



PAUL R. LEPAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

July 28, 2015

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

Subject: ADVISORY RULING AR 15-1 (Group 5.0 West; Millinocket Lake)

Penobscot County (T1 R8 WELS), Piscataquis County (T1 R9 WELS)

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. § 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.

Please note that this advisory ruling addresses the proposed sale of properties owned by Katahdin Timberlands, L.L.C. and Katahdin Forest Management, L.L.C. that abut the southwestern portion of Millinocket Lake and represents only a portion of proposed lot sales in T1 R8 WELS and T1 R9 WELS.

Background

It is our understanding that Katahdin Timberlands, L.L.C. (KTL) owns sixty seven (67) leased camp/cottage lots in T1 R8 WELS, Penobscot County and T1 R9 WELS, Piscataquis County, abutting the southwestern part of Millinocket Lake. These 67 lots, which consist of 8 island lots and 59 mainland lots, collectively are part of an approximately 187-acre area identified as part of Maine Revenue Service taxation Plan 01, Lot 1 in T1 R9 WELS and a 73.17 acre area identified as part of Maine Revenue Service taxation Plan 01, Lot 1 in T1 R8 WELS.

The 59 mainland lease lots fall into one of two general categories. The first category is pre-Commission lots; these are lots created by lease prior to the establishment of the Land Use Regulation Commission¹ on September 23, 1971 and continuously leased without a lapse in being leased exceeding two years. Fifty five (55) of KTL's lots fall into the pre-Commission category.

¹ The name of the Land Use Regulation Commission was subsequently changed to the Land Use Planning Commission.

The second category is post-Commission lots; this category includes lots initially created by lease after the creation of the Commission, or most recently created after September 23, 1971 following the lapse of a pre-Commission lease for more than two years. Four (4) of KTL's lots fall into the post-Commission category, two of the lots having been created by lease in 1981 (ML 24 and ML 49), and the other two lots in 1994 and 1998 respectively (ML 59 and ML 60).

The eight island lots owned by KTL are individual islands, each in its entirety leased as a single lot.²

KTL proposes to sell all 67 of its leased camp/cottage lots.

In addition, Katahdin Forest Management L.L.C. (KFM) is record owner of approximately 13,773 acres of land in T1 R9 WELS identified as part of Maine Revenue Service taxation Plan 01, Lot 1 in T1 R9 WELS and approximately 12,417 acres of land in T1 R8 WELS identified as part of Maine Revenue Service taxation Plan 01, Lot 1 in T1 R8 WELS, including land abutting Millinocket Lake. KFM proposes to sell twelve lots. Of these twelve lots, nine of them are islands (KFM 1 through KFM 9). Each island is an individual lot. Of the remaining three mainland lots (KFM 196, KFM 1053 and KFM 15), KFM 196 is proposed to be retained or sold only to an abutting land owner. KFM 1053 is proposed to be sold either to 1 or 2 abutting landowners or sold as an undevelopable lot for water access to a non-abutting landowner. KFM 15, which is 8.28 acres, may have portions sold to abutting landowners. The remainder, if any, plus the adjacent road will be transferred in fee to the new lot owners Association.

In sum, KTL and KFM have authorized for sale a total of 79 lots as described above. The above referenced lots, which are listed in the table below and are shown on a set of plans entitled *Final Survey Plan, Millinocket Lake (West) Lots*, represent a portion of KTL's and KFM's land holdings located around Millinocket Lake in T1 R8 WELS and T1 R9 WELS, and are 79 lots of an ongoing sale of nearly seven hundred (700) lots in several townships over the past and next few years.

Relevant Statutory and Regulatory Provisions

In accordance with section 10.02 (197) of the Commission's Land Use Districts and Standards and 12 M.R.S. § 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.

For the purposes of the definition of subdivision in 12 M.R.S. § 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.

For the purpose of counting lots under the Commission's definition of subdivision, the renewal of a lease within two years of its expiration shall not be counted as the creation of a lot. Section 10.25, Q, 1, e. Thus, lots continuously leased since before establishment of the Commission without a gap of more than 2 years between lease renewals are not counted as lots for subdivision purposes.

In accordance with Section 10.25, Q, 1, g (2) of the Commission's Land Use Districts and Standards,

² The KTL island lots are identified as ML 896, ML 1793, ML 2477, ML 2729, ML 2875, ML 1686, ML 2468, ML 1767.

Retained Lots, 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) below; 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.

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 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	Township	Initial Issuance	Lapse	Reissue	Review Findings
ML	1	2482	0.69	T1R8 WELS	12/4/1957			NL (size)
ML	2	1672	1.15	T1R8 WELS	12/4/1957			CL
ML	3	1842	3.28	T1R8 WELS	12/4/1957			CL
ML	4	4825	1.56	T1R8 WELS	4/20/1971			CL
ML	6	2332	0.68	T1R8 WELS	12/4/1957			NL (size, water frontage)
ML	7	2333	0.5	T1R8 WELS	12/4/1957			NL (size, water frontage)

ID	Lot#	Lease#	Acres	Township	Initial Issuance	Lapse	Reissue	Review Findings
ML	8	2341	0.44	T1R8 WELS	12/4/1957			NL (size, water frontage)
ML	9	4488	0.49	T1R8 WELS	4/22/1969			NL (size, water frontage)
ML	10	3906	1.13	T1R8 WELS	6/25/1965			NL (water frontage)
ML	11	2818	0.49	T1R8 WELS	9/17/1964			NL (size, water frontage)
ML	12	2817	1.28	T1R8 WELS	7/14/1958			CL
ML	13	1376	1.01	T1R8 WELS	12/4/1957			CL
ML	14	3976	1.07	T1R8 WELS	9/21/1965			NL (water frontage)
ML	15	1057	1.23	T1R8 WELS	12/7/1957			CL
ML	16	834	1.45	T1R8 WELS	12/4/1957			NL (water frontage)
ML	17	800	0.67	T1R8 WELS	12/4/1957			NL (size, water frontage)
ML	18	2143	0.93	T1R8 WELS	12/4/1957			CL
ML	19	3326	1.06	T1R8 WELS	7/6/1961			NL (water frontage)
ML	1889	1889	1.1	T1R8 WELS	12/4/1957			CL
ML	896	896	0.6	T1R8 WELS	8/3/1957			NL (size)
ML	1793	1793	2.1	T1R8 WELS	8/3/1957			CL
ML	2477	2477	1.5	T1R8 WELS	4/29/1969			CL
ML	2729	2729	5.9	T1R8 WELS	7/16/1957			CL
ML	2875	2875	0.5	T1R8 WELS	9/9/1958			NL (size)
KFM	5	4704	2.5	T1R8 WELS				CL
KFM	6		7.3	T1R8 WELS				CL
KFM	7		4.6	T1R8 WELS				CL
KFM	8		2.9	T1R8 WELS				CL
KFM	9		4.5	T1R8 WELS				CL
ML	20	2022	0.4	T1R9 WELS	8/5/1957			NL (size, water frontage)
ML	21	1776	0.32	T1R9 WELS	6/21/1957			NL (size, water frontage)
ML	22	749	0.41	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	23	433	0.38	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	24	4964	0.33	T1R9 WELS	6/1/1981			NL (size, water frontage)
ML	25	679	0.62	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	26	678	0.58	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	27	681	0.96	T1R9 WELS	8/2/1957			NL (water frontage)
ML	28	1363	0.77	T1R9 WELS	12/6/1941			NL (size, water frontage)
ML	29	2703	1.1	T1R9 WELS	6/1/1957			NL (water frontage)
ML	30	877	1.81	T1R9 WELS	8/2/1957			CL
ML	31	662	0.93	T1R9 WELS	8/2/1957			NL (water frontage)
ML	32	2909	0.46	T1R9 WELS	5/26/1959			NL (size, water frontage)
ML	33	2908	0.48	T1R9 WELS	5/26/1959			NL (size, water frontage)

ID	Lot#	Lease#	Acres	Township	Initial Issuance	Lapse	Reissue	Review Findings
ML	34	125	0.82	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	35	307	0.8	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	36	760	2.29	T1R9 WELS	8/2/1957			CL
ML	37	3346	0.45	T1R9 WELS	7/24/1961			NL (size, water frontage)
ML	38	4459	0.95	T1R9 WELS	10/29/1968			NL (water frontage)
ML	39	321	0.36	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	40	4575	0.63	T1R9 WELS	9/22/1969			NL (size)
ML	41	3988	0.73	T1R9 WELS	10/26/1965			NL (size, water frontage)
ML	42	4434	2.55	T1R9 WELS	9/9/1968			CL
ML	43	819	1.07	T1R9 WELS	8/2/1957			NL (water frontage)
ML	44	775	0.78	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	45	618	0.93	T1R9 WELS	8/2/1957			NL (water frontage)
ML	46	815	0.6	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	47	456	3.15	T1R9 WELS	8/2/1957			CL
ML	48	4873	5.5	T1R9 WELS	11/15/1961			CL
ML	49	4962	0.18	T1R9 WELS	2/8/1981			NL (size, road frontage)
ML	50	730	0.75	T1R9 WELS	8/2/1957			NL (size, water frontage, road frontage)
ML	51	1022	0.6	T1R9 WELS	8/3/1957			NL (size, water frontage, road frontage)
ML	52	1324	0.38	T1R9 WELS	8/3/1957			NL (size, water frontage, road frontage)
ML	53	727	0.31	T1R9 WELS	8/2/1957			NL (size, water frontage, road frontage)
ML	54	726	0.38	T1R9 WELS	8/2/1957			NL (size, water frontage, road frontage)
ML	55	725	0.54	T1R9 WELS	8/2/1957			NL (size, water frontage, road frontage)
ML	56	575	0.47	T1R9 WELS	8/2/1957			NL (size, water frontage, road frontage)
ML	57	567	0.61	T1R9 WELS	8/2/1957			NL (size, water frontage)
ML	58	2823	0.72	T1R9 WELS	7/21/1958			NL (size, water frontage)
ML	59	9115	33.5	T1R9 WELS	8/1/1994			CL
ML	60	5182	64	T1R9 WELS	8/3/1957	12/8/1984	9/1/1998	CL
ML	1687	1687	0.1	T1R9 WELS	8/3/1957			NL (size)
ML	1767	1767	0.3	T1R9 WELS	1/28/1957	9/30/2002		NL (size)
ML	2468	2468	3.1	T1R9 WELS	12/4/1957	12/31/1986	11/7/2000	CL ³
KFM	1	3086	0.5	T1R9 WELS				NL (size)

³ Island lot ML 2468 was addressed in Advisory Ruling 14-13, but is included in this table because it is shown also on the plats corresponding to this advisory ruling.

ID	Lot#	Lease#	Acres	Township	Initial Issuance	Lapse	Reissue	Review Findings
KFM	2		9.2	T1R9 WELS				CL
KFM	3		1.3	T1R9 WELS				CL
KFM	4		2.5	T1R9 WELS				CL
KFM	15		8.28	T1R9 WELS				CL
KFM	196	4063	0.26	T1R9 WELS				NL (size, water frontage)
KFM	1053	1053	0.5	T1R9 WELS	8/3/1957	12/8/1984		NL (size, water frontage)

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.

Analysis

Based upon the information and lease histories which you have submitted to us, it is noted that of the 67 KTL leased lots, eight are islands. These eight islands each are individual parcels and leased in their entirety. Section 10.25,Q,1,f. The sale of these islands in their entirety would not create a division or new lot for subdivision purposes.

Of KTL's 59 mainland lots, 55 are pre-Commission lots – lots created by lease before establishment of the Commission and continuously leased since then . These 55 lots are exempt as subdivision lots by virtue of having been created by lease prior to the effective date of the law. Section 10.25,Q,1,e.

KTL's four remaining mainland lots are post-Commission lots. This is a result of having been created in the first instance by a lease commenced after establishment of the Commission in 1971 or as the result of the lease of an earlier created lot having lapsed for more than two years and resuming the lease after establishment of the Commission. Any pre-Commission, lease-lot status is lost after a lapse of more than two years. (Section 10.25,Q,1,e). All four of these post-Commission lots have been continuously leased without interruption for 20 years or more and, therefore, are exempt as subdivision lots. (Section 10.25 Q,1,g,8).

KFM proposes to sell all nine island lots, each lot consisting of the entire island. The island lots are considered to be individual parcels and leased in their entirety. Pursuant to Section 10.25,Q,1,f., the sale of these islands in their entirety would not create a division or new lot for subdivision purposes.

KFM also proposes to sell three mainland lots or portions of mainland lots. Of the three mainland lots (KFM 196, KFM 1053 and KFM 15), KFM 196 is proposed to be retained or sold only to an abutting land owner, KFM 1053 will be sold either to 1 or 2 abutting landowners or sold as an undevelopable lot for water access to a non-abutting landowner. This latter option would create one new non-exempt lot. KFM 15, which is 8.28 acres, may have portions sold to abutting landowners. The remainder of the lot, if any, plus the adjacent road, is proposed to be transferred in fee to the new lot owners association. This conveyance would also have the effect of creating a new non-

exempt lot. If KFM 1053 is sold to a non-abutting landowner, then two non-exempt lots will have been created. In this case, to avoid creating a subdivision, KFM could not create any additional lots from this parent parcel in T1 R9 WELS for five years from the date of conveyance of the second lot created, and during that time period the parent parcel is used solely for forest or agricultural management activities or natural resource conservation purposes as per Section 10.25,Q,1,g (2) 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,


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

xc: Geo File

STATE OF MAINE
County of Kennebec, ss,

Date: 7/28/15

Personally appeared the above named William Galbraith, in his capacity as Supervisor for Permitting and Compliance 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