



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

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NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

June 10, 2014

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

Subject: ADVISORY RULING AR 14-6

Penobscot County (*T4 Indian Purchase 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 twenty eight (28) leased camp/cottage lots in T4 Indian Purchase Township, Penobscot County, abutting or near North Twin Lake and further described below. These twenty eight (28) 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, North Twin Lake 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 North Twin Lake and Wadleigh Pond and represent twenty eight (28) 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 T4 Indian Purchase 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 parcel of land from whence the twenty eight (28) lots were created (*Group 4.1 Lots*) is not contiguous with the remainder of Lot 1 on Plan 01 [reference Advisory Ruling AR 13-05] in that it is separated by North Twin Lake and South Twin Lake. Therefore this land area is considered to be a separate "existing parcel" of land.

Further, it is our understanding that the leases below represent only a portion of KTL's leases within the township of T4 Indian Purchase Township.

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.

The lots in question are listed below with applicable review findings:

ID	Lot #	Lease#	Acres	Former Lot #'s	INITIAL	LAPSE	REISSUE	REVIEW CRITERIA
NT	1	4461	1.1	A-446	7/1/1970	10/18/1971	8/26/1977	US, CL
NT	2	1873	1	A-461	6/28/1957			CL
NT	3	4737	1.3	B-2	8/18/1970	2/4/1975	8/26/1981	US, CL
NT	4	4667	0.6	B-3	7/1/1970			NL (size)
NT	5	4670	1.1	B-4	7/1/1970			CL
NT	6	4729	2	B-5 & B-6	8/18/1970			CL
NT	7	4853	1.1	B-7	9/18/1972			US, NL (water frontage)
NT	8	4680	0.9	B-8	7/20/1970			NL (size, water frontage)
NT	9	4713	0.8	B-9	8/12/197			NL (size)
NT	10	4784	1.3	B-10 & B-11	10/21/1970			CL
NT	11	4710	0.6	B-12	8/12/1970	11/3/1971	7/25/1975	US, NL (size, water frontage)
NT	12	4718	0.9	B-18	8/12/1972			US, NL (size, water frontage)
NT	13	4719	1	B-19	8/12/1972			US, CL
NT	14	4722	1.6	B-20 & B-21	8/12/1970			CL
NT	15	5194	3.6	B-22 - B-25	9/24/2009			CL
NT	16	4714	2.29	B-26 & B-27	8/12/1970			CL

ID	Lot #	Lease#	Acres	Former Lot #'s	INITIAL	LAPSE	REISSUE	REVIEW CRITERIA
NT	17	4717	0.8	B-28	8/15/1972			US, NL (size, water frontage)
NT	18	4724	0.8	B-29	8/12/1970			NL (size, water frontage)
NT	19	4716	1.7	B-30 & B-31	8/12/1970	3/6/1977	10/4/1979	US, CL
NT	20	4720	1.7	B-32 & B-33	1/31/1973			US, CL
NT	21	4752	1.3	B-34 & 1/2 of B-35	9/14/1970	6/18/1975	6/1/1979	US, CL
NT	22	4735	1.7	B-36 & 1/2 of B-35	8/18/1970			CL
NT	23	4861	1.3	B-37	8/3/1973			US, NL (water frontage)
NT	24	4758	1	B-38	9/16/1970			NL (water frontage)
NT	25	4771	0.7	B-39	9/29/1970			NL (size, water frontage)
NT	26	4797	1.1	B-47	11/23/1970			CL
NT	2479	2479	0.53	I-12	7/1/1957			NL (size)
WP	4590	4590	1.1	1	10/9/1969			CL

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 leased lots

Based upon the information and lease histories which you have submitted to us, it appears that sixteen (16) of the twenty eight (28) 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. Six (6) lots (lots NT 7, 12, 13, 17, 20, and 23) were created by lease between 1972 and 1973 and have also been continuously leased without interruption since that date. Five (5) lots (lots NT 1, 3, 11, 19, 21) were initially leased prior to September 23, 1971, but the leases were interrupted for more than 2 years since that date. These leases were reinstated between 1975 and 1981. One lot (lot NT 15) was created by lease in 2009.

The sixteen (16) 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.

The six (6) lots initially leased after September 23, 1971 (lots NT 7, 12, 13, 17, 20, and 23), that would have been considered subdivision lots at that time, have been continuously leased without interruption for more than 20 years and are therefore exempt as subdivision lots (reference Section 10.25 Q,1,g,8 of the Commission's Land Use Districts and Standards).

The five (5) lots (lots NT 1, 3, 11, 19, 21) that were initially leased prior to September 23, 1971, but had the leases interrupted for more than 2 years since that date have also been continuously leased without interruption for more than 20 years since the date that the leases were reinstated and are therefore exempt as subdivision lots (reference Section 10.25 Q,1,g,8 of the Commission's Land Use Districts and Standards).

The single lot (Lot NT 15) 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.

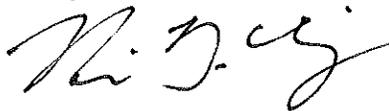
By application of the above referenced exemptions, and in consideration of the fact that only a single non-exempt lot (Lot NT 15) has been created, the proposed sale of the twenty eight (28) subject lots will not create a subdivision as long as no further non-exempt lots are created prior to September 24, 2014.

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: 60/10/14

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