



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

APR - 6 2006

Ms. Kathleen Leyden  
Director  
Maine Coastal Program  
State Planning Office  
State House Station 38  
184 State Street  
Augusta, ME 04333-0038

Dear Ms. Leyden:

Thank you for the Maine State Planning Office's January 31, 2006, request that changes to Maine's Land Use Regulatory Commission (LURC) Chapter 10 Rules and Department of Environmental Protection (DEP) Stormwater Rules, Chapters 500 and 502, be incorporated into the Maine Coastal Program. You requested that changes to the rules described below be incorporated as routine program changes (RPCs) pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request February 1, 2006, and OCRM's decision deadline was extended until April 7, 2006.

Based on our review of your submission, we concur, with the exception described below, that the changes to the LURC and Stormwater Rules are RPCs and we approve the incorporation of the changes as enforceable policies of the Maine Coastal Program. Federal Consistency will apply to the approved changes only after you publish notice of this approval pursuant to 15 C.F.R. section 923.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

### SECTIONS APPROVED

#### **LURC Rules; Chapter 10**

- Miscellaneous changes to LURC Rules; Chapter 10, Land Use Districts and Standards that were adopted on November 12, 2003, and effective April 1, 2004.

Changes to the following sections that were adopted February 11, 2004, and effective April 1, 2004:

- Structural reorganization of Chapter 10
- Adoption of two-tiered approach to subdivision review: Section 10.25(Q)
- Changes to development standards: Sections 10.02, 10.15, 10.26

Changes to the following sections that were effective September 13, 2004:

- Clearing standards: Section 10.27(B)
- Property line setback waiver: Sections 10.11; 10.26(G)



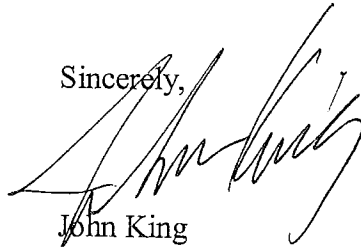
**DEP Rules, Chapter 500 and 502**

- Changes to DEP Rules, Chapter 500 and 502 on Stormwater Management that were effective November 17, 2005.

OCRM notes, however, that the definition of “person” in Chapter 500(3)(S) includes “federal agency.” The CZMA does not authorize states to establish regulatory standards for federal lands or waters and, in fact, excludes federally controlled lands from the state’s coastal zone. *See* 16 U.S.C. § 1453(1). Moreover, a state policy that purports to regulate or otherwise establish standards for federal agencies or federal lands or waters would not meet the CZMA’s definition of “enforceable policy,” which requires that state policies be legally binding under state law. *See* 16 U.S.C. § 1453(6a). Therefore, unless Maine has stormwater management authority over federal agencies under a federal statute other than the CZMA, the Chapter 500 stormwater management permit requirements do not apply to federal agencies and federal agencies are only required to be consistent to the maximum extent practicable with the Chapter 500 policies per CZMA section 307(c)(1) and (2) (16 U.S.C. § 1456(c)(1) and (2)).

Thank you for your cooperation in this review. Please contact Bill O’Beirne at (301)713-3155 extension 160, if you have any questions.

Sincerely,



John King  
Division Chief