High Water Mark of Non-Tidal Water Bodies:
That line on the shores and banks of non-tidal water bodies that is ~~discernible because of the different character of the soil or the vegetation due to the influence of surface water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (aquatic vegetation includes but is not limited to the following plants and plant groups – water lily, pond lily, pickerel weed, cat tail, wild rice, sedges, rushes, marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups – upland grasses, aster, lady slipper, wintergreen, partridge berry, sasparilla, pines, cedars, oaks, ashes, alders, elms, spruces, birches, beeches, larches, and maples).~~ apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and that distinguishes between predominantly aquatic and predominantly terrestrial land. In places where the shore or bank is of such character that the normal high water mark cannot be easily determined (as in the case of rock slides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

xxx. Persistence:
The overall ability of a wetland to be self-sustaining, continue to exist, and serve intended functions over an indefinite period of time, although its vegetation, soils, hydrologic characteristics and precise boundaries may change.

xxx. Preservation:
The maintenance of a wetland area or associated upland areas that contribute to the wetland's functions so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trust acquisitions.

xxx. Protected Natural Resource:
Coastal sand dune systems, coastal wetlands, significant wildlife habitat, high mountain areas, freshwater wetlands, community public water system primary protection areas, bodies of standing water, and flowing water.

xxx. Shoreline:
The ~~mean high water level of tidal water, or the~~ normal high water mark of a coastal wetland, a body of standing water, or flowing water~~., or stream channel.~~

~~**xxx. Stream Channel:**~~
~~A channel between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock.~~

~~**xxx. Tidal Waters:**~~
~~All waters or portions thereof which customarily ebb and flow as the result of tidal action.~~

xxx. Water-Dependent Uses:
Those uses that require for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal waters and which cannot be located away from these waters. These uses include commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale marketing facilities, waterfront dock and port facilities, boat building facilities, navigation aides, basins and channels, uses dependent upon water-borne transportation that cannot reasonably be located or operated at an inland site and uses which primarily provide general public access to coastal waters~~marine or tidal waters~~.

10.07 EXEMPTIONS

Notwithstanding any other provisions contained in this chapter, and provided that unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures:

E. Archaeological excavation adjacent to a body of standing water, flowing water, freshwater wetland, coastal wetland, or sand dune system does not require a permit from the Commission as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list~~, and that unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures~~.

10.23,L SHORELAND PROTECTION SUBDISTRICT (P-SL)

2. Description

P-SL1: Areas within 250 feet of the normal high water mark, measured as horizontal distance landward of such high water mark, of (a) ~~tidal waters~~coastal wetlands, and (b) flowing waters downstream from the point where such waters drain 50 square miles or more.

P-SL2: Areas within 75 feet, measured as a horizontal distance landward, of (a) the normal high water mark of ~~stream channels~~ flowing waters upstream from the point where such channels drain 50 square miles; (b) the upland edge of those ~~coastal and inland~~ freshwater wetlands identified in Section 10.23,N,2,a,(1),~~(b) and~~ (c) and (2), and (3); and (c) the normal high water mark of bodies of standing water less than 10 acres in size, but excluding bodies of standing water which are less than three acres in size and which are not fed or drained by a flowing water.

3. Land Uses

c. Uses Requiring a Permit

(22) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D, except for water crossings of minor flowing waters on/for land management roads; water crossings of ~~tidal waters~~coastal wetlands,

bodies of standing water, and of major flowing waters, except water crossings of ~~tidal waters~~coastal wetlands, bodies of standing water and of major flowing waters on/for land management roads;

e. Use Regulated by the Maine Forest Service

(4) Water crossings of minor flowing waters, major flowing waters, bodies of standing water, and ~~tidal waters~~coastal wetlands on/for land management roads.

10.23,N WETLAND PROTECTION SUBDISTRICT (P-WL)

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2. Description

a. ~~Surface w~~Water bodies and areas meeting the definition of coastal or freshwater wetlands shall be included in P-WL subdistricts as described below:

(1) **P-WL1:** Wetlands of special significance:

(a) Areas enclosed by the normal high water mark of flowing waters~~, stream channels,~~ and bodies of standing water, except for constructed ponds less than 10 acres in size which are not fed or drained by flowing waters;

(b) Coastal wetlands, together with areas below the normal high water mark ~~of tidal waters and~~ extending seaward to the limits of the State's jurisdiction; or

(c) Freshwater wetlands, as follows:

(i) Within 250 feet of the normal high water mark of a coastal wetland or ~~of the normal high water mark of~~ any body of standing water greater than 10 acres;

(v) …; ~~or~~

(vi) Within 25 feet~~.~~ of the normal high water mark of a ~~stream channel~~ flowing water~~.~~; or

(vii) Containing a natural community that is critically imperiled (S1) or imperiled (S2).

3. Land Uses

b. Uses Allowed Without a Permit Subject to Standards

(6) Hand-carry launches: Commercial, private and public hand-carry launches within a P-WL2 or P-WL3 subdistrict or ~~within~~ below the normal high water mark of flowing waters~~, stream channels,~~ or bodies of standing water;

(10) Service drops for telephone or electrical service, including associated vegetative clearing, provided:

(a) the line extension does not cross or run beneath a coastal wetland, or flowing water~~river, stream, or brook~~;

(12) Trailered ramps: Public trailered ramps within a P-WL2 or P-WL3 subdistrict or ~~within~~ extending below the normal high water mark of flowing waters~~, stream channels,~~ or bodies of standing water;

c. Uses Requiring a Permit

(15) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D, except water crossings of minor flowing waters on/for land management roads; and water crossings of coastal wetlands~~tidal waters~~, bodies of standing water, and of major flowing waters, except water crossings of ~~tidal waters~~coastal wetlands, bodies of standing water, and of major flowing waters on/for land management roads;

e. Uses Regulated by the Maine Forest Service

(3) Water crossings of minor flowing waters, major flowing waters, bodies of standing water and coastal wetlands ~~tidal waters~~ on/for land management roads.

10.25,P PROTECTED NATURAL RESOURCES~~WETLAND ALTERATIONS~~

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1. Review Standards for Determinations of No Unreasonable Impacts.

The following standards apply to permit applications affecting protected natural resources as listed in Section 10.25,P, 2 through 3 and requiring determinations of no unreasonable impacts. For Tier 1 reviews, the applicable standards are limited to Section 10.25,P,1,b, c, and e.

~~(a)~~**a. Existing U~~u~~ses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

~~(b)~~**b. Soil ~~e~~Erosion.** The activity will not cause unreasonable erosion of soil ~~n~~or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

~~(c)~~**c. Harm to ~~h~~Habitats; ~~f~~Fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the Commission may consider proposed mitigation if that mitigation does not diminish the overall value of significant wildlife habitat and species utilization of the habitat in the vicinity of the proposed activity and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of Section 10.25,P,1,c, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

(1) Avoiding an impact altogether by not taking a certain action or parts of an action;

(2) Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;

(3) Rectifying an impact by repairing, rehabilitating or restoring the affected environment;

(4) Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

(5) Compensating for an impact by replacing the affected significant wildlife habitat.

~~(d)~~d. **Interference with ~~n~~Natural ~~w~~Water ~~f~~Flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface water.

e. **Lower Water Quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

~~(e)~~f. **Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

~~(f)~~g. **Sand ~~s~~Supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

~~(g)~~h. **Outstanding ~~r~~River ~~s~~Segments.** If the proposed activity is a crossing of any outstanding river segment as identified in Section 10.23,I, the applicant ~~cannot~~ shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

~~(h)~~i. **Dredging.** If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant ~~cannot~~ must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable.

In evaluating whether the applicant has made the required demonstration under Section 10.25,P,1,i, above, the Commission must request an assessment from the Commissioner of Marine Resources consistent with the assessment required by 38 M.R.S.A. § 480-D(9), and take into consideration any assessment timely provided by the Commissioner in response to this request. Any permit issued by the Land Use Planning Commission must require the applicant to:

(1) Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;

(2) Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and

(3) Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

2. Water Bodies and Wetlands.

The following requirements apply to wetland alterations for Uses Requiring a Permit and Special Exceptions in Section 10.23,N,3. Except as hereinafter provided, wetland alterations not in conformance with the standards of this section are prohibited.

~~1.~~a. Procedural Requirements.

~~a.~~(1) ~~Transition.~~

~~P-WL subdistricts identified on the Commission's Land Use Guidance Maps that were adopted prior to the adoption of this section will be regulated according to standards applying to wetlands of special significance (P-WL1 subdistrict), as defined herein, until the Commission adopts amended Land Use Guidance Maps pursuant to this section, unless the applicant demonstrates, through delineation or other means acceptable to the Commission, that the P-WL is not a wetland of special significance.~~

~~b.~~(1) **Area of Project Alteration.**

~~(1)~~(a) If a proposed activity requires a permit and will alter 15,000 or more square feet of wetland area, or 1 acre or more of overall land area, the applicant must delineate on the ground and in a site plan all wetlands within the general project area using methods described in the "Corps of Engineers Wetlands Delineation Manual." U.S. Army Corps of Engineers. (1987) and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region." U.S. Army Corps of Engineers. (Version 2.0, January 2012).

~~(2)~~(b) ~~If a proposed activity requires a permit and will alter 500 or more square feet of a P-WL1 wetland or 20,000 or more square feet of a P-WL2 or P-WL3 wetland, the Commission may require, as a condition of approval, mitigation, including compensation, in conformance with the provisions of Section 10.25,P,2.~~

~~(3)~~(b) In determining the area of wetland alteration or overall land alteration, all components of a proposed activity, including all phases of a multiphased project, are treated together as constituting one single and complete project.

~~c.~~(2) **Level of Permit Review.**

The level of permit review required depends upon the size of the proposed wetland alteration and the P-WL subdistrict involved. If any part of the overall project requires a higher level of review, then the whole overall project will be reviewed under that higher tier, unless otherwise authorized by the Commission:

~~(1)~~(a) Tier 1 reviews ~~are for~~ apply to projects altering 4,300 up to 15,000 square feet of P-WL2 wetlands, ~~or~~ P-WL3 wetlands~~.~~, or P-WL1 wetlands where the wetland is included as a P-WL1 wetland of special significance solely on the basis of its containing an S1 or S2 natural community.

~~(2)~~(b) Tier 2 reviews ~~are for~~ apply to projects altering 15,000 up to 43,560 square feet (one acre) of P-WL2 or P-WL3 wetlands ~~not containing critically imperiled (S1) or imperiled (S2) natural communities~~.

~~(3)~~(c) Tier 3 reviews ~~are for~~ apply to projects altering any area of P-WL1 wetlands except as otherwise provided in Section 10.25,P,2,a,(2),(a) ~~, 15,000 up to 43,560 square feet (one acre) of P-WL2 or P-WL3 wetlands containing critically imperiled (S1) or imperiled (S2) natural communities~~, or one acre or more of P-WL2 or P-WL3 wetlands.

Alterations of P-WL1 wetlands may be eligible for Tier 1 or 2 review if the Commission determines, at the applicant's request, that the activity will ~~have no undue adverse impact on~~not have an unreasonable negative affect on the freshwater wetlands or other protected natural resources present. In making this determination, consideration shall include but not be limited to, such factors as the size of the alteration, functions of the impacted area, existing development or character of the area in and around the alteration site, elevation differences and hydrological connection to surface water or other protected natural resources.

~~(4)~~(d) When wetland delineation is required, the level of permit review required will be determined by the type of wetland indicated through delineation.

(3) Seasonal Factors.

When determining the significance of a resource or impact from an activity, seasonal factors and events that temporarily reduce the numbers or visibility of plants or animals, or obscure the topography and characteristics of a wetland such as a period of high water, snow and ice cover, erosion event, or drought, are taken into account. Determinations may be deferred for an amount of time necessary to allow an assessment of the resource without such seasonal factors.

~~3.~~**b. General Land Use Standards.** The following standards apply to all projects dependent upon the required tier level of review.

~~a.~~**(1) Avoidance.**

~~(1)~~(a) Projects requiring Tier 1, Tier 2, or Tier 3 review must avoid alteration of wetland areas on the property to the extent feasible considering natural features, cost, existing technology and logistics based on the overall purpose of the project.

~~(2)~~(b) Projects requiring Tier 2 or Tier 3 review ~~must not cause a loss in wetland area, functions and values if there is a practicable alternative to the project that would be less damaging to the environment.~~ will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. Each Tier 2 and Tier 3 application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

For an activity proposed in, on or over P-WL1 wetlands of special significance, a practicable alternative less damaging to the environment is deemed to exist and the impact is unreasonable, unless the activity is described in Section 10.25,P,2,b,(1),(b),(i) or (ii) below.

(i) Certain types of projects. The activity is necessary for one or more of the purposes specified in the following subparagraphs aa through hh.

aa. Health and safety;

bb. Crossings by driveway, road, rail, trail or utility lines;

cc. Water dependent uses;

dd. Reconstruction or expansion of an existing developed area or related construction that cannot practicably be located elsewhere because of the relation to the existing developed area, if the existing developed area was created prior to August 18, 2005 (existing developed area includes structures, fill areas, and landscaped areas);

ee. Mineral excavation and appurtenant facilities;

ff. Walkways;

gg. Restoration or enhancement of the functions and values of the P-WL1 wetlands of special significance; or

hh. Shoreline stabilization.

(ii) Certain wetlands of special significance. The activity is for a purpose other than those specified in Section 10.25,P,2,b,(1),(b),(i) above, is located in a P-WL1 wetland with aquatic vegetation, emergent marsh vegetation or open water, and the activity:

aa. Is located at least 250 feet from aquatic vegetation, emergent marsh vegetation or open water; and

bb. Does not unreasonably adversely affect the functions and values of the aquatic vegetation, emergent marsh vegetation or open water, or the functions and values of the freshwater wetlands that are enhanced or served by the aquatic vegetation, emergent marsh vegetation or open water.

~~b.~~(2) **Minimal Alteration.** Projects requiring Tier 1, Tier 2, or Tier 3 review must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.

~~c.~~(3) ~~**Water Quality.** Projects requiring Tier 1, Tier 2 or Tier 3 review must comply with applicable water quality standards; i.e., the activity will not violate any state water quality law, including those governing the classification of the State's waters. Projects that would alter wetland hydrology and could also alter stream flows or other adjacent surface waters must comply with the water quality classification standards contained in 38 M.R.S.A. §465.~~

~~d.~~(4) ~~**Erosion Control.** Projects requiring Tier 1 or Tier 2 review must use erosion control measures to prevent sedimentation of surface waters. A 25-foot buffer strip must be maintained between the activity and any surface waters.~~

~~e.~~(3) **Compensation.** Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.

In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention that reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

(a) ~~(1)~~ Functional assessment. For projects requiring Tier 2 or Tier 3 review, the applicant must conduct a functional assessment unless exempt from this requirement under Section 10.25,P,2,b,(3),(f) or granted a waiver under Section 10.25,P,2,b,(3),(g). A functional assessment must be conducted in accordance with Section 10.25,P,2,f,(2) and be sufficient to allow the Commission to evaluate whether the proposed wetlands alteration will cause a loss or degradation of wetland functions.

(b) When compensation is required. For Tier 2 or Tier 3 projects, unless exempt under Section 10.25,P,2,b,(3),(f) or granted a waiver under Section 10.25,P,2,b,(3),(g), if the Commission determines that a wetland alteration will cause a wetland function or functions to be lost or degraded, the applicant must provide compensation for the wetland impacts.

(c) Location of compensation projects. The compensation must take place in a location:

(i) On or close to a project site, if determined necessary and appropriate by the Commission, to off-set direct impacts to an aquatic ecosystem;

(ii) Otherwise, compensation may occur in an off-site location where it will satisfy wetland priority needs as established at the local, regional or state level to achieve an equal or higher net benefit for wetland systems, if approved by the Commission.

(d) Types of compensation. Compensation may occur in the form of:

(i) Restoration of previously degraded wetlands;

(ii) Enhancement of existing wetlands;

(iii) Preservation of existing wetlands or adjacent uplands where the site to be preserved provides significant wetland functions and might otherwise be degraded by unregulated activity; or

(iv) Creation of wetland from upland.

More than one method of compensation may be allowed on a single project. Preference is generally given to restoration projects that will off-set lost functions within, or in close proximity to, the affected wetland. However, other types of compensation may be allowed by the Commission if the result is an equal or higher overall net benefit for wetland systems.

(e) Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity; the functions of the wetland to be altered; the type of compensation to be used; and the characteristics of the compensation site. Compensation shall be performed to meet the following ratios at a minimum, unless the Commission finds that a different ratio is appropriate to directly off-set wetland functions to achieve an equal or higher net benefit for wetlands:

(i) 1:1 for restoration, enhancement or creation to compensate for impacts in wetlands not of special significance;

(ii) 2:1 for restoration, enhancement or creation to compensate for impacts in wetlands of special significance; and

(iii) 8:1 for preservation, including adjacent upland areas, to compensate for impacts in all wetlands.

(f) Exceptions. Neither a functional assessment nor compensation is required for the following single, complete projects:

(i) Freshwater wetlands

aa. Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values, significant wildlife habitat, or imperiled or critically imperiled communities due to the activity;

~~aa.~~bb. Alterations of less than 15,000 square feet in a freshwater wetland not of special significance, provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;

cc. Alterations in a freshwater wetland for a road, rail or utility line crossing of a flowing water for a distance of up to 100 feet from the normal high water mark on both sides, measured perpendicular to the thread of the flowing water, provided: (i) Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and (ii) The total project affects 500 square feet or less of the channel.

(ii) Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries and Wildlife as applicable.

(iii) Bodies of Standing Water. An alteration of a body of standing water that does not place any fill below the normal high water mark, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries and Wildlife or the Department of Environmental Protection.

(iv) Flowing Water. An alteration of flowing water that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.

(v) Walkways/Access Structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.

~~(2)~~(g) Waiver. The Commission may waive the requirement for a functional assessment, compensation, or both. The Commission may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The Commission may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

~~f.~~**(4) No Unreasonable Impact.** The following standards apply only to applications requiring Tier 2 or Tier 3 review~~-~~:

(~~1~~a) Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. ~~A project will be determined to have an~~ "U~~u~~nreasonable impact" ~~if the Commission makes~~means that one or more of the ~~following findings~~review standards of Section 10.25,P,1 will not be met. In making this determination, the Commission shall consider:

(i) The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;

(ii) The functions and values provided by the wetland;

(iii) Any proposed compensation and the level of uncertainty regarding it; and

(iv) Cumulative effects of frequent minor alterations on the wetland.

(b) Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:

(i) The wetland alteration will not disturb the threatened or endangered species; and

(ii) The overall project will not affect the continued use or habitation of the site by the species.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the Commission shall consider factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).

c. Wetland Compensation Standards.

Where compensation is required, the following standards apply:

(1) Expertise. The applicant shall demonstrate sufficient scientific expertise to carry out the proposed compensation work.

(2) Financial Resources. The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions.

(3) Persistence. For restoration, enhancement and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions after a period of three years unless otherwise approved by the Commission. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the Commission may require additional monitoring and corrective action, or additional wetland restoration, enhancement or creation in order to achieve the compensation ratio as originally approved.

(4) Monitoring. The applicant shall set forth a plan for interim reporting and remediation measures during monitoring of the restored or created wetland over a minimum of five years, which shall include contingency plans for replanting, contouring or other corrections if the project fails to meet project goals during that time.

(5) Maintenance. A compensation project that will naturally maintain itself without active intervention is preferred. However, the permittee may be required to conduct activities to assure continuation of the wetland, or the accomplishment of compensation goals, after a compensation project has been technically completed. Such activities may include, but are not limited to, water level manipulations and control of non-native plant species.

(6) Protection.

(a) A compensation project involving restoration, enhancement or creation must provide for deed covenant and restriction or a conservation easement conveyed to a qualified holder that requires maintenance of the area as a coastal wetland, freshwater wetland or body of standing water in perpetuity. The conservation easement must list the Department of Agriculture, Conservation, and Forestry as an enforcing agent. Regardless of the size of the compensation area, any future alterations in, on or over the area must be approved by the Commission.

(b) A compensation project involving preservation must provide for a conservation easement conveyed to a qualified holder or deed covenant and restriction so that the parcel will remain undeveloped in perpetuity. The easement must list the Department of Agriculture, Conservation, and Forestry as an enforcing agent. Compensation areas may be deeded to local or state conservation groups or agencies, but any land management practices must be approved by the Commission.

(7) Source of Water (Creation Only). For a creation project, the Commission prefers that the created wetland be located adjacent to an existing wetland or waterbody.

(8) Implementation Schedule. A schedule for implementing the compensation plan must be submitted. Generally, compensation will be required to be completed prior to, or concurrent with, the permitted alteration. For on-going or long-term alterations, such as mining, compensation must be completed no later than within the first year of operation unless otherwise approved by the Commission.

d. Mitigation Banking.

(1) Purpose. A public or private entity may apply to the Commission to undertake wetland compensation projects for the purposes of off-setting one or more alteration projects proposed at that time or in the future. The ratios set forth in Section 10.25,P,2,b,(5),(e) will be used as guidance to determine the amount of credit required for any proposed alteration.

(2) Location. Compensation work must take place in the same watershed, biophysical region or in the project vicinity of the future alteration work, if feasible. Otherwise, the work must occur as close to the wetland alteration site or sites as feasible.

(3) Effectively Functioning. A project to be used for compensation credit must be functioning as proposed in the mitigation banking application, as demonstrated by an updated functional assessment, in order to quality as an off-set to a proposed activity.

(4) Limitation. No person may use mitigation banking to compensate for more than 25 acres of wetland alteration statewide in any one-year period.

(5) Expertise. The applicant is required to show a combination of expertise, experience and resources sufficient to undertake and maintain land placed in mitigation banking.

e. Terms and Conditions. The Commission may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will meet the standards of Section 10.25,P,1, such as:

(1) Design changes to help insure the success of the project;

(2) Buffer requirements;

(3) Project supervisory requirements;

(4) Monitoring requirements;

(5) Mid-course correction or maintenance capability;

(6) Bonding or other assurances of continued financial resources to complete compensation requirements; and

(7) Timing requirements for all or portions of a project.

f. Submission Requirements.

(1) Alternatives Analysis. If required by Section 10.25,P,2,b,(1),(b), an alternatives analysis must be conducted that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:

(a) Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;

(b) Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;

(c) Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and

(d) Demonstrating the need, whether public or private, for the proposed alteration.

(2) Functional Assessments. If required by Section 10.25,P,2,b,(3),(a), a functional assessment must be conducted of the wetland to be altered, that analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The functional assessment must be conducted by a qualified professional(s) using an acceptable methodology approved by the Commission. If other than an established methodology is proposed, the applicant must submit documentation describing how the methodology was developed, how the wetland functions and values are determined using the methodology, and how much field testing the technique has undergone.

In cases where the size of the wetland alteration or other factors make the use of an established assessment methodology impracticable or inappropriate, the Commission may instead accept the best professional judgment of a qualified professional. The applicant must notify the Commission if he or she intends to use best professional judgment.

~~**f. No Unreasonable Impact.** The following standards apply only to applications requiring Tier 3 review:~~

~~(1) Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. A project will be determined to have an "unreasonable impact" is the Commission makes one or more of the following findings:~~

~~(a) Existing uses. The activity will unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.~~

~~(b)Soil erosion. The activity will cause unreasonable erosion of soil or sediment or unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.~~

~~(c)Harm to habitats; fisheries. The activity will unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater or marine fisheries or other aquatic life.~~

~~In determining whether there is unreasonable harm to significant wildlife habitat, the Commission may consider proposed mitigation if that mitigation does not diminish the overall value of significant wildlife habitat and species utilization of the habitat in the vicinity of the proposed activity and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity.~~

~~(d)Interference with natural water flow. The activity will unreasonably interfere with the natural flow of any surface or subsurface water.~~

~~(e)Flooding. The activity will unreasonably cause or increase the flooding of the alteration area or adjacent properties.~~

~~(f)Sand supply. If the activity is on or adjacent to a sand dune, it will unreasonably interfere with the natural supply or movement of sand within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.~~

~~(g)Outstanding river segments. If the proposed activity is a crossing of any outstanding river segment as identified in Section 10.23,I, the applicant cannot demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.~~

~~(h)Dredging. If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant cannot demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable.~~

~~(i)In determining if an activity will have an unreasonable impact, the Commission shall consider:~~

~~(i) The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;~~

~~(ii) The functions and values provided by the wetland;~~

~~(iii) Any proposed compensation and the level of uncertainty regarding it; and~~

~~(iv) Cumulative effects of frequent minor alterations on the wetland.~~

~~(2) Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:~~

~~(a) The wetland alteration will not disturb the threatened or endangered species; and~~

~~(b) The overall project will not affect the continued use or habitation of the site by the species.~~

~~(3) When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the Commission shall consider factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the~~

~~activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).~~

3. High Mountain Areas.

The review standards of Section 10.25,P,1 apply to alterations for Uses Requiring a Permit and Special Exceptions in Section 10.23,G,3,c and d.

4. Coastal Sand Dune Systems. (Reserved)

5. Community Public Water System Primary Protection Areas. (Reserved)

6. Significant Wildlife Habitat. (Reserved)

10.27, D ROADS AND WATER CROSSINGS

1. The following requirements shall apply to construction and maintenance of roads:

All cut or fill banks and areas of exposed mineral soil outside the roadbed within 75 feet of a flowing water, body of standing water, ~~tidal water~~coastal wetland, or freshwater ~~a~~ wetland shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies or wetlands;

10.27, F FILLING AND GRADING

2. Beyond 250 feet from water bodies and wetlands, the maximum size of filled or graded areas, as described above, shall be 20,000 square feet, except that there shall be no limit to the size of filled or graded areas in M-GN subdistricts which are greater than 250 feet from water bodies and wetlands. In such M-GN subdistrict areas, the provisions of Section 10.27,F,4 and 6 shall apply; and

5. Within 250 feet of major flowing waters, bodies of standing water and P-WL1 wetlands, the sustained slope between the normal high water mark or the upland edge of the resource and the soil disturbance shall be no greater than 20%. For the purposes of this standard, sustained slope means a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area. The provisions of this paragraph apply only to a face sloping toward the water body or wetland; and

6. ~~5.~~Where filled or graded areas are in the vicinity of water bodies or wetlands, such filled or graded areas shall not extend closer to the normal high water mark of a flowing water, a body of standing water, ~~tidal watera~~ coastal wetland, or the upland edge of freshwater wetlands identified as P-WL1 subdistrict than the following:

a. For a minor flowing water, body of standing water less than 10 acres in size, coastal wetland, or freshwater wetland: 75 feet; and

b. For a major flowing water and body of standing water 10 acres or greater in size: 100 feet.

~~distance indicated in the following table:~~

~~**Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge** (Percent)~~	~~**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge** (Feet Along Surface of the Ground)~~
~~10 or less~~	~~100~~
~~20~~	~~130~~
~~30~~	~~170~~
~~40~~	~~210~~
~~50~~	~~250~~
~~60~~	~~290~~
~~70~~	~~330~~

~~Table 10.27,F-1. Unscarified filter strip width requirements for exposed mineral soil created by filling and grading.~~

7. ~~6.~~All filled or graded areas shall be promptly stabilized to prevent erosion and sedimentation.

Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.

10.27,0 PERMANENT DOCKING STRUCTURES

2. New or Expanded Permanent Docking Structures.

a. Special Exception Criteria for Permanent Docking Structures ~~on Tidal and Non-Tidal Waters.~~

b. Maximum Dimensions. The new or expanded permanent docking structure must be no longer or wider than is necessary for the use intended, and meet the following:

(1) **~~Tidal Waters~~Coastal Wetlands.**

(a) Maximum length. A dock must not be constructed within a marked navigable channel, and

(2) **Non-Tidal Water Bodies.**

4. Construction Standards.

a. New or expanded docking structures must be constructed using methods, such as pilings, that allow for free flowing water and fish passage beneath the dock. Reconstructed docking structures must be pile-supported where feasible. Construction methods, such as rock filled cribs, that place fill below the normal high water mark of ~~tidal~~ coastal wetlands or non-tidal water bodies may only be allowed where the applicant demonstrates by a preponderance of evidence that non-fill construction techniques are not practicable;

PART 2: PROPOSED MOTORIZED RECREATIONAL GOLD PROSPECTING CHANGES

June 4, 2015 Draft

This document includes ***draft*** revisions to Section 10.27,G to conform with Public Law, Chapter 536, LD 1671, 126th Maine State Legislature (An Act To Prohibit Motorized Recreational Gold Prospecting in Class AA Waters and Certain Atlantic Salmon and Brook Trout Habitats). Specifically, the LUPC staff employed the text of Title 38, Section 467, Title 38, Section 468 and LD 1671, and the Maine Department of Environmental Protection's (DEP) GIS layer named "MEDEP.Water_Classification" to aid in illustrating Class AA waters. The revisions also include updates to the names of several minor civil divisions.

10.27 ACTIVITY-SPECIFIC STANDARDS

G. MOTORIZED RECREATIONAL GOLD PROSPECTING

The following motorized recreational gold prospecting requirements shall apply ~~within~~ below the normal high water mark of flowing waters, except as otherwise provided herein.

Motorized recreational gold prospecting activities not in conformance with the standards of Section 10.27,G,1 through ~~–~~5 below may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved, except that such activities are prohibited on the river and stream segments listed in Section 10.27,G,6, except as provided in Section 10.27,G,6,b. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

1. Motorized recreational gold prospecting may only be performed from June 15 to September 15, and only with written permission of the landowner(s).

2. The activity must not cause an undue adverse effect on natural resources. The area must be kept free of litter, trash, and any other materials that may constitute a hazardous or nuisance condition.

3. Limitations on Equipment.

a. Equipment must not have any fuel, oil, or hydraulic leaks, nor cause any other unlicensed discharge.

b. Power Limit. Motorized equipment must not exceed ~~six~~ seven horsepower.

c. Nozzle Diameter. The inside diameter of a suction dredge intake nozzle and hose must not exceed four inches.

d. Sluice Size. The area of a sluice must not exceed 10 square feet.

e. Use of a flume to transport water outside of a ~~stream channel~~flowing water is prohibited.

4. Prohibition of Chemicals. Use of mercury, nitric acid or other chemicals for extraction is prohibited.

5. Specific Restrictions on Methods of Operation.

a. No motorized recreational gold prospecting may occur in a manner that:

(1) Disturbs the ~~a stream~~ bank of a flowing water, including but not limited to digging into the bank, or dredging or altering water flow within a ~~stream channel~~flowing water in a manner that causes the bank to erode or collapse.

(2) Removes or damages vegetation, or woody debris such as root wads, stumps or logs within a ~~stream channel~~flowing water, on the bank, or on nearby upland, including cutting or abrasion of trees.

(3) Diverts, dams, or otherwise obstructs a ~~stream~~flowing water.

(4) Deposits soil, rocks, or any other foreign material from outside of the channel into a ~~stream~~flowing water.

(5) Deposits channel ~~stream~~ bottom sediments or rocks onto the bank or upland.

b. Upon completion of one or more consecutive days of prospecting, dredge spoils must be smoothed out and dredge holes refilled below the normal high water mark of the ~~stream~~ flowing water in order to restore the approximate original contours of the ~~stream~~ channel bottom and must not deflect the current.

6. Closed Areas. Motorized recreational gold prospecting is prohibited within the following areas.

a. C~~Stream c~~hannels narrower than four feet wide.

b. Any area designated as Essential Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife (MDIFW) unless it is determined by MDIFW that:

(1) There will be no significant harm to the Essential Wildlife Habitat, and

(2) The activity will not violate protection guidelines adopted pursuant to the Maine Endangered Species Act.

c. Waters defined as Class AA waters pursuant to 38 M.R.S.A. § 465. Class AA waters as of the effective date of this rule are included in the areas listed below.

~~c.~~d. The Allagash Wilderness Waterway and all water bodies within 800 feet of normal high water mark of the watercourse.

~~d.~~e. Aroostook County.

(1) Aroostook River: T9 R5 WELS, T9 R7 WELS, T9 R8 WELS, Oxbow Plt, T10 R6 WELS

(2) St. Croix Stream: St. Croix Twp, T9 R5 WELS

(3) (Big) Machias River: T12 R8 WELS, T11 R8 WELS, T11 R7 WELS, T10 R7 WELS, Garfield Plt

(4) Musquacook Stream: T11 R11 WELS, T12 R11 WELS, T13 R11 WELS, T13 R12 WELS

(5) Allagash River and all water bodies within 800 feet of normal high water mark of the watercourse: T10 R12 WELS, T10 R13 WELS, T11 R13 WELS, T12 R13 WELS, T13 R12 WELS, T13 R13 WELS, T14 R11 WELS, T14 R12 WELS, T15 R10 WELS, T15 R11 WELS

(6) Chemquasabamticook Stream: T11 R13 WELS, Clayton Lake Twp ~~T11 R14 WELS~~, T11 R15 WELS, T12 R13 WELS

(7) St. John River: T11 R17 WELS, T11 R16 WELS, T12 R15 WELS, T12 R16 WELS, T13 R14 WELS, T13 R15 WELS, T14 R13 WELS, T14 R14 WELS, T15 R13 WELS, T16 R12 WELS, T16 R13 WELS, surrounding Hunnewell Island in St. John Plt, Hamlin

(8) Northwest Branch St. John River downstream from outlet of Beaver Pond: T11 R17 WELS, T12 R17 WELS

(9) Big Black River: T14 R14 WELS, T14 R15 WELS, T14 R16 WELS, T15 R13 WELS, T15 R14 WELS

(10) Fish River from Mud Pond to St. Froid Lake: T13 R8 WELS, T14 R8 WELS, T14 R7 WELS, T13 R7 WELS, T14 R6 WELS

(11) Smith Brook: T13 R8 WELS, T14 R8 WELS

(12) Red River: T14 R8 WELS

(13) McLean Brook: T17 R4 WELS

(14) Macwahoc Stream: Macwahoc Plt, North Yarmouth Academy Grant, Upper Molunkus Twp

(15) Molunkus Stream: Macwahoc Plt, North Yarmouth Academy Grant, T1 R5 WELS, Benedicta Twp, Silver Ridge Twp

(16) Mattawamkeag River: Reed Plt

(17) East Branch Mattawamkeag River: Forkstown Twp, T3 R3 WELS, T4 R3 WELS

(18) West Branch Mattawamkeag River: T3 R3 WELS, T4 R3 WELS

(19) Wytopitlock Stream: Reed Plt, Upper Molunkus Twp, T2 R4 WELS, Glenwood Plt, T3 R4 WELS

(20) Goddard Brook: T15 R5 WELS

(21) Unnamed stream connecting Cross Lake and Square Lake: Square Lake Twp

(22) Unnamed stream flowing east into Square Lake at Goddard Cove: Square Lake Twp

(23) Unnamed stream flowing northeast into Square Lake one mile northwest of Limestone Pt.: Square Lake Twp

~~e.~~f. Franklin County.

(1) Moose River downstream from Number One Brook: Beattie Twp, Lowelltown Twp

(2) Kennebago River and its tributaries: Davis Twp, Stetsontown Twp, Seven Ponds Twp, Chain of Ponds Twp, Massachusetts Gore, Tim Pond Twp, Lang Twp

(3) Cupsuptic River tributaries: Seven Ponds Twp

(4) Spencer Stream and Little Spencer Stream tributaries, including Kibby Stream: Kibby Twp, Skinner Twp

(5) North Branch Dead River: Jim Pond Twp

(6) Sandy River: Sandy River Plt, Township E, Madrid Twp

(7) West Branch Carrabassett River: Freeman Twp, Salem Twp

~~(8) Carrabassett River, Main Stem: Mount Abram Twp~~

(8) Bemis Stream and tributaries: Township D, Rangeley Plt

(9) Carrabassett River and tributaries: Freeman Twp, Mount Abram Twp, Salem Twp

(10) South Bog Stream: Rangeley Plt

(11) Horseshoe Stream: Chain of Ponds Twp

~~f.~~g. Hancock County.

(1) The following townships in their entirety: T9 SD, T10 SD, T16 MD, T22 MD, T28 MD, T34 MD, T35 MD, T41 MD, T4 ND

(2) Passadumkeag River: T3 ND

(3) Sunkhaze Stream and its tributaries: T32 MD BPP

~~g.~~h. Kennebec County.

(1) Sebasticook River: Unity Twp

~~h.~~i. Oxford County.

(1) Cupsuptic River and its tributaries: Lower Cupsuptic Twp, Upper Cupsuptic Twp, Oxbow Twp, Parkertown Twp, Lynchtown Twp, Seven Ponds Twp

(2) Kennebago River and its tributaries: Lower Cupsuptic Twp, Upper Cupsuptic Twp, Oxbow Twp

(3) Rapid River: Magalloway Twp, Township C

(4) Bear River: Grafton Twp

(5) Bull Branch of Sunday River and tributaries: Grafton Twp, Riley Twp

(6) Magalloway River and tributaries, including Little Magalloway River: Bowmantown Twp, Lincoln Plt, Lynchtown Twp, Magalloway Plt, Oxbow Twp, Parkertown Twp, Parmachenee Twp

(7) Abbott Brook and its tributaries: Lincoln Plt

(8) Wild River: Batchelders Grant

(9) Crooked River and its tributaries: Albany Twp

~~i.~~ **j. Penobscot County.**

(1) East Branch Penobscot River: Grindstone Twp, Soldiertown Twp, T3 R7 WELS, T4 R7 WELS, T4 R8 WELS, T5 R8 WELS, T6 R8 WELS

~~(1)~~(2) East Branch Penobscot River, all tributaries, the portions of which that are located in T3 R8 WELS and within the boundaries of Baxter State Park

~~(2)~~(3) Wassataquoik Stream: T4 R8 WELS, T3 R7 WELS, T3 R8 WELS

~~(3)~~(4) Seboeis River: T3 R7 WELS, T4 R7 WELS, T5 R7 WELS, T6 R7 WELS, T7 R7 WELS

~~(4)~~(5) Sawtelle Brook: T6 R7 WELS

~~(5)~~(6) Munsungan Stream: T8 R8 WELS

~~(6)~~(7) Millinocket Stream: T8 R8 WELS

~~(7)~~(8) Aroostook River: T8 R8 WELS

~~(8)~~(9) Ayers Brook: Summit Twp

~~(9)~~(10) Madagascal Stream: Grand Falls Twp

~~(10)~~(11) Mattagodus Stream: Kingman Twp, Webster Plt, Prentiss Twp, Carroll Plt

~~(11)~~(12) Mattawamkeag River: Kingman Twp, Drew Plt

~~(12)~~(13) Molunkus Stream: Kingman Twp

~~(13)~~(14) Wytopitlock Stream: Drew Plt

~~(14)~~(15) Passadumkeag River: Summit Twp, Grand Falls Twp, T3 R1 NBPP, Lakeville

~~(15)~~(16) Penobscot River: Argyle Twp, Mattamiscontis Twp, T2 R8 NWP

~~(16)~~(17) West Branch Penobscot River: TA R7 WELS, T3 Indian Purchase, T4 Indian Purchase

(18) Millinocket Stream: T3 Indian Purchase, T1 R8 WELS

~~(17)~~(19) Sunkhaze Stream and its tributaries: Greenfield Twp

~~j.~~k. Piscataquis County.

(1) East Branch Pleasant River: ~~T5 R9 NWP~~Ebeemee Twp

(2) West Branch Pleasant River: Shawtown Twp, Beaver Cove, Bowdoin College Grant East, Katahdin Iron Works Twp, Williamsburg Twp

(3) West Branch Penobscot River: T1 R9 WELS, T2 R9 WELS, T2 R10 WELS, T3 R11 WELS

(4) Allagash River and all water bodies within 800 feet of normal high water mark of the watercourse: T10 R12 WELS, T10 R13 WELS

(5) Allagash Stream and all water bodies within 800 feet of normal high water mark of the watercourse: Eagle Lake Twp, T8 R14 WELS

(6) Webster Brook: T6 R11 WELS

(7) Millinocket Stream: T7 R9 WELS

(8) Munsungan Stream: T8 R9 WELS

(9) Chemquasabamticook Stream: T10 R15 WELS

(10) Stream between Lower Portage Pond and Spider Lake: T9 R11 WELS

(11) Stream in wetland on south end of Churchill Lake: T9 R12 WELS

(12) Stream between Webster Lake and Telos Pond and all water bodies within 800 feet of normal high water mark of the watercourse: T6 R11 WELS

(13) Kennebec River: ~~Big Squaw Twp~~Big Moose Twp

(14) East Branch Piscataquis River: Blanchard Twp

(15) West Branch Piscataquis River: Blanchard Twp

(16) West Branch Penobscot River, those segments of any tributary that are in T2 R9 WELS and are also within the portion of Baxter State Park served by the Land Use Planning Commission

~~k.~~l. Somerset County.

(1) Dead River: Pierce Pond Twp, T3 R4 BKP WKR, Bowtown Twp, West Forks Plt, T3 R5 BKP WKR, Lower Enchanted Twp

(2) Spencer Stream, ~~and~~ Little Spencer Stream, and Little Spencer Stream tributaries, including Kibby Stream: T3 R4 BKP WKR, T3 R5 BKP WKR, King and Bartlett Twp, Haynestown Twp ~~T5 R6 BKP WKR~~

(3) Kennebec River above junction with Dead River: West Forks Plt, Moxie Gore, Chase Stream Twp, Indian Stream Twp, Sapling Twp, Taunton & Raynham Academy Grant Twp, Misery Gore, The Forks Plt

(4) Moxie Stream: Moxie Gore

(5) Parlin Stream: Parlin Pond Twp

(6) Doucie Brook: T9 R17 WELS

(7) Gulliver Brook: Plymouth Twp

(8) Moose River: Holeb Twp, Attean Twp, T5 R7 BKP WKR, Bradstreet Twp

(9) Cold Stream and Cold Stream tributaries, including Tomhegan Stream: Chase Stream Twp, West Forks Plt, Johnson Mountain Twp

(10) Baker Branch St. John River: T5 R17 WELS, T6 R17 WELS, St John Twp, T7 R 16 WELS, T9 R17 WELS, T8 R17 WELS, T7 R17 WELS

(11) Southwest Branch St. John River: T9 R18 WELS, T9 R17 WELS, Big Ten Twp

(12) Northwest Branch St. John River: Big Ten Twp

(13) St. John River: Big Ten Twp, ~~R10~~ T10 ~~T16~~ R16 WELS~~,T9 R17 WELS~~

(14) Enchanted Stream: Upper Enchanted Twp, Lower Enchanted Twp

~~l.~~m. Washington County.

(1) The following townships and town in their entirety: T18 MD BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T30 MD BPP, Day Block Twp~~T31 MD BPP~~, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP, Sakom Twp~~T5 ND BPP~~, ~~No. 14 Twp~~Cathance Twp, ~~No. 21 Twp~~Big Lake Twp, Berry Twp~~T18 ED BPP~~, T19 ED BPP, T26 ED BPP, Greenlaw Chopping Twp~~T27 ED BPP~~, Devereaux Twp, Marion Twp, Edmunds Twp, Baring

(2) Tomah Stream: Forest Twp, Codyville Plt, Lambert Lake Twp

(3) Baskahegan Stream: Brookton Twp

(4) St. Croix River: Fowler Twp, Dyer Twp, Lambert Lake Twp

(5) Dennys River: Cathance Twp, Edmunds Twp

(6) East Machias River: Big Lake Twp, Berry Twp~~T18 ED BPP~~, T19 ED BPP

(7) Venture Brook: Edmunds Twp

(8) Cathance Stream: Edmunds Twp

(9) Northern Stream: T19 ED BPP

(10) Hobart Stream: Edmunds Twp

(11) Creamer Brook: T19 ED BPP

(12) Clifford Brook: Marion Twp

(13) Machias River: Centerville Twp

NRPA CONSISTENCY AND RECREATIONAL GOLD PROSPECTING

Attachment 3

Public Comments Received on Proposed Rule Revisions:
NRPA Consistency and Recreational Gold Prospecting

PUBLIC COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS: NRPA CONSISTENCY

Maine Land Use Planning Commission
Maine Department of Agriculture, Conservation and Forestry

Published Date: February 25, 2015

Public Comment Deadline: March 27, 2015

Rebuttal Comment Deadline: April 3, 2015

From: Sarah J Medina
To: Beyer, Stacie R
Cc: Horn-Olsen, Samantha
Subject: NRPA changes
Date: Friday, January 09, 2015 2:27:33 PM
Attachments: NRPA changes proposed Dec. 2014, send to Stacie.docx

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Hi Stacie,

The attached summarizes my questions and comments on the proposed changes to the NRPA rules. My concerns are in two areas; 1. insertion of "fragile" to describe mountain areas over 2700' (P-MAs) and 2. additional permitting and mitigation required for smaller wetlands. Although forest management activities are exempt under NRPA, we have had situations where permits were necessary for camp lot driveways, and roads have to conform to PBR standards.

The term "fragile" is used in NRPA statute, but not all mountain areas are "fragile." LURC used the 2700' elevation as a proxy for the likelihood that areas above 2700' required special attention, and NRPA took LURC's proxy and redefined it as "fragile." Being over 2700', however, does not automatically make the area "fragile" - high elevation maybe (by Maine standards), but "fragile" NO. Seven Islands has plateaus of relatively flat/gentle slopes and reasonably good growing ground above 2700' in our Rangeley unit. Much of Oxbow is above 2700' and it is not "fragile." It would be misleading and wrong to call all P-MAs as such in LUPC regulations. I understand the desire for "consistency" but LUPC is not required to use the NRPA language word for word. This is one instance where, clearly, the use of a word (though "consistent") is not appropriate.

LUPC should be focusing on the areas and concerns of most significance. When the three tiers of wetlands were originally created, it was anticipated by everyone from the Corps of Engineers, to DEP, to municipalities and landowners that as time went on there would be lesser review and permitting requirements for small wetlands having no special significance. This proposal seems to be going the opposite way – for example, going from 20,000 vs. 15,000 sq. ft. for triggering a functional assessment & requiring compensation. This places increased cost and burden on landowners/applicants and diverts agency staff time. How is that justified from environmental and practical perspectives? This likely has more applicability to landowners who may do more development than we do, but cumulative regulatory burdens influence land values, owners' rights and agency functions.

Thanks for considering this. I'd be happy to talk with you.

Sarah

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Re: Proposed Routine Technical Rule Amendment to the Commission's Chapter 10, "*Land Use Districts and Standards*," Subchapters 1, 2, and 3, NRPA Consistency Rulemaking, Wetlands and Water bodies

"Consistency" statewide is a laudable goal in many respects but the UT is a lot different than a town in Cumberland County. Alteration 15,000 square feet of wetland in Scarborough (fastest growing community in state on one list) may be a lot more significant and justify a more rigorous review than alteration 15,000 square feet of wetland in T.18 R. 10.

Flowing water- some upper headwater channels will not be regulated under the new definition. Fine. We'll still employ BMP's to protect them.

"Critically imperiled (S1) or imperiled natural communities (S2) will be added to P-WL wetlands of special significance." Likely to require more permits. Is it justified? NRPA applies statewide but conditions and threats vary from city to working forest.

"Consistency" statewide is a laudable goal in many respects but the UT is a lot different than a town in Cumberland County. Alteration 15,000 square feet of wetland in Scarborough (fastest growing community in state on one list) may be a lot more significant and justify a more rigorous review than alteration 15,000 square feet of wetland in T.4 R.1.

*10.25,P Protected Natural Resources - "*recommending the Wetland Alterations rule be replaced with a Protected Natural Resources rule, and that this rule be reorganized with placeholders for wildlife habitat and sand dune sections.". Also "reduced the amount of freshwater wetlands not of special significance that triggers the need for a functional assessment and compensation from 20,000 square feet to 15,000 square feet, clarified what is meant by "no unreasonable impact" as it relates to wetlands of special significance, and clarified certain terms and conditions that may be established for wetland compensation projects." "Protected Natural resources" is ok, but reduction in square footage will trigger more permits; "clarification" and mitigation become more complex. What is the scientific justification for going from 20,000 vs. 15,000 sq. ft. for triggering a functional assessment & requiring compensation? How is the burden on landowners/applicants truly justified?

p. 8 "xx. Fragile Mountain Area: All mountain areas included in Mountain Area Protection Subdistricts (P-MA), as described in 01-672 Chapter 10.23,G and shown on the Commission's Land Use Guidance Maps." This renames all mountain areas >2700' in elevation as "fragile." They are not all fragile – we have plateaus of good soil in the western mountains. **Delete "fragile." Though used in NRPA statute it is misleading.**

p. 9 "xxx. Protected Natural Resource: Coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, bodies of standing water, and

flowing water." Delete "fragile" here and anywhere else it is used to describe high mountain areas.

p. 11 10.23, N 2. A. (1) (c) (vii) **P-WL1: Wetlands of special significance** Wetlands "Containing a natural community that is critically imperiled **(S1)** or imperiled **(S2)**" would now all be P-WL1. This could bump a lot of P-WL2's and 3's into P-WL1, which means more permitting and paperwork. How is it environmentally/scientifically justified?

p. 12 Protected Natural Resources (formerly Wetland Alterations), Review Standards for Determinations of No Unreasonable Impacts, **c." Harm to habitats; fisheries"** states "The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent **upland habitat**, travel corridor, etc. **Adjacent upland habitat is new. How far is adjacent? Justification?**

p. 13/14 Dredging The new text outlines the **procedure** for the Commissioner of Marine Resources to hold a public hearing. No particular concern with text, but are these regulations the the appropriate location for statement of public hearing procedures?

p. 14/15 The big change here is that all P-WL2 and P-WL3 wetlands containing (S1) or (S2) natural communities will now all be classified as P-WL1, potentially **pulling many small wetlands from Tier 1 to the much more extensive and costly Tier 3 review**. Currently alterations of 4,300-15,000 square feet of P-WL2 and P-WL3 wetlands are reviewed under Tier 1, whether or not they containing (S1) or (S2) natural communities. (Alterations under 4,300 square feet do not require review, unless they are cumulative.) Alteration to any P-WL1 requires Tier 3 review.

If P-WL2 and P-WL3 wetlands containing (S1) or (S2) natural communities are pulled into P-WL1 as proposed, then the proposed language regarding Tier 3 review should be modified so alterations of between 4,300-15,000 sq. ft., remain reviewed under Tier 1. LUPC proposes doing so if the "activity will not have an unreasonable affect" however, determining what is an unreasonable affect is subjective, time consuming, and this is not a place where it is necessary to rely on judgment. There is *no* justification in unorganized townships/ LUPC jurisdiction for Tier 3 review of wetland alterations of 4,300-15,000 sq. ft. Tier 1 is adequate, if not over-regulation already.

p.17/18 Functional assessment and compensation will be required for Tier 2 as well as Tier 3 projects. There's a waiver clause on p. 19, which might provide some relief. Time consuming and expensive. Justification? Types of acceptable compensation are listed. Mitigation banking isn't mentioned until p.21 where provisions are outlined.
A functional assessment and compensation should not be required for Tier 2.

p. 19/20 "No unreasonable impact" standards are moved from elsewhere in the document and modified to define unreasonable impact for **Tier 2 and 3** projects. The

big change is the addition of Tier 2 where currently “no unreasonable impact applies only to Tier 3. With all P-WL2 and P-WL3 wetlands containing (S1) or (S2) natural communities being pulled into P-WL1, and P-WL1 requiring Tier 3 review, this could mean a lot of “unreasonable impact.” Again, what is the scientific justification for these wetlands, in remote areas, needing the same review and conditions as a wetland in Portland? Ease of administering regulations is not an acceptable reason.

p. 21 Protection required for compensation projects “deed covenant and restriction or a conservation easement.” Impractical. Hard to track & administer. Over-kill, especially on small projects.

p. 24 3. Fragile Mountain Areas defined**. Delete the word “fragile.”**

BURMAN
LAND & TREE COMPANY, LLC.

P.O. Box 145, Orrington, Maine 04474 (207) 825-4050

March 23, 2015

Maine Land Use Planning Commission
Attention: Stacie R. Beyer
106 Hogan Rd, Suite 8
Bangor, Maine 04401

Subject: Public Comments
NRPA Consistency Rulemaking

Dear Stacie,

This letter is to provide comments to the Maine Land Use Planning Commission (LUPC) regarding the Proposed Rulemaking to create consistency between LUPC waterbody and wetland rules and the Maine Department of Environmental Protection (MDEP) Natural Resources Protection Act (NRPA). As a consulting soil and wetland scientist who assists clients through both the LUPC and the MDEP permitting processes regarding natural resources, I am strongly in favor of consistency between the two jurisdictions.

From the broadest perspective, it has never made sense for the LUPC and MDEP to have different natural resource related rules, regulations and permitting processes. While the two jurisdictional areas are very different in terms of population, infrastructure, ownership, development and development pressure, both areas are in the one State of Maine. The natural resources themselves are **not** different, and should be regulated similarly no matter where you are in the State of Maine.

The LUPC could greatly streamline their regulations and permitting processes by fully adopting the MDEP regulations regarding protected natural resources, including the NRPA Statute, Chapter 310 Wetlands and Waterbodies Protection Rules, Chapter 335

William H. Burman
Licensed Professional Forester
Master Arborist
Master Pesticide Applicator

Aleita M. Burman
Certified Wetland Scientist
Certified Soil Scientist
Licensed Site Evaluator

Significant Wildlife Habitat, and Chapter 305 Permit-By-Rule Standards (not inclusive). The LUPC could then use their capacity as a planning organization to put greater restrictions on certain resources or in certain geographical areas, if needed for particular goals in certain planning zones, as several municipalities in Maine currently do. For instance, Bar Harbor (municipality) has greater restrictions on development around vernal pools than does the MDEP.

By fully adopting MDEP protected natural resources regulation language, the LUPC brings years of technical review and precedent into their rules. The MDEP NRPA has been in effect since the late 1990's and although there have been amendments and additions (a notable one being the vernal pool regulations in Chapter 335), the basic framework is time tested and many unusual or atypical situations have been reviewed and brought to decision, creating precedent and thus more predictability in permitting for applicants as well as for the reviewer. The LUPC could share technical review with the MDEP in a more consistent way, as the rules would be the same.

The greatest benefit of full adoption of MDEP rules is that protected natural resources will be regulated the same way throughout the State of Maine, using a time-tested regulation, which creates predictability and more ease of planning for permit applicants, which is (I believe) one of the goals of this and other proposed LUPC rule changes. While this proposed rule change goes a long way towards consistency with MDEP rules, there are still differences (most notably no permit-by-rule standards) that make the LUPC process more difficult to navigate, without notable benefit to the environment (i.e. the MDEP rules are generally accepted as being adequate to protect the environment).

The bigger picture now being said, below are comments regarding the specific rule changes.

<u>*Coastal Wetlands:*</u> "*all areas below any identifiable debris line left by tidal action*" is in the LUPC definition but not in the NRPA definition (It was noted that it was removed from the Normal High Water Mark of Coastal Wetlands definition in the proposed changes). This portion of the definition can be difficult to use in the field. Debris lines can be higher or lower than the "highest astronomical tide for the National Tidal Datum

Epoch published by the NOAA". If a wetland scientist is delineating a coastal wetland so that a house can be properly set back from the resource, and they use the visible debris line as the start of the setback, the house could be built too close to the resource as the debris line is often not representative of the HAT line. It is my experience that when in doubt, most wetland scientists rely on a surveyor to set this mark as they don't want to be responsible for a setback violation or for the house being setback further than the homeowner wanted. A surveyed HAT line is also generally used by the Corps for delineation of coastal wetlands. This should be removed from the definition as it is variable and not able to be replicated in subsequent years.

Freshwater Wetland: "*body of standing water*" should say "non-tidal water body".

Non-Tidal Water Bodies: There needs to be more definition here, especially regarding size and permanence of hydrology. The NRPA uses the Great Pond definition for non-tidal water bodies, which is a 10 acre body of water or a 30 acre body of water if artificially formed or increased. The LUPC definition as written could include a mud puddle with a non-permanent hydrology. The definition includes "all water bodies" but does not define what a "water body" is elsewhere in the proposed changes or in the Chapter 10 definitions.

Normal High Water Mark of Non-Tidal Water Bodies: This definition has always been difficult to use in the field. The portion that says "distinguishes between predominantly aquatic and predominantly terrestrial land" can be confusing. Is the line between aquatic vegetation and wetland or upland vegetation, or between wetland and upland vegetation? (in general I have interpreted it to be the former). Also, a line determined using this method can change over time and thus not be replicable. For instance, I have observed where just two years of low water in a lake can cause the aquatic/wetland vegetation line to move outward into the lake (the plants are adapting to the new site conditions that quickly). This can cause issues in enforcement cases, where the delineator found a line on the ground and it has changed due to changing lake levels, soil or bank erosion, etc.

The portion of the definition that says "in places where…the normal high water mark cannot be easily determined…it shall be estimated from places where it can be

determined by the above method" is also difficult to use in the field. First of all, wetland scientists are not allowed to enter someone else's property without permission, which may not be readily available when in the field. Also, how is that line, once found elsewhere, transferred to the subject property? By survey or by the wetland scientists level? This definition should ALSO include, where the normal high water mark cannot be easily determined on the property, a surveyable means of determination. Many flowed lakes (Moosehead Lake being one) have monitored gauges with published lake levels. A surveyor can use the gauge data to set a "normal high water mark" on the subject property (with or without other vegetative evidence of high water mark). This is more scientific and replicable, although surveyors may want to be consulted prior to wording.

Protected Natural Resource: "*bodies of standing water*" should say "non-tidal water bodies".

Shoreline: "*body of standing water*" should say "non-tidal water body".

10.23,L Shoreland Protection Subdistrict: P-SL2 (b) the upland edge of those wetlands identified in Section 10.23,N,2,a,(1)(a)(b)(c),(2) and (3). Remove "and (c)…" from end.

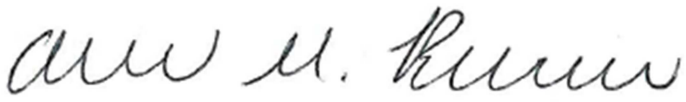
10.23,N Wetland Protection Subdistrict: 2. Description a. "Water bodies" should say "non-tidal water bodies". Also should be changed under 2.a.(1)(a) and 2.a.(1)(c)(i) where it says "body(ies) of standing water". Wetlands of Special Significance should include Significant Wildlife Habitat, 100-year flood zone wetlands, peatlands, and >20,000 sf of aquatic vegetation (make consistent with Chapter 301 definition).

10.27, F Filling and Grading: 2. "Beyond 250 feet from water bodies and wetlands". Is this all wetlands or just P-WL 1 wetlands? It should not include all wetlands. The term "wetlands" is used throughout this section and is only once defined as a P-WL1. Also "water body(ies)" is used throughout – should say "non-tidal water body" (or be defined better in the definitions).

Thank you for the opportunity to make comments on the proposed LUPC Rulemaking for NRPA Consistency. If there will be a stakeholders group set up to discuss these proposed changes, I would like to attend these meetings if possible. Please contact me with any questions you have on my comments.

Respectfully Submitted,

Burman Land & Tree Company, LLC



Aleita M. Burman, C.W.S., C.S.S., L.S.E.

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Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330
(207) 622-3101 • nrcm@nrcm.org • www.nrcm.org

Stacie R. Beyer
Land Use Planning Commission
106 Hogan Rd.
Bangor, ME 04401

March 26, 2015

Dear Stacie:

Thank you for the opportunity to submit comments on the proposed rulemaking related to the Natural Resources Protection Act (NRPA) and Recreational Gold Prospecting. Please see our comments related to NRPA consistency below. We have no comments on the Recreational Gold Prospecting revisions at this time, but presume that the rules are consistent with Public Law 2013, Chapter 260 and Public Law 2013, Chapter 536 (enacting LD 1135, An Act to Provide Consistency in the Regulation of Motorized Recreation Gold Prospecting and LD 1671, An Act to Prohibit Motorized Recreational Gold Prospecting in Class AA Waters and Certain Atlantic Salmon and Brook Trout Habitats, respectively). NRCM supported both bills.

10.02, definition of "Coastal Wetland"

- NRCM appreciates the changes made to this definition since the preliminary rule revision draft. We believe that this proposed revision more clearly indicates that all defining characteristics should be taken into consideration equally. We believe that LUPC staff addressed our preliminary concern that freshwater tidal waters would not fit within the definition of "Coastal Wetlands."

10.02, definition of "Flowing Water"

- Similarly, NRCM appreciates the changes made to the definition of "Flowing Water" since the preliminary rule revision draft, from "A surface water within a channel that has defined banks created by the action of surface water and has 2 or more of the following characteristics…" to "A channel that has defined banks created by the action of surface water and has 2 or more of the following characteristics…." We believe this is step in the right direction toward the inclusion of intermittent streams, which are extremely important for downstream water quality, aquatic life, and watershed ecological function. However, we remain troubled that a plain reading of term "Flowing Water" will lead to disputes over whether these rules in fact protect intermittent streams at times when "flowing water" is not present in the channel.

10.02, definition of "High Mountain Area"

- It is unclear why, since the preliminary rule revision draft, LUPC staff changed "Fragile Mountain Area" to "High Mountain Area." NRPA lists "fragile mountain area" as a resource of state significance. 38 M.R.S.A. §480-A (1987). NRCM is concerned that this change will preclude areas included within the LUPC's Mountain Area Protection Subdistricts from NRPA protections, as well as other sensitive high elevation habitat. The term is not consistent with NRPA. We recommend changing the definition back to "Fragile Mountain Area."

10.25, P, 3, "High Mountain Areas"

- NRCM appreciates the inclusion of a development standard for "High Mountain Areas." However, as previously discussed, we recommend that the term be changed to "Fragile Mountain Areas" to be consistent with NRPA and to ensure protection under the statute.

Thank you again for accepting our comments. If you have any questions, don't hesitate to be in touch.

Thank you,

Eliza Donoghue, Esq.
North Woods Policy Advocate & Outreach Coordinator

PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
MAINE FOREST SERVICE
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WALTER E. WHITCOMB
COMMISSIONER

27 March 2015

Stacie Beyer
Land Use Planning Commission
106 Hogan Rd, Suite 8
Bangor, ME 04401

RE: Proposed Chapter 10 Revisions, NRPA Consistency and Recreational Gold Prospecting

Dear Stacie:

The Maine Forest Service (MFS) offers the following comments on the proposed amendments regarding NRPA consistency. MFS has one specific concern regarding the proposed amendments - the changes to the definition of "flowing water." While we understand LUPC's rationale for seeking consistency with NRPA, in this case, we consider the existing LUPC definition to be superior to the definition of "river, stream, or brook" found in NRPA, because it is based completely on science. It also is more practical to apply in the field.

When MFS developed its Chapter 21 Rule, Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas in 2005, the stakeholder group (which included LUPC and DEP representatives) agreed with our use of the following definition: "Stream channel means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock; and which is connected hydrologically with other water bodies. "Stream channel" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetative cover has been removed by human activity."

The above was adapted from LUPC's definition: "195. Stream Channel: A channel between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock."

DEP's definition is a mix of science and subjectivity:

"9. River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.

B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

DOUGLAS P. DENICO
DIRECTOR

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D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation."

MFS considers A and B to be subjective and not necessary to the purpose of defining a flowing water. MFS is now responsible for enforcing regulation of timber harvesting and related activities in shoreland areas statewide. We have both a larger area of responsibility and a larger number of activities subject to those regulations than any other agency, and we believe that the definition in our rule is quite workable for both the regulated community and the regulatory agencies. Therefore, we strongly recommend that LUPC adopt MFS's definition, which is much closer to LUPC's current definition, and work with MFS and DEP to seek a change in the NRPA definition. Both the resource and the regulated community will be better served by a purely science-based definition.

We hope that LUPC will consider our recommendation. Please let me know if you have any questions.

Sincerely,

Doug Denico

Doug Denico
Director, Maine Forest Service

MAINE AUDUBON

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March 27, 2015

Stacie R. Beyer
Maine Land Use Planning Commission
106 Hogan Rd.
Bangor, ME 04401

RE: LUPC NRPA Rulemaking Comments

Dear Stacie,

On behalf of Maine Audubon and our 20,000 members and supporters, I am submitting comments regarding the LUPC NRPA Rulemaking. We applaud the process that the Commission has followed in developing these rules. Providing an opportunity for comments on the preliminary draft helped us understand the proposal better and greatly reduced the number of our concerns. We have the following comments:

10.02 Definitions, 28, xx, Flowing Water. We support the definition. This is consistent with the statute. However, given that the term being defined is "flowing water," we suggest either changing the term to river, stream or brook as is in the statute or adding language clarifying that this could mean that the channel is dry. Protection of intermittent streams and headwaters is important for water quality and aquatic life. Headwater streams are even more important with climate change.

10.25P, (f). Submission Requirements. Much of this appears to be taken from NRPA. However, several sections are missing and we are unclear why they are not included.

Thank you for your consideration.

Sincerely,

Jennifer Burns Gray

PUBLIC COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS:

RECREATIONAL GOLD PROSPECTING

Maine Land Use Planning Commission
Maine Department of Agriculture, Conservation and Forestry

Published Date: February 25, 2015

Public Comment Deadline: March 27, 2015

Rebuttal Comment Deadline: April 3, 2015

MAINE LAND USE PLANNING COMMISSION

Stacie R. Beyer
106 Hogan Rd, Suite 8
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(207) 941-4593
"Stacie R Beyer" <Stacie.R.Beyer@maine.gov>

Dear Committee members;

We would like to add our voices of support for the following proposed changes:

CHAPTER NUMBER AND RULE TITLE: Chapter 10, Land Use Districts and Standards STATUTORY AUTHORITY: 12 M.R.S.A. §684; §685-A(3); and §685-C(5)(A); and 38 M.R.S.A. §480-E-1

PART 2: PROPOSED MOTORIZED RECREATIONAL GOLD PROSPECTING CHANGES

We understand that these "changes are proposed to Chapter 10 to conform with recent legislative changes relating to improved consistency in the regulation of motorized recreational gold prospecting."

Early on, we became aware of the protections needed for Maine's iconic brook trout and Atlantic salmon streams from motorized recreational gold prospecting, and LUPC's long attention to those waters. As frequent visitors to the waters in LUPC's jurisdiction, we have had the opportunity to stumble upon prospectors using gold dredges, and we have seen first hand their effects upon our streams. Our initial encounters led us to in-depth research to the impacts documented nationwide and the laws that have resulted. The rise in gold prices, the sharing of prospecting locations via the Internet, and the romantic portrayal of gold mining on television elevated the number of prospectors using motorized means across the country, and, specifically, in Maine. Witness what happened on the upper Cupsuptic.

We were very much involved in the efforts which led to LD 1671 (and LD 1135 before it). During that effort, it was evident that LUPC had a history of protections concerning motorized prospecting. Thank you for that, and for incorporating this additional language which resulted from LD 1671.

Sincerely,

Kathy Scott and David Van Burgel

Mercer, Maine

From: Bob Woodbury
To: Beyer, Stacie R
Subject: Motorized recreational prospecting
Date: Thursday, March 12, 2015 1:19:07 PM

To the members of the Land Use Planning Commission:

I just wanted to thank you for your past efforts to protect our streams from this potentially disastrous endeavor and to tell you I am strongly in favor of adopting the proposed rule changes for Chapter 10 Part 2: Proposed Motorized Recreational Gold Prospecting Changes.

Thank you for your time.

Bob Woodbury
16 Poulin Street
Winslow, Maine 04901
207-873-1943
bob.mare4@myfairpoint.net

From: Dennis Simard
To: Beyer, Stacie R
Subject: gold dredging and panning
Date: Saturday, March 14, 2015 12:58:39 PM

I am a Maine native, sportsman, fly fisherman and recreational gold and mineral prospector for more than 50 years. I can see that the government now wants to over regulate another recreational sport that has had absolutely no impact on the fishing qualities of environmental qualities of the streams and rivers.
Take a look a what mother nature does each spring in comparison of a few prospectors. The rivers are swollen and raging, tearing out riverbanks, churning the bottoms, trees, mud and debris is scattered everywhere each springtime. Now and handful of gold prospectors and going to bring doom and destruction. Really?!

march 15 2015.

Stacie Beyer.

This is in response to your article in the sun journal on March 12, 2015. about searching for gold. Let me set the record straight. I don't know if you ever dredged before but this is my side of the story. I can't speak for all prospectors. I was there when Trout Unlimited and the Maine Guides tried to shut down all dredging in the state. by using a California scientific study that was biased against the prospectors right from the start. This study never says or proves that the silt from dredging kills fish. As far as I know there is no brook trout or Atlantic salmon in California. how could these groups use this study and get away with it? how could the legislators even believe this study? I believe like a lot of other prospectors this was never about the fish. This I believe was about these 2 groups who didn't want to share the rivers and streams in Maine with us because of the noise our engines make. This was stated at the January 2014 meeting with the panel with some of the legislators. These 2 groups have a lot of money and pull with the legislators. We never had a chance. It was 20 to 1 against this bill at the meeting. I wrote to all 426 or more members to give them pamphlets on how dredging really works. only 1 ever replied. He was from Knox county and thanked me for showing him what we do. As far as I know no prospectors invited or agreed to a compromise. We once was able to dredge the entire state. Now we only have a few little stream to go to now. My guess there is more than 200 prospectors who likes to dredge all in a few streams. How's that a compromise? If everyone wanted to protect the fish how about ban fishing? Fishermen kills fish by the thousands ever day. This was about 2 outdoor enthusiast groups trying to ban another outdoor enthusiast group. Just because the don't like what we do. Here is what we do, we drive 2 to 4 hours on a weekend to get to where we hope to find some gold. We spend thousands of our hard earned money on equipment, we find a spot we like, we set up the dredges, put our suits on because the water is always ice cold, move heavy boulders out of the way. As we suck up the loose material we open up a hole in the bottom of the stream we are looking for bedrock. Gold is heavy and it will slowly over time fall through the light sand until it hits something hard like bedrock. We never add anything to the streams but, we do take out lots of heavy metals like gold but , also mercury, lead, iron and brass. While fishermen leave lead, brass and steel behind. While dredging I often see brook trout in my hole looking for grubs, bugs and things they like to eat. So you see we dredgers don't harm the environment. only thing we do is kick up a little silt. At the end of the hard worked day we look into the sluice box hoping to find that pretty yellow metal. Not thinking I will ever get rich, but hoping to hit the mother lode. I love what I do its got its own rewards even without the gold. So we all wait for the state

biologists findings, as long as they don't take sides. Will my favorite past time be banned and fade away? Will more streams and rivers be reopened again for prospecting. Only time will tell.

thank you

Mark Kindlimann

Lisbon.

phone 353-8952

From:	Joy and Tom Clough
To:	Beyer, Stacie R
Subject:	NRPA Consistency - Recreational Gold Prospecting
Date:	Tuesday, March 17, 2015 12:16:59 PM

Hello Stacie Beyer,

I am writing to voice my strong support of the proposed rule changes *for Chapter 10, Part 2:*
Proposed Motorized Recreational Gold Prospecting Changes.

Last year I testified on behalf of the Rangeley Region Guides and Sportsman's Club. As one of the largest and oldest sporting clubs in the state, we felt strongly that we must continue to protect the regions critical trout and salmon habitat that is one of the principle resources that has made this region famous.

During testimony I made the point that we are not opposed to hand panning for gold or small hand sluices. This type of recreation can still be enjoyed without doing the harm that mechanized equipment will do to our streams.

Thank you,

Thomas Clough
Rangeley Plantation, Maine

From:	Forrest Bonney
To:	Beyer, Stacie R
Subject:	Proposed motorized recreational gold prospecting changes
Date:	Thursday, March 19, 2015 3:22:40 PM

To the members of the Land Use Planning Commission:

I have had a chance to review the above document and wish to comment that the protection of AA waters from motorized gold prospecting will go far to protect sensitive wild brook trout habitat. Prior to my retirement as fisheries biologist and brook trout specialist, I worked extensively throughout northern and western Maine. I am personally familiar with many of the waters listed, have documented stream degradation caused by log driving, and have worked to restore selected stream reaches. I applaud your efforts to protect this sensitive habitat from in-stream degradation. Thank you for your good work.

Forrest Bonney