
PUBLIC COMMENTS RECEIVED FOR PROPOSED RULE REVISIONS:
NRPA CONSISTENCY AND RECREATIONAL GOLD PROSPECTING

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

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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](#)

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

Sarah J. Medina
Seven Islands Land Company
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207-947-0541

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.”**

MAINE LAND USE PLANNING COMMISSION

[Stacie R. Beyer](mailto:Stacie.R.Beyer@maine.gov)

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



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.

Coastal Wetlands: “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).



March 23, 2015
LUPC NRPA Consistency Rulemaking

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

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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,

A handwritten signature in cursive script that reads "Eliza P. Donoghue". The signature is written in black ink and is positioned above the printed name.

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



PAUL R. LEPAGE
GOVERNOR

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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.

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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,

A handwritten signature in cursive script that reads "Doug Denico".

Doug Denico
Director, Maine Forest Service



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www.maineaudubon.org

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,

A handwritten signature in blue ink that reads "Jennifer Burns Gray".

Jennifer Burns Gray