



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

August 31, 2020

Ms. Kathleen Leyden
Director, Maine Coastal Program
Maine Department of Marine Resources
State House Station 21
Augusta ME, 04333-0021

Dear Ms. Leyden,

Thank you for the Maine Department of Marine Resources May 11, 2020, request for approval of changes to the Maine Coastal Management Program pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H, as revised at 84 FR 38118 (Aug. 6, 2019).¹

With the exception and qualification described below, the Office for Coastal Management approves the incorporation of the changes as part of the federally-approved Maine Coastal Management Program. Please note that the State of Maine is required to publish a public notice of this decision on the Maine Department of Marine Resources website pursuant to 15 CFR § 923.81(e)(5). The public notice should state that pursuant to 15 CFR § 923.81(f), the enforceable policies approved in this program change shall apply to federal consistency reviews under 16 USC § 1456 and 15 CFR part 930 as of the date of this approval letter. Please include in the public notice the Table of Approved Changes provided with this letter, or a link thereto, and send a copy of the notice to the Office for Coastal Management for our records.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management did not receive any comments on this program change submission.

CHANGES APPROVED

See the attached Table of Approved Changes to the Maine Coastal Management Program (ME-2020-1).

¹ The original decision due date for this submission was June 10, 2020. The Office for Coastal Management extended the decision due date to August 7, 2020.

EXCEPTION AND QUALIFICATION

Consistent with other decisions by the Office for Coastal Management, the requirements for compensatory mitigation found at 38 MRS § 480-Z are not approved as enforceable policies in the review of federal actions as authorized under the CZMA. It is NOAA's view that a state cannot use federal consistency reviews to require a federal agency or applicant for a federal authorization to pay funds to the state or others to create a new project or otherwise compensate entities. The CZMA does not authorize the requirement for such payments as part of the federal consistency process. In addition, for federal agency activities under 15 CFR part 930, subpart C, such requirements could cause Anti-Deficiency Act issues. The Office for Coastal Management recognizes that compensatory mitigation requirements as applied through state permitting requirements are part of the state's federally-approved coastal management program so long as it is understood that the requirement cannot be applied to federal actions through the CZMA federal consistency review process. Mitigating for coastal effects may include compensation as determined by the state and the federal agency or applicant, but such payments cannot be part of an enforceable policy, a condition of concurrence, or a basis for an objection. A state could still issue a CZMA objection upon finding that mitigation is not adequate to meet the application of an enforceable policy, but could not object because the federal agency or applicant did not pay funds.

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

Thank you for your cooperation in this review. Please contact Becca Newhall at 978-281-9237, if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, ME-2020-1.

Sincerely,



Joelle Gore
Chief, Stewardship Division

Attachment: Table of Approved Changes ME-2020-1

TABLE OF APPROVED CHANGES TO THE MAINE COASTAL MANAGEMENT PROGRAM (ME-2020-1)

Please reference the Office for Coastal Management August 31, 2020, decision letter for the exception and qualification pertaining to this

approval

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state	Enforceable policy	Enforceable mechanism citation
38 MRSA §480-Z, 4th ¶ (PL 2019 c. 581, sec. 1)	Natural Resources Protection Act (technical edit)	Revised	6/16/2020	No	DEP permit
38 MRSA §480-Z, sub-§3 (PL 2019 c. 581, sec. 2)	Natural Resources Protection Act (clarifies agencies to be consulted; technical edit)	Revised	6/16/2020	No	DEP permit

<p>38 MRSA §480-Z, sub-§7, ¶¶D and E (PL 2019 c. 581, sec. 3)</p>	<p>Natural Resources Protection Act (technical edit)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>No</p>	<p>DEP permit</p>
<p>38 MRSA §480-Z, sub-§7, ¶F (PL 2019 c. 581, sec. 4)</p>	<p>Natural Resources Protection Act (add 'rivers, streams and brooks' to resources for which DEP may develop an in lieu fee program)</p>	<p>New</p>	<p>6/16/2020</p>	<p>No</p>	<p>DEP permit</p>

<p>38 MRSA §1303-C, sub-§6 (PL 2019 c. 619, sec. 1)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (clarifies definition of “commercial solid waste disposal facility”)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>
<p>38 MRSA §1303-C, sub-§22-A (PL 2019 c. 619, sec. 2)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (defines “recycling facility”)</p>	<p>New</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>

<p>38 MRSA §1303-C, sub-§40-A (PL 2019 c. 619, sec. 3)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (defines “waste generated within the State”)</p>	<p>New</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>
<p>38 MRSA §1310-N, sub-§5-A, ¶B (PL 2019 c. 619, sec. 4)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (clarifies waste that may be deemed “recycled” by a solid waste processing facility)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>

<p>38 MRSA §1310-N, sub-§11 (PL 2019 c. 619, sec. 5)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (amends definition of “waste generated within the state”)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>
<p>38 MRSA §1310-AA, sub-§1-A (PL 2019 c. 619, sec. 6)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (amends provision re: public benefit determination for waste not generated within the state)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>

<p>38 MRSA §1310-AA, sub-§2 (PL 2019 c. 619, sec. 7)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (technical edit)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>
<p>38 MRSA §1310-AA, sub-§3 (PL 2019 c. 619, sec. 8)</p>	<p>Maine Hazardous Waste, Septage and Solid Waste Management Act (technical edit)</p>	<p>Revised</p>	<p>6/16/2020</p>	<p>Yes</p>	<p>DEP license</p>

01-672 CMR ch. 10, Appendix D	LUPC rules ch. 10, Appendix D (land use districts and standards in unorganized area; listed on waters on which personal watercraft prohibited)	Revised	6/17/2019	Yes	LUPC enforcement
01-672 CMR ch. 10.27(D)	LUPC rules ch. 10 (land use districts and standards in unorganized area/roads and water crossings)	Revised (repealed and replaced)	6/17/2019	Yes	LUPC zoning and permitting

<p>01-672 CMR ch. 10.02*</p> <p>*changes which involve refinement of LUPC's 'adjacency principle' regarding location of new in relation to existing development)</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; definitions added and amended)</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>
<p>01-672 CMR ch. 10.08(A)*</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; technical edit/references)</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>

01-672 CMR ch. 10.08(B)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; criteria re: adoption and amendment of the following development subdistricts, except as provided in Section 10.08,B,3: Commercial and Industrial Development (D-CI), General Development (D-GN), Low-density Development (D-LD), and Residential Development (D-RS))	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.08(C)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; technical edit)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.08(D)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; technical, clarifying edits)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.08-A*	LUPC rules ch. 10 (land use districts and standards in unorganized area; locational factors for adoption or amendment of land use district boundaries)	New	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.17*	LUPC rules ch. 10 (land use districts and standards in unorganized area; provisions re: permit expiration)	New (repealed and replaced)	6/17/2019	Yes	LUPC zoning and permitting
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<p>01-672 CMR ch. 10.21(A)*</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; commercial industrial development sub-district (D-CI))</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>
<p>01-672 CMR ch. 10.21(C)*</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; general development sub-district (D-GN))</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>

<p>01-672 CMR ch. 10.21(F)* [add note re: renumbering sections; see LUPC basis statement]</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; low development sub- district (D-LD))</p>	<p>New</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>
<p>01-672 CMR ch. 10.21(J)*</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; rural business sub- district (D-RB))</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>

<p>01-672 CMR ch. 10.21(K)* [add note re: renumbering sections; see LUPC basis statement]</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; resource-dependent development sub- district (D-RD))</p>	<p>New</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>
<p>01-672 CMR ch. 10.21(L)*</p>	<p>LUPC rules ch. 10 (land use districts and standards in unorganized area; recreation facility development sub- district (D-RF))</p>	<p>Revised</p>	<p>6/17/2019</p>	<p>Yes</p>	<p>LUPC zoning and permitting</p>

01-672 CMR ch. 10.21(M)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; residential development sub-district (D-RS))	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.22(A)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; general management sub-district (M-GN))	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.23(E)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; great pond protection sub-district (P-GP))	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.23(L)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; great pond protection sub-district (P-SL))	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.25(D)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/vehicular circulation, access and parking)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.25(E)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/natural character and cultural resources)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.25(F)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/noise and lighting)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.25(P)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/protected natural resources)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.25(Q)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/subdivision and lot creation)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.25(S)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; development standards/common open space)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.26(D)(6)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; dimensional requirements/ minimum setbacks; farm stands and recreation supply businesses)	New	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.26(G)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; dimensional requirements/ exceptions)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.27(A)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; activity specific standards/ agriculture)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.27(J)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; activity specific standards/signs)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.27(N)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; activity specific standards/ home-based businesses)	Revised	6/17/2019	Yes	LUPC zoning and permitting
01-672 CMR ch. 10.27(Q)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; activity specific standards/ recreational lodging facilities)	Revised	6/17/2019	Yes	LUPC zoning and permitting

01-672 CMR ch. 10.27(S)*	LUPC rules ch. 10 (land use districts and standards in unorganized area; activity specific standards/ commercial business)	New	6/17/2019	Yes	LUPC zoning and permitting		
06-096 CMR ch. 692.2 (various paragraphs)	DEP rules ch. 692 (siting oil storage facilities/technical edits, clarifies various definitions; repeals definition of “same property”; adds definition of “significant sand and gravel aquifer”)	Revised	8/07/2019	Yes	DEP license		

		<i>Enter one</i>				
06-096 CMR ch. 692.3	DEP rules ch. 692 (siting oil storage facilities/amends provision regarding siting facilities in wellhead protection zones, including variance provisions)	Revised	8/7/2019	Yes	DEP license	
06-096 CMR ch. 692.4	DEP rules ch. 692 (siting oil storage facilities/ amends provision regarding siting facilities on significant sand and gravel aquifers, including variance provisions)	Revised	8/7/2019	Yes	DEP license	06-096 (v: rior

06-096 CMR ch. 692, Appendix A	DEP rules ch. 692 (siting oil storage facilities/ amends provision regarding when a DEP- approved hydrogeological evaluation of actual aquifer yield is required for a proposed facility)	Revised	8/7/2019	Yes	DEP license
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