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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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February 25, 2015

Paul T. Crane
c/o Erik Lochmann
Acme Land Surveying
108 Fairbanks Rd., Suite 5
Farmington, ME 04938

Subject: ADVISORY RULING AR 14-14; Lot #2 on Sandy River Plantation Tax Map #12, Franklin County

Dear Mr. Crane and Mr. Lochmann:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on a proposed division of a parcel of land in Sandy River Plantation, currently designated as Lot #2 on Sandy River Plantation Tax Map #12. The subject parcel is currently owned by Mr. Crane, Charles W. Fitch III, John P. Fitch and Charles W. Fitch II. Mr. Crane owns a 2/3 undivided interest in the subject parcel while the Messrs. Fitch together own the remaining 1/3 undivided interest. The subject parcel, hereinafter referred to as the "Crane/Fitch parcel," is approximately 794 acres in size and includes all of Perry Pond. The parcel is bounded to the north by Beech Hill Road, to east and south by the Sandy River Plantation/Madrid Township town line, and to the west by parcels of land now or formerly owned by Cousineau, Inc., Desmond McGlynn and Denis and Marsha Drapeau. The Crane/Fitch parcel is currently developed with two cabins and associated sheds and driveways, permitted under Building Permit BP 11497, issued to Mr. Crane in April of 2002. One of the cabins is located near the southerly shoreline of Perry Pond, while the other cabin is located approximately 1500 feet to the north. Access to the property is via an existing land management road from Route #4 in Madrid Township, across land in Madrid Township now or formerly owned by Thomas Dillon, and entering the subject parcel on its southern boundary. The land management road continues another approximately 6100 feet through the subject parcel to the northerly permitted camp. An approximately 1300 foot long land management road extends to the west from the main land management road and accesses the permitted camp along the south shore of Perry Pond.

The zoning of the Crane/Fitch parcel includes (P-SL2) Shoreland Protection Subdistricts within 75 feet of streams and Perry Pond, a (P-WL2) Wetland Protection Subdistrict and a (P-WL3) Wetland Protection Subdistrict. The remainder of the parcel outside these protection zones is zoned (M-GN) General Management Subdistrict. Perry Pond and the mapped wetlands are all individually less than 10 acres in size. Mr. Crane and Messrs. Fitch acquired the subject parcel from Mr. Dillon by a deed dated August 13, 2001 and recorded in book 2066, page 254 in the Franklin County Registry of Deeds.

The proposed division of the Crane/Fitch parcel is as shown on a survey plan by David Adelson dated October 30, 2014 and submitted with your request. I have attached a copy of the location map from the survey plan which shows the outline of the existing Crane/Fitch parcel (highlighted in yellow) and the proposed parcels. We will attempt to provide our view on the matters as we understand them, pursuant to 5 M.R.S.A. 9001. I want to caution however, this is an informal response and not a legal determination. You may want to consult your attorney on this matter. In providing our views on these matters, we have relied upon the facts as you have presented them to us, supplemented by our research of records available through the Franklin County Registry of Deeds.

Land Division & Transfer History of Crane/Fitch Parcel and Adjacent Parcels

November 21, 1986; Plan Book #935: Patten Corporation filed a plan of 40+ acre lots on its parcel to the west of the Crane/Fitch parcel, including the lots now or formerly owned by Desmond McGlynn and Denis and Marsha Drapeau.

Prior to January 18, 1993: United Timber Corporation acquired approximately 629 acres in the southeastern portion of what is currently the Crane/Fitch parcel, bounded to the east and south by the Sandy River Plantation/Madrid Township town line.

January 18, 1993; Book 1346, Page 264: Georgia-Pacific Corporation transferred an approximately 165 acre portion of its land to United Timber Corporation. The transferred parcel abutted United Timber Corporation's original parcel described above, and extended United Timber Corporation's parcel to Beech Hill Road to the north. This acquisition combined with United Timber Corporation's original parcel created what is now the Fitch/Crane parcel, and brought the parcel to its current size of approximately 794 acres.

November 30, 1993; Book 1417, Page 220: Georgia-Pacific Corporation transferred what are now Lots #1 and #3 on Sandy River Plantation Tax Map #12 to Cousineau, Inc. With this transfer, the Crane/Fitch parcel clearly became a separate lot of record in that it was separated from any other adjacent land in Sandy River Plantation that may have been under common ownership.

October 3, 1998; Book 1814, Page 69: United Timber Corporation transferred its land holdings in Sandy River Plantation, including the Crane/Fitch parcel, to New River-Franklin Ltd. This deed describes nine parcels in Sandy River Plantation, being parcels #298 - #303 (pages 89-90), #465 - #466 (page 97), and #6 (page 101). Parcel #466 is the 168 acre parcel that was transferred from Georgia-Pacific to United Timber Corporation by the deed recorded in Book 1346, Page 264 described above. Parcels #298 - #303 and #466 abut one another and constitute the current Crane/Fitch parcel. Parcels #465 and #6 are separate parcels, not contiguous with the other seven parcels listed in this deed.

March 27, 2001; Book 1997, Page 309: New River-Franklin Ltd. transferred Parcels #298 - #303 and #466 in Sandy River Plantation, constituting the Crane/Fitch parcel, to Thomas Dillon.

March 27, 2001; Book 1997, Page 309: Thomas Dillon transferred Parcels #298 - #303 and #466 in Sandy River Plantation, being all of his landholdings in Sandy River Plantation, to the current ownership of Mr. Crane, Charles and Messrs. Fitch as described above.

Land Division Proposal

Mr. Crane and Messrs. Fitch now propose to divide their parcel as follows:

Parcel A: 3.5 acre lot with 306 feet of frontage along Perry Pond and including the camp and shed on the south side of the pond permitted under Building Permit BP 11497. This parcel would be owned by the Crane Family Revocable Trust. This parcel is highlighted in pink on the attached map.

Parcel B: 3.5 acre parcel north of Perry Pond and including the other camp and shed on the south side of the pond permitted under Building Permit BP 11497. This parcel would be conveyed to Charles W. Fitch III & Kelly N. Fitch, and John P. & Shelly H. Fitch. This parcel is highlighted in blue on the attached map.

Parcel C: Remaining 787 acre parcel to be owned in common by the Crane Family Revocable Trust (2/3 interest) and John P. & Shelly H. Fitch (1/3 interest). This proposed parcel is currently undeveloped except for the land management roads described above that also serve to provide access to the two camps. It is my understanding that for five years after the proposed land division, the owners of Parcel C would not develop it, except possibly additional land management roads, and would only harvest timber on it and/or conduct other forest management activities on it.

You have inquired whether the proposed land divisions would constitute a subdivision under the Commission's statutes and rules, requiring prior subdivision permit approval from the Commission.

Relevant Standards

Definition of a subdivision:

Section 10.02, (186), of the Commission's Land Use Districts and Standards states that "except as provided in 12 M.R.S.A § 682-B, "subdivision" means a division of an existing parcel into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing."

Lots existing at least 20 years:

Under provisions of Section 10.25, Q, 1, g, (8) of the Commission's Standards, a lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:

- (a) Approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission's decision was recorded in the appropriate registry of deeds;
- (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission's decision was recorded in the appropriate registry of deeds;
- (c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
- (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds.

Forest/agricultural management/conservation lot exemption:

Under provisions of Section 10.25, Q, 1, g, (1), of the Commission's Standards, a lot is not counted as a lot for the purposes of subdivision if the following conditions are met:

- (a) The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
- (b) The lot is at least 40 acres in size;
- (c) If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S.A. §436-A;
- (d) The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
- (e) When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S.A §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S.A §682-B(4).

Retained lot exemption:

Under provisions of Section 10.25, Q, 1, g, (2), of the Commission's Standards, a lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:

- (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3); and
- (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Only one retained lot exempt under Section 10.25,Q,1,g,(2) may be created from any one existing parcel.

Interpretation

Based upon the information you have provided and the above land division history, it appears that a subdivision permit from the Commission would not be required for the proposed division of the Crane/Fitch parcel provided that that certain criteria are met. In reaching this conclusion we first determined the status of your existing lot. To do this we traced your lot back more than 20 years pursuant to Section 10.25, Q, 1, g, (8) of the Commission's standards in order to determine the parent parcel for your lot. We then tracked the parent parcel to the present to determine whether more than two "subdivision" lots had been created within any 5-year period as defined by the Commission's statutes and rules. It appears that the current Crane/Fitch parcel has existed in its current configuration for more than 20 years, no divisions of the Crane/Fitch parcel have occurred within the past 20 years, and no other abutting parcels within Sandy River Plantation were ever under the same ownership as the current Crane/Fitch parcel within the past 20 years. Accordingly, it appears that the Crane/Fitch parcel as it is currently configured is a legally existing parcel.

Your proposed land division would not create a subdivision as defined by the Commission, and would not require subdivision permit approval, *provided that proposed Parcel C meets the exemption criteria for forest/agricultural management/conservation lots under Section 10.25, Q, 1, g, (1) or the exemption criteria for retained lots under Section 10.25, Q, 1, g, (2)*. Proposed Parcels A and B would not qualify for any exemptions and thus both would count for subdivision purposes, creating two subdivision lots. Therefore, in order to avoid creating a subdivision as defined by the Commission, Parcel C would need to be exempt from being considered a subdivision lot, either as a forest/agricultural management lot or as a retained lot. In order for Parcel C to meet the forest/agricultural management lot exemption under Section 10.25,Q,g(1), it could not be developed for at least 5 years after the transfer of parcels A and B (other than structures for forest/agricultural management); and it could be used only for forest or agricultural management activities, or natural resource conservation purposes. Under the forest/agricultural management/conservation lot exemption Parcel C could be further divided within 5 years after the transfer of Parcels A and B, but only for forest/agricultural management purposes and only if any resulting lots would also comply with the provisions of Section 10.25,Q,1,g(1). Please also note that if further divisions of Parcel C were done within the 5 year period under the forest/agricultural management lot exemption, a plat would have to be filed upon creation of the third exempt lot in accordance with Section 10.25,Q,1,g(1)(e) and none of the lots created from the original Crane/Fitch parcel could be further divided for a period of 10 years from the date of filing of the plat.

Alternatively, Parcel C could qualify for the retained lot exemption under Section 10.25,Q,g(2). In order to meet this exemption, Parcel C would have to remain in the same ownership as at the time of transfer of Parcels A and B for at least 5 years after the transfer of Parcels A and B; and during that time period Parcel C could be used only for forest or agricultural management activities, or natural resource conservation; and could not be transferred or further divided during that time period except for a transfer to an owner of abutting land. If you wish to qualify Parcel C for the retained lot exemption you must convey the entire Crane/Fitch lot to whatever ownership configuration is to ultimately own Parcel C, prior to transferring out either Parcels A or B, and then have that new ownership configuration transfer out Parcels A and B.

Please note that in order for either the forest/agricultural management/conservation lot exemption or the retained lot exemption to apply, Parcel C could not be developed for at least five years after the transfers of Parcels A and B, except for structures or roads used for agricultural or forest management purposes.

Please also be advised that any future divisions of proposed parcels A, B or C within 5 years of the date of the proposed land division would likely be counted as lots for the purposes of subdivision and likely require a subdivision permit from the Commission. Accordingly, we recommend that deeds for the proposed Parcels A, B and C include a warning or restriction regarding further division of the lots within this 5 year period.

Please note that our interpretation is based upon the Commission's current statutes and standards. The status of the proposed land division may change in the future should relevant statutes and/or standards be amended. Please also be aware that any land division activities other than those which you have described within your request may, or may have, require(d) prior Commission review and/or rezoning, or may be prohibited under provisions of the Commission's Land Use Districts and Standards. Please contact the Commission if you plan any changes.

Should you have any further questions, please contact Sara Brusila at our West Farmington Office at (207) 670-7493.

Sincerely,


William J. Galbraith, Supervisor
Department of Agriculture, Conservation & Forestry
Division of Land Use Planning

WG/slb

Enclosure: AR 14-14 Location Map

xc: Geo File, Sandy River Plt.
BP 11497 File

NIF
McGlynn
Desmond

NIF
Cousineau, Inc.
SRP Tax Map 12
Lot 3

AR 14-14
Paul T. Crane
Sandy River Plt.

BEECH

HILL

ROAD

PARCEL C → 787 acres
No Buildings

PARCEL B
3.5 acres
w/camp
BP 11497

PERRY
POND

PARCEL A
3.5 Acres
w/camp
BP 11497

NIF
Cousineau, Inc.
SRP Tax Map 12
Lot 1

Existing
Land
Management
Road

SANDY RIVER PLANTATION
TOWN OF MADRID

SANDY RIVER PLANTATION
TOWN OF MADRID

CRANE-FITCH
ROAD

LOCATION MAP

SCALE: 1" = 1000'±

ROUTE 4

TO RANGELEY

TO FARMINGTON

SANDY
RIVER

