



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

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EXECUTIVE DIRECTOR

July 14, 2014

Katahdin Timberlands, L.L.C.  
c/o Howard Weymouth, Land Use Forester  
P.O. Box 38  
Millinocket, ME 04462

**Subject: ADVISORY RULING AR 14-3**

**Penobscot County (*Long A Township*)**

Dear Mr. Weymouth:

Thank you for the information provided in your request for an Advisory Ruling. You have asked our opinion on some complex issues with respect to selling existing leased lots. Further, within your request you have indicated that you have modified/enlarged some lots as practical to meet current LUPC lot requirements. 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. In providing our views on these matters, we have relied entirely upon the facts as you have presented them to us in the information submitted to the Commission and in conversations with Commission staff.

### **Background**

It is our understanding that Kathadin Timberlands, L.L.C. (hereafter referred to as KTL) owns the thirty nine (39) leased camp/cottage lots in Long A Township, Penobscot County. Thirty (30) of these lots abut Cedar Lake and are further described below. Nine of the KTL lots are abutting or in the vicinity of the West Seboeis Road (so-called). In addition, KTL has requested an advisory ruling on the planned sale of three (3) lots in Long A Township owned by Katahdin Forest Management (KFM), that also abut Cedar Lake. These forty two (42) lots are addressed in this Advisory Ruling. Most of the subject lots were established and leased prior to September 23, 1971. All of the subject lots have been surveyed within the last 5 years. Some lots were modified/enlarged in an effort to bring them into compliance with, or as close to, current dimensional size requirements when possible. The lots are depicted on plats entitled *Final Survey Plan, Cedar Lake Lots* and *Final Survey Plan, Seboeis Lots*.

KTL has authorized for sale certain lots contained within extensive land holdings, including the area described above. The above referenced lots, which are listed in the table below, represent KTL's land holdings comprising an existing parcel of land around Cedar Lake and another parcel of land on the West Seboeis Road (so called) and represent thirty nine (39) lots of an ongoing sale of nearly seven hundred (700) parcels in several townships over the next few years. The subject land area currently owned by KTL is identified by Maine Revenue Services as part of Lot 1 on Plan 01 in Long A Township. However, for the purposes of the definition of subdivision in Title 12 MRSA § 682 (2-A) and in accordance with section 10.25,Q,1,f of the Commission's Land Use Districts and Standards, an "existing parcel" of land shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership. The parcels of land from whence the thirty nine (39) lots are created (*Cedar Lake Lots and Seboeis Lots*) are not contiguous to one another and are not contiguous with the remainder of Lot 1 on Plan 01 in that they are separated by land owned by Katahdin Forest Management L.L.C. (KFM). Therefore the KTL Cedar Lake land holdings and the Seboeis Lease Lots land holdings are considered to be separate "existing parcels" of land.

PHONE: 207-746-2244

191 MAIN STREET  
www.maine.gov/acf

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You have also requested an advisory ruling of a proposed sale of three (3) lots abutting Cedar Lake in Long A Township by KFM. These lots would be newly created lots divided from the overall KFM land holdings, identified by Maine Revenue Service as a part of Plan 01, Lot 1, which totals approximately 23,752 acres.

It is our understanding that no other non-exempt land sales have occurred on either of the KTL parcels or on the KFM parcel in the last 20 years.

## Review Findings

Using the information provided, we have performed a review of the lots in question. Issues that may have consistently arisen are categorized below:

*Unauthorized Subdivision (US)* – Section 10.25, Q.1.g(8) of the Land Use Districts and Standards discusses how the Commission considers lots that may have required subdivision approval when created, but have existed for at least 20 years as now being exempt from subdivision review.

*Nonconforming Lots (NL)* – Lots which do not meet the current dimensional requirements for residential development contained in Section 10.26 of the Commission's Land Use Districts and Standards are considered to be nonconforming. While they legally exist, you have discussed that it may be possible in some circumstances to modify the lots to make them conforming or less nonconforming. These legally existing nonconforming lots may be conveyed in their present configuration, or in a configuration that makes them less nonconforming provided that the method that makes them less nonconforming does not create a new, non exempt lot.

*Nonconforming Contiguous Lots (NCL)* – Section 10.11, E.5 of the Commission's Land Use Districts and Standards discusses the manner of conveyance for nonconforming contiguous lots. In all cases, said lots shall be combined to the extent necessary to meet dimensional requirements except where each lot has a legally existing conforming dwelling.

*Conforming Lots (CL)* – Several lots within the Advisory Ruling request meet current dimensional requirements. These lots do not require additional modification and may be conveyed in their current configuration.

ID	Lot#	Lease #	Acres	Former Lot #'s	Initial issuance	Lapse	Reissue	Review Criteria
CL	1	4468	1.2	43	11/12/1968			CL
CL	2	2990	0.4	1	9/21/1959			NL (size, water frontage)
CL	3	3019	0.7	2	10/1/1959			NL (size, water frontage)
CL	4	3017	0.6	3	10/6/1959			NL (size, water frontage, road frontage)
CL	5	2991	0.5	4	9/21/1959			NL (size, water frontage, road frontage)
CL	6	2992	0.5	5	9/21/1959			NL (size, water frontage), road frontage
CL	7	2993	0.5	6	9/21/1959			NL (size, water frontage, road frontage)
CL	8	2994	0.55	7	9/21/1959			NL (size, water frontage, road frontage)
CL	9	1828	2	8	7/8/1957			NL (water frontage)
CL	10	3357	0.5	10	7/16/1964			NL (size, water frontage)
CL	11	3156	0.7	11	7/7/1960			NL (size, water frontage, road frontage)
CL	12	3125	0.6	12	6/27/1960			NL (size, water frontage, road frontage)

ID	Lot#	Lease #	Acres	Former Lot #'s	Initial issuance	Lapse	Reissue	Review Criteria
CL	13	2999	0.6	13	9/24/1959			NL (size, water frontage, road frontage)
CL	14	3000	1	14 & 15	9/24/1959			CL
CL	15	3048	0.8	16	11/17/1959			NL (size, water frontage)
CL	16	3087	0.5	17	8/5/1966			NL (size, water frontage, road frontage)
CL	17	3022	0.5	18	8/5/1966			NL (size, water frontage, road frontage)
CL	18	3011	0.5	19	10/1/1959			NL (size, water frontage, road frontage)
CL	19	3106	0.5	20	6/6/1960			NL (size, water frontage)
CL	20	4533	1.1	22 & 1/2 of 23	7/14/1969			NL (water frontage)
CL	21	3191	0.5	28	8/15/1960			NL (size, water frontage)
CL	22	4497	0.6	30	6/2/1969			NL (size, water frontage)
CL	23	4388	1.1	31 & 32	7/22/1968			NL (water frontage)
CL	24	3652	1	33, 34	8/13/1963			NL (water frontage)
CL	25	3897	0.5	35	6/9/1965			NL (size, water frontage)
CL	26	3795	0.6	36	8/12/1964			NL (size, water frontage, road frontage)
CL	27	3796	0.6	37	8/12/1964			NL (size, water frontage)
CL	28	3018	0.8	38	10/6/1959			NL (size, water frontage)
CL	29	4337	1.5	39, 40 & 1/2 of 41	9/24/2009			CL
CL	30	4338	0.9	42 & 1/2 of 41	5/13/1968			NL (size)
KFM	9	9001	0.5	(btw CL9 & CL10)	Potential transfer to abutter only			NL (size, water frontage)
KFM	21	9002	0.7	21 Boat Landing	Potential transfer to Association, 2014			NL (size, water frontage, road frontage)
KFM	29	9003	0.5	(btw CL21 & CL22)	Potential transfer to abutter only			NL (size, water frontage)
SB	1	1389	1.05	1	12/4/1957	05/23/78	02/04/81	CL
SB	2	1390	0.95	9	12/4/1957			CL
SB	3	2351	0.65	8	12/4/1957			NL (size)
SB	4	1384	1.06	7	12/4/1957			CL
SB	5	1385	1.27	6	12/4/1957			CL
SB	6	1406	1.46	5	8/14/1957			CL
SB	7	1396	0.98	4	12/4/1957			CL
SB	8	1388	4.8	3	12/4/1957			CL
SB	9	1386	0.7	10	6/1/1991			NL (size)

Count 42

CL = Cedar Lake, owned by KTL , 30 lots

KFM = owned by KFM, also on Cedar Lake, 1 boat launch, 2 possible add'ns to KTL lots

SB = Seboeis area, owned by KTL, 9 lots

## **Inquiry**

You inquire as to whether the referenced lots are currently salable. You want to know whether this proposal would create a subdivision as defined under provisions of section 682(2-A) of the Commission's Statutes, 12 M.R.S.A.

## **Analysis**

### Existing KTL leased lots

Based upon the information and lease histories which you have submitted to us, it appears that thirty seven (37) of the thirty nine (39) existing leased lots, currently owned by KTL, were created by lease prior to the inception of the Maine Land Use Planning Commission (formerly Maine Land Use Regulation Commission) on September 23, 1971 and have been continuously leased without interruption since that date. One (1) lot (lot SB 1) was initially leased prior to September 23, 1971, but the lease was interrupted for more than 2 years since that date. This lease was reinstated in 1981. One lot (lot CL 29) was created by lease in 2009.

The thirty seven (37) lots that were initially created by lease prior to the inception of the Maine Land Use Planning Commission (formerly Maine Land Use Regulation Commission) are exempt as subdivision lots by virtue of having been created prior to the effective date of the law.

Lot (lot SB1) that was initially leased prior to September 23, 1971, but had the lease interrupted for more than 2 years since that date has been continuously leased without interruption for more than 20 years since the date that the lease was reinstated and is therefore exempt as a subdivision lot (reference Section 10.25 Q,1,g,8 of the Commission's Land Use Districts and Standards).

Lot (Lot CL 29 ) that was created by lease in 2009 constitutes a single countable lot under subdivision law. In accordance with section 10.02 (197) of the Commission's Land Use Districts and Standards and Title 12 MRSA, §682 (2-A), a "Subdivision" is defined as a division of an existing parcel of land 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.

By application of the above referenced exemptions, and in consideration of the fact that only a single non-exempt lot (Lot CL 29) will have been created, the proposed sale of the thirty (30) proposed Cedar Lake lots will not create a subdivision as long as no further non-exempt lots are created prior to September 24, 2014.

Further, the proposed sale of the nine (9) Seboeis lots will not create a subdivision because the lots were initially leased prior to September 23, 1971 and, with the exception of lot SB1, have been continuously leased without interruption since that date. Lot SB1 is exempt as a subdivision lot because it has been continuously leased without interruption for more than 20 years since the date that the lease was reinstated.

### Proposed KFM Lots

Two lots (lots KFM 9 and 29) are proposed to be conveyed by KFM only to abutting property owners. In accordance with section 10.25,Q,1,g (3) of the Commission's Land Use Districts and Standards, a lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years.

One lot (Lot KFM 21) is currently used as a boat landing by camp owners. KFM proposes to transfer this lot to the newly developed lot owners' association to be used as a boat launch. The transfer of this lot would be considered a countable

lot under the Commission's rules relating to subdivisions. A subdivision would be created if KFM were to convey two (2) or more non-exempt lots within a 5 year period of the conveyance of lot KFM 21 (reference section 10.25,Q,1,g of the Commission's Land Use Districts and Standards).

**Filing Plats**

Please note that final plats showing the subject lots should be submitted to the Commission for signature and subsequent filing in the appropriate Registry of Deeds. We also suggest that this Advisory Ruling be recorded at the Registry. We will need to receive one mylar and three paper copies of all the final plats. All plats must be sealed and signed by the Licensed Surveyor who has prepared the plats.

Should you have any further questions, please contact Jean Flannery, Manager for Permitting & Compliance, in our Bangor office at (207) 941-4590.

Sincerely,

Nicholas D. Livesay, Executive Director  
Maine Land Use Planning Commission

xc: Geo File

STATE OF MAINE  
County of Kennebec, ss,

Date: 7/14/18

Personally appeared the above named Nicholas D. Livesay, in his capacity as Executive Director of the Maine Land Use Planning Commission, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of the Maine Land Use Planning Commission.

Before me,

Marylisa York, Notary Public  
My Commission expires September 11, 2018

**MARYLISA YORK**  
Notary Public • State of Maine  
My Commission Expires September 11, 2018