



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

PAUL R. LePAGE
GOVERNOR

February 24, 2016

Attn: John Kelley
Prentiss & Carlisle Management Co, Inc.
107 Court Street
PO Box 637
Bangor, ME 04402-0637

Subject: ADVISORY RULING AR 16-01; Upper Jo Mary Lake

Dear Mr. Kelly,

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 land use rules. 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 upon the facts as they have been presented to us, supplemented by information in our files.

It is our understanding that you would like further information about: 1) the development potential along the shoreline of Upper Jo-Mary Lake; and 2) whether the existing Upper Jo-Mary Campground in TA, R10 Twp and TB, R10 Twp could be subdivided or put to some other use.

Background Information

Materials included with your application for an advisory ruling describe Upper Jo-Mary Lake and indicate that there are seven existing residential leases and one campground located along the shoreline within the Accessible Lake Protection Subdistrict (P-AL). Upper Jo-Mary Lake is located entirely within TA, R10 Twp; TB, R10 Twp; and Veazie Gore Twp and the length of the shoreline is 61,564 feet or approximately 11.65 miles.

Following is a summary of information for existing leases around Upper Jo Mary Lake:

- TA, R10 Twp:
 - Lease 12710-1004 is a 1 acre lot for a campsite with approximately 200 feet of shore frontage located on the upper east side of the Lake and currently leased to Jean Megquier, first leased in 1973;
 - Lease 12710, Lot RC-13 is 2 acres with approximately 250 feet of shore frontage located on the western shore of the Lake and currently leased to Raymond Ormsby, first leased in 1989;
 - Lease 12710, Lot RC-14 is 2 acres with approximately 250 feet of shore frontage located on the westerly shore of the lake and currently leased to Thomas Nelson, first leased in 1991;

- TB, R10 Twp:

- Lease 12606-1002 includes a .92 acre lot with buildings thereon and approximately 200 feet of shore frontage located at the head of the lake and currently leased to Linda Harris, first leased in 1983.
- Veazie Gore Twp:
 - Lease 21602, lot RC15 is 1.38 acres with approximately 275 feet of shore frontage located on the eastern shore of the lake and currently leased to Silas Ames, first leased in 1992;
 - Lease 21602, Lot RC16 is 1.38 acres with approximately 200 feet of shore frontage located on the eastern shore of the lake and currently leased to Barbara Rozelle, first leased in 1990;
 - Lease 21602, Lot RC28 is 1.38 acres with approximately 200 feet of shore frontage and currently leased to Dale Leavitt, first leased in 1995.
- Upper Jo-Mary Campground:
 - Located in TA, R10 Twp and TB, R10 Twp, the campground is on a 36 acre lot with approximately 2,640 feet of shore frontage, is located at the head of the lake, first leased in 1957;
 - The campground includes 70 camp sites, primary buildings include a combined office/store/shower house, and a caretaker's cabin with attached storage and open carport; and several accessory buildings such as a tool shed and bathrooms, and a dumping station.

Allocation of Development around Upper Jo-Mary Lake

In your advisory ruling application materials you asked: "Are additional development units allowed on Upper Jo-Mary Lake? If so, how many additional development units would be allowed?"

Relevant Subdistricts and Standards

The shorefront of Upper Jo-Mary Lake is within the Accessible Lake Protection (P-AL) subdistrict which extends 500 feet from the normal high water mark. The purpose of the P-AL subdistrict is to "maintain and protect the existing natural values of the accessible, undeveloped, high value lakes within the Commission's jurisdiction", and "...to restrict development" (Chapter 10, Section 10.23,A,1). Within the P-AL, single family dwellings are allowed with a permit "provided that such dwelling units are limited to an average density per landownership of no more than one dwelling unit per shore mile." Similarly, levels A and B recreational lodging facilities are allowed by special exception permit in the P-AL subdistrict "provided that there shall be no more than one development unit per shore mile." (Chapter 10, Section 10.23,A,3,c,(11)). The Commission rules define a development unit to be: "A single family dwelling unit or non-residential use containing a total of no more than 8,000 square feet of gross floor space for all principal buildings concerned." (Chapter 10, Section 10.02, 49).

Response

Based on the information you have provided we assume that all 11.65 miles of shorefront along Upper Jo Mary Lake are in one landownership that would be allocated all 11 potential development units. It appears that there are eight existing development units around Upper Jo-Mary Lake – seven single family dwellings and the campground which counts as one development unit (so long as the gross floor area for all principal buildings in the campground does not exceed 8,000 square feet). Subtracting the eight existing

development units along Upper Jo-Mary Lake from the total allocation of 11 development units leaves a remainder of three potential development units within the P-AL around the lake. Those development units could take the form of single family dwellings or additional recreational lodging.

The three potential development units allocated to your client's holdings around Upper Jo-Mary Lake may be applied anywhere, provided that creation of new lots, whether by lease or by transfer of ownership, does not create a Subdivision. Subdivision is defined in 12 M.R.S. § 682(2-A) as "a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period" and also includes "the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period." Subdivision is not permitted within the P-AL and therefore divisions of existing parcels¹, or placement of dwelling units on existing parcels, would not be permissible if they create a subdivision.

Upper Jo-Mary Campground

In your advisory ruling application materials you asked: "Could the Jo-Mary Campground be subdivided or put to some other use?"

Relevant Subdistricts and Standards

The Upper Jo-Mary Campground appears to be a recreational lodging facility, which is defined as "Site improvements, a building or group of buildings or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for commercial purposes...term includes but is not limited to, commercial sporting camps, youth or group camps, back-country huts, rental cabins, outpost cabins, campgrounds, or any combination of these types of uses..." (Chapter 10, Section 10.02,173).

The P-AL Subdistrict allows recreational lodging facilities up to Level B by special exception, provided "(a) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land use Plan; and further provided that there shall be no more than one development unit per shore mile except as provided in Section 10.23,A,3,c, such distance measured by following the shoreline of the lake, including all shoreline irregularities, on the Commission's Land use Guidance Map" (Chapter 10, Section 10.23,A,3,d).

Recreational lodging facilities are divided into five levels (A-E) according to certain factors present at the site (Chapter 10, Section 10.27,Q,1,Table A). Level B recreational lodging facilities can have onsite recreation activities, features, and/or services that exhibit low noise, odor and which are mostly screened; utilities; up to 8,000 square feet of floor area for principle buildings; up to 36,000 square feet of cleared area within 250 feet of the lake; up to 100 square feet of retail space; can have dining amenities for guests, fuel sales for guests, provide recreational activities, features, or services for guests; and an overnight capacity of up to 100 people at one time (Chapter 10, Section 10.27,Q,1,TableA). Facilities established prior

¹ For the purposes of the definition of subdivision, the Commission considers existing parcels to "...include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership" (Chapter 10, Section 10.25,Q,1,f).

to July 1, 2013, when the Commission's current recreational lodging regulations became effective, can be categorized without regard to footprint of clearing (Chapter 10, Section 10.27,Q,1).

Response

Assuming that Upper Jo Mary Campground has been in continuous operation and use of the facility has not been discontinued or abandoned for a period exceeding two years, it would be considered a legally existing use. However, as a result of the recent change in rules pertaining to recreational lodging facilities, the campground may be a non-conforming use. Recreational Lodging facilities up to a Level B are allowed in the P-AL subdistrict by special exception permit, but information contained in past permits for the campground indicate that it would likely exceed a Level B facility due to overnight occupancy capacity (See, Chapter 10, Section 10.27,Q,Table A). We would need more information about operations of the campground to be able to accurately categorize the facility.

Assuming that the facility is a legally existing use that was made nonconforming by the recent recreational lodging rule changes, Commission policy is to allow facilities to continue to operate as legally existing nonconforming uses and permit a one-time expansion so long as:

- The change or expansion cannot create conditions that otherwise would change the category of the facility;
- Structures within the facility may not be reconstructed unless and until the facility becomes a conforming use or the facility qualifies under the Commission's standards for reconstruction of nonconforming structures (Chapter 10, Section 10.11,c,2,e); and
- The expansion does not result in new services (e.g., if no restaurant then allowance may not include a restaurant).

If the facility was made non-conforming by the recent change in rules, the Commission would assist the landowner in rezoning the land around the facility to bring it into conformance if the landowner so chooses.

If the land around Upper Jo-Mary Campground were to be re-zoned, it could potentially support a larger recreational lodging facility; however, because Upper Jo-Mary Lake is a Management Class 2 lake, such a facility would still be limited by the density limitations in the P-AL. For every development unit (equivalent to 8,000 square feet of gross floor area for principal buildings) allocated to a recreational lodging facility, there would need to be 1 corresponding mile of undeveloped shoreline on Upper Jo-Mary Lake. So for example, if the landowner wanted to rezone to facilitate development of a Level C Recreational Lodging facility, and then developed a facility which has 12,000 square feet of gross floor area for principal buildings (the maximum allowed for a level C facility), the recreational lodging facility would account for two development units of the total potential for the lake.

Upper Jo-Mary campground could also be converted to residential use so long as the additional dwelling units do not exceed the total development potential for Upper Jo Mary Lake, the development does not create a subdivision (which is not allowed in the P-AL Subdistrict), and the conversion meets all other applicable regulations including the provisions of Chapter 10, Section 10.27,Q,8 which sets out requirements for converting recreational lodging facilities to residential use.

If the campground was no longer used as a "non-residential" facility, the development unit attributable to that use would be available for further residential development, including potential conversion of an

existing campground structure to a single family dwelling unit, provided dimensional requirements (Chapter 10, Section 10.26) and other applicable regulatory provisions are met. Any such residential development could be concentrated on the current site of the campground so long as development within the P-AL on the lake does not exceed a total of 11 development units and does not constitute a subdivision.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Hugh Coxé". The signature is written in a cursive style with a large initial "H" and a stylized "Coxé".

Hugh Coxé
Chief Planner, Maine Land Use Planning Commission