



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

PAUL R. LEPAGE
GOVERNOR

March 1, 2016

Stetson Land & Trading Co., LLC.
Attn: Whitney Schmidt
PO Box 1428
Tampa, FL 33601

Subject: ADVISORY RULING AR 16-4, Plan 01, Lot 54 on Map PE035, Argyle Township, Penobscot County

Dear Mr. Schmidt:

Thank you for the information provided in your request for an Advisory Ruling. It is our understanding that you were the highest bidder pursuant to the State of Maine's annual sale of tax acquired property for an undeveloped eight (8) acre parcel located in Argyle Township. The subject property is further described as Lot 54, Plan 01 on Map PE035. You have asked our opinion as to whether the subject lot can be developed for single-family residential use. 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 these matters. Of course, 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 Penobscot County Registry of Deeds and the Maine Revenue Service.

Background Information

According to the information you have provided, Michael Hoff and Brian Hoff were the owners of the subject property prior to being tax acquired by the State of Maine. The parcel is depicted as Plan 01, Lot 54 on the Maine Revenue Service Tax Map PE035 and is listed as a vacant lot on the Maine Revenue Service Property Record Card. The subject parcel is approximately 8 acres in size and has approximately 390 feet of road frontage on the east side of Route 116 and approximately 425 feet of shoreline frontage on the west shore of the Penobscot River as measured using ArcGis 10.1. The parcel is designated as having the following zoning districts: (M-GN) General Management Subdistrict, (P-WL1 & PWL2) Wetland Protection Subdistricts, (P-SL1) Shoreland Protection Subdistrict, and (P-FP) Flood Prone Area Protection Subdistrict of the Commission's Land Use Districts and Standards.

Based upon our review of the Hoff deed provided, records at the Penobscot County Registry of Deeds, and historical tax listings, it appears that Michael Hoff and Brian Hoff acquired Lot 52, 53 and 54 (also known as part lot 49 river lot 11) as recorded in Book 2338, Page 17 in the Registry of Deeds on January 29, 1973, totaling thirty-six (36) acres more or less. Review of the Maine Revenue Service Property Tax Card reveals Lot 52 and Lot 53 are contiguous lots located on the west side of Route 116 totaling 28 acres in size and Lot 54 is located on the east side of Route 116 and is 8 acres in size. Lot 54 is separated from Lot 52 and Lot 53 by Route 116 (the Edinburg Road) and, therefore, would be considered a separate parcel. The deed history for Lots 52, 53 & 54, further described as the south half of the north half of Lot 11 of River Range lots as designated on

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the plan of John Neal, can be traced back to the 1800's being the same premises conveyed to John W. Foster by Eliza A. Burr by deed dated October 24, 1874 and by John W. Foster to Etta C. Foster by warranty deed dated September 26, 1885 and recorded in the Penobscot Registry of Deeds, Volume 664, Page 79.

Based upon review of the property maps prepared by James W. Sewall Company for the Bureau of Taxation, State of Maine, entitled "Property Plan of Argyle Township" dated March 15, 1966, and further revised in 2001, there appears to be a 50-foot wide U.S. Government Pipeline easement running through the subject property, Lot 54, near the western property boundary line and parallel with Route 116 (Edinburg Road). No reference was made to the pipeline easement in the Hoff deed to the subject property (Book 2338, Page 17), nor in the prior owners' deeds referenced (Book 1907, Page 373 and Book 2177, Page 471), and no further information was provided regarding the easement. An attorney should be consulted regarding the pipeline easement to determine the exact location and the specific language contained within the easement, which could affect your ability to develop within or over the easement.

Relevant Standards

- Section 10.22, A of the Commission's standards describes the (M-GN) General Management Subdistrict and lists the allowed uses within the (M-GN) General Management Subdistrict (a copy of this section is enclosed for your reference). This section lists uses that are allowed without a permit, allowed without a permit subject to standards, allowed with a permit, allowed with a permit by special exception, and uses regulated by the Maine Forest Service. Uses that are not specifically listed under Section 10.22,A,3 are prohibited within the (M-GN) General Management Subdistrict under Section 10.22,A,3,f. Under Section 10.22,A,3,c (14), single and two-family dwellings are allowed uses within the (M-GN) General Management Subdistrict upon issuance of a permit from the Commission.
- Under the provisions of Section 10.02,(55) of the Commission's Land Use Districts and Standards, a dwelling unit is defined as: "A structure or any part thereof that is intended for use or is used for human habitation, consisting of a room or group of rooms designed and equipped for use primarily as living quarters, including any minor home occupations, for one family. Accessory structures intended for human habitation that have plumbing are considered separate dwelling units. Dwelling units do not include buildings or parts of buildings used as a hotel, motel, commercial sporting camp, outpost cabin, or other similar facility which is rented or leased on a relatively short term basis. Staff housing in such facilities is not considered to be a dwelling unit. However, the term shall include accommodations utilized by guests for transient occupancy that qualifies as a home occupation.
- Under the provisions of Section 10.26, A of the Commission's standards, the minimum lot size for residential uses is 40,000 square feet per dwelling unit or residential campsite except where each dwelling unit is to use a common or community sewer and not on-site subsurface waste water disposal, the minimum lot size shall be 20,000 square feet per dwelling unit.
- Under provisions of Section 10.26,B of the Commission's standards, the minimum required shoreline frontage for residential uses for lots fronting on a flowing water draining 50 square miles or more shall be 200 feet per dwelling unit.
- Under provisions of Section 10.26,C of the Commission's standards, the minimum required road frontage for residential uses is 100 feet per dwelling unit.
- Under provisions of Section 10.26,D of the Commission's standards, the minimum required setbacks for residential structures are: 100 feet from the nearest shoreline of a flowing water draining 50 square miles

or more, 75 feet from the upland edge of wetlands designated as P-WL1 subdistricts, 50 feet from the traveled portion of Edinburg Road (Rte. 116), and 15 feet from side and rear property lines. These setbacks also apply to all parking areas associated with single-family residential uses. The minimum setbacks for multi-family dwellings and commercial, industrial, and other nonresidential principal and accessory structures, other than those described in Section 10.26,D,1 and 3 and except as provided in Sections 10.26,G and 10.27,Q are: 150 feet from the nearest shoreline of a flowing water draining 50 square miles or more, 100 feet from the upland edge of wetlands designated as P-WL1 subdistricts, 75 feet from the traveled portion of Edinburg Road (Rte. 116), and 25 feet from side and rear property lines.

- Section 10.23,N of the Commission's standards describes the (P-WL) Wetland Protection Subdistrict and lists the allowed uses within the (P-WL) Wetland Protection Subdistrict (a copy of this section is enclosed for your reference). This section lists uses that are allowed without a permit, allowed without a permit subject to standards, allowed with a permit, allowed with a permit by special exception, and uses regulated by the Maine Forest Service. Uses that are not specifically listed under Section 10.22,A,3 are prohibited within the (P-WL) Wetland Protection Subdistrict under Section 10.23,N,3,f. Residential, single and two-family dwellings are not specifically listed under Section 10.22, A,3 and are, therefore, prohibited within the (P-WL) Wetland Protection Subdistrict.
- Section 10.23,C and Section 10.23,L, of the Commission's standards describe the (P-FP) Flood Prone Area Subdistrict and (P-SL) Wetland Protection Subdistrict, respectively, and lists the allowed uses within the (P-WL) Wetland Protection Subdistrict and (P-SL) Shoreland Protection Subdistrict. Under Section 10.23,C,3,d (4), single and two-family dwellings are uses allowed within the (P-FP) Flood Prone Area Subdistrict as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan. Under Section 10.23,C,3,c(14), single family dwellings are allowed uses allowed within the (P-SL) Shoreland Protection Subdistrict.
- Under the provisions of Section 10.06,C of the Commission's Land Use Districts and Standards, where two or more protection subdistricts apply to a single land area, the combination of the more protective standards for each subdistrict shall apply. While the (P-FP) Flood Prone Protection Subdistrict and (P-SL) Wetland Protection Subdistrict apply to some of the same areas as the (P-WL) Wetland Protection Subdistrict, the (P-WL) Wetland Protection Subdistrict is the more protective standard for residential, single and two-family dwellings, which are prohibited within the (P-WL) Wetland Protection Subdistrict, and therefore, those standards would apply.
- Under the provisions of Section 10.25,I of the Commission's Land Use Districts and Standards, no permit will be issued for a project with subsurface waste water disposal unless an acceptable plan to construct the absorption area is prepared. Where waste water is to be disposed on-site by a subsurface waste water system, the system shall be designed by a licensed site evaluator or a Maine Licensed Professional Engineer, in accordance with the Subsurface Waste Water Disposal Rules.

Interpretation

Based upon the information you have provided, it appears that the subject property, Plan 01, Lot 54, on Map PE035, is an eight (8) acre parcel created prior to the inception of the Commission in 1971 and has existed in its current configuration more than 20 years. The subject property, Lot 54, meets the Commission's current minimum dimensional requirements for lot size, shoreline frontage, and road frontage requirements for the proposed residential single-family use and is currently undeveloped.

Notwithstanding the U.S. Government 50-foot pipeline easement, a residential single-family dwelling may be allowed with a permit within the (M-GN) General Management Subdistrict under the provisions of Section 10.22, A provided that all applicable standards for residential structures are met. The applicable standards include, but are not limited to, the minimum required waterbody, wetland, road, and property line setbacks for residential structures, and an approved subsurface wastewater disposal plan. This Advisory Ruling does not certify whether the subject property has adequate soils to support a subsurface wastewater disposal system, that would be determined by a site-specific soil survey prepared by a licensed site evaluator or a Maine Licensed Professional Engineer in accordance with the Subsurface Waste Water Disposal Rules.

A residential dwelling within the (P-WL) Wetland Protection Subdistricts, (P-SL1) Shoreland Protection Subdistrict, and (P-FP) Flood Prone Area Subdistrict on the subject property would be prohibited due to the more protective standards within the (P-WL) Wetland Protection Subdistrict for the proposed use.

Please be aware that any proposed development activities other than those which you have described within your request may or may not require prior Commission review, 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 Debra Kaczowski by email at debra.kaczowski@maine.gov or by phone at (207) 731-4398.

Sincerely,



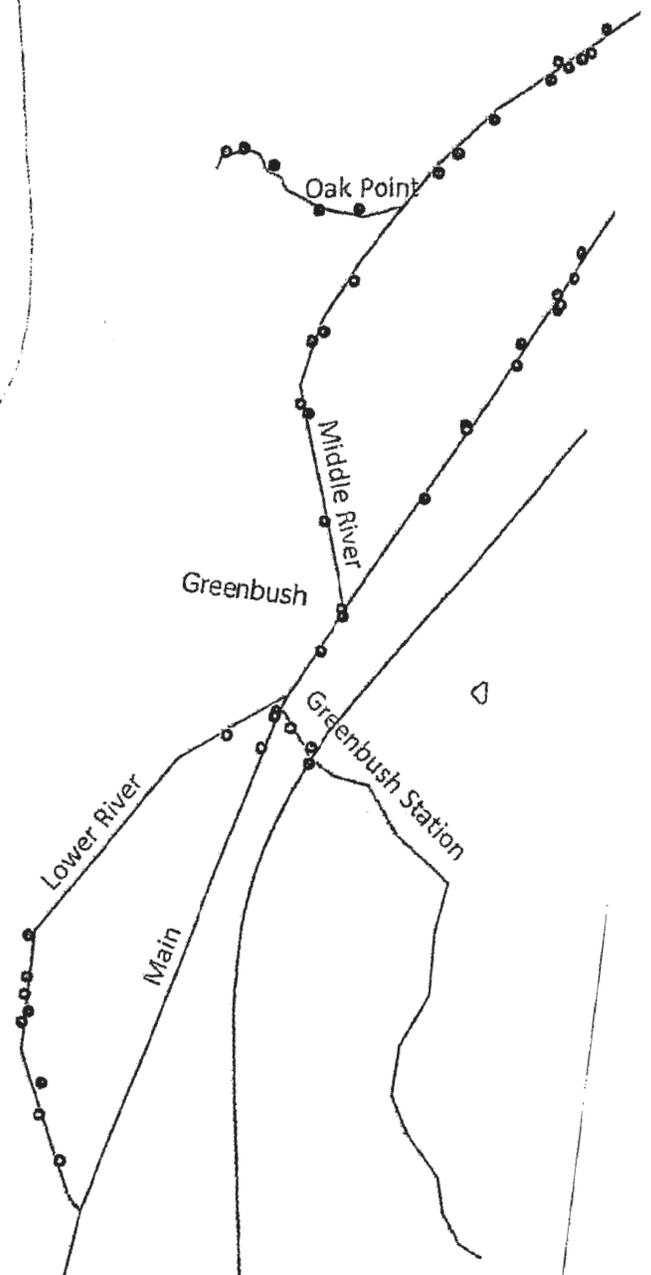
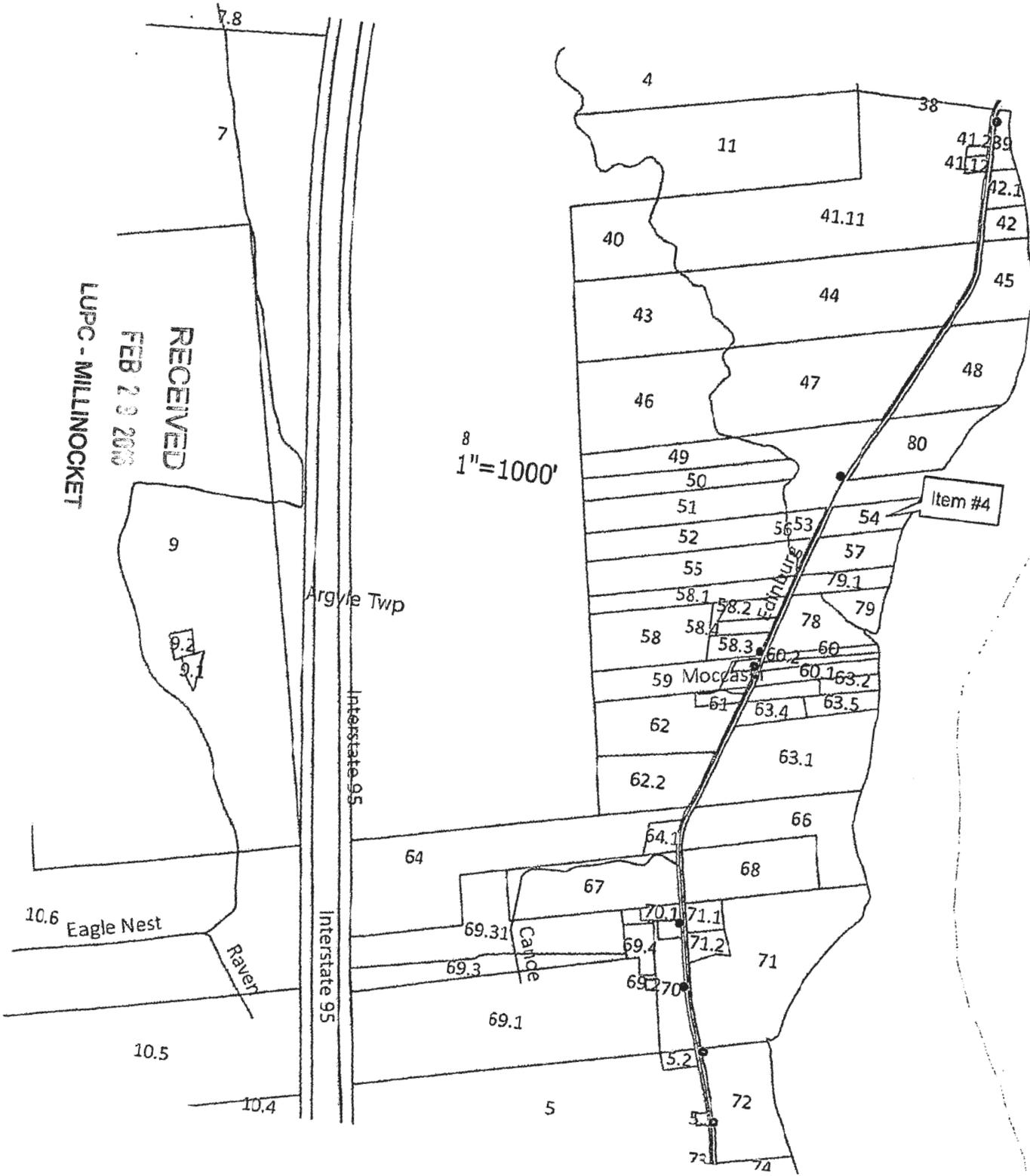
Jean A. Flannery
Permitting and Compliance Division Manager

DK/

Enclosures: LUPC Zoning & Parcel Viewer, Plan 01, Lot 54 on Map PE035
Section 10.22, A, (M-GN) General Management Subdistrict
Section 10.23,N, (P-WL) Wetland Protection Subdistrict

xc: AR 16-4 File

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10.22 MANAGEMENT SUBDISTRICTS

Pursuant to the Commission's Comprehensive Land Use Plan, the following management subdistricts are established:

A. GENERAL MANAGEMENT SUBDISTRICT (M-GN)

1. Purpose

The purpose of the M-GN subdistrict is to permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required.

2. Description

These are areas which are appropriate for forest or agricultural management activities and that do not require the special protection afforded by the protection subdistricts or the M-NC or M-HP subdistricts. Also included within M-GN subdistricts shall be areas which do not qualify for inclusion in any other subdistrict.

3. Land Uses

a. Uses Allowed Without a Permit

The following uses shall be allowed without a permit from the Commission within M-GN subdistricts:

- (1) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (2) Forest management activities, except for timber harvesting¹;
- (3) Land application of septage, sludge and other residuals, and related storage and composting activities in compliance with regulations promulgated by the Maine Department of Environmental Protection under 38 M.R.S.A. §13: Maine Hazardous Waste, Septage and Solid Waste Management Act;
- (4) Motorized vehicular traffic on roads and trails, and snowmobiling;
- (5) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
- (6) Surveying and other resource analysis;
- (7) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies; and
- (8) Wildlife and fishery management practices.

¹ Explanatory note: Timber harvesting is not prohibited in this subdistrict, but instead is regulated by the Maine Forest Service. (See P.L. 2011, ch. 599.) Refer to subsection "e. Uses Regulated by the Maine Forest Service."

b. Uses Allowed Without a Permit Subject to Standards

The following uses shall be allowed without a permit from the Commission within M-GN subdistricts subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Accessory structures: New or expanded structures accessory to any legally existing principal structures and uses, provided that the total square footage of the footprint of all new or expanded accessory structures built on a lot within a two (2) year period is not more than 750 square feet and all other requirements and standards of Section 10.27,P are met;
- (2) Agricultural management activities, including cranberry cultivation, the construction, alteration or maintenance of farm or livestock ponds which are not fed or drained by a flowing water, and the operation of machinery and the erection of buildings including buildings to store equipment and materials for maintaining roads and other structures used primarily for agricultural management activities;
- (3) Campsites;
- (4) Checkpoint buildings;
- (5) Constructed ponds: Creation, alteration or maintenance of constructed ponds, other than those described in Section 10.22,A,3,b,(1) above, less than 1 acre in size which are not fed or drained by flowing waters, in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (6) Driveways associated with residential uses;
- (7) Filling and grading;
- (8) Forest management activities, except for timber harvesting², involving the operation of machinery and the erection of buildings including buildings to store equipment and materials for maintaining roads and other structures used primarily for forest management activities;
- (9) Hand-carry launches: Parking areas, roads, signs and similar facilities associated with private and commercial hand-carry launches;
- (10) Home occupations: Minor home occupations;
- (11) Mineral exploration activities: Level A mineral exploration activities, including associated access ways;
- (12) Mineral extraction operations, less than 5 acres in size, except for gravel extraction less than 5 acres in size;
- (13) Road projects: Level A and B road projects;
- (14) Service drops;
- (15) Signs;
- (16) Trailered ramps: Parking areas, roads, signs and similar facilities associated with public trailered ramps; and
- (17) Utility services: Buildings or structures necessary for the furnishing of public utility services, provided they contain not more than 500 square feet of floor area, are less than 20 feet in height, and are not supplied with water.

²Explanatory note: Timber harvesting is not prohibited in this subdistrict, but instead is regulated by the Maine Forest Service. (See P.L. 2011, ch. 599.) Refer to subsection “c. Uses Regulated by the Maine Forest Service.”

c. Uses Requiring a Permit

The following uses may be allowed within M-GN subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Campsites, Residential;
- (2) Constructed ponds: Creation, alteration or maintenance of constructed ponds, other than those described in Section 10.22,A,3,b, above, which are 1 acre or more in size, or such ponds less than 1 acre which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (3) Draining, dredging, and alteration of the water table or water level for other than mineral extraction;
- (4) Driveways associated with non-residential uses; driveways associated with residential uses which are not in conformance with the standards of Section 10.27,H;
- (5) Family burying grounds of not more than ¼ acre, in accordance with 13 M.R.S.A. §1142;
- (6) Filling and grading which is not in conformance with the standards of Section 10.27,F;
- (7) Home occupations: Major home occupations, **except in the townships or plantations listed in Section 10.22,A,3,d;**
- (8) Maple sugar processing operations;
- (9) Mineral exploration activities: Level A mineral exploration activities, including associated access ways, which are not in conformance with the standards of Section 10.27,C; and Level B mineral exploration activities;
- (10) Mineral extraction operations, except for gravel extraction less than 5 acres in size,
 - (a) affecting an area less than 5 acres in size and which are not in conformance with the standards of Section 10.27,C;
 - (b) affecting an area between 5 and 30 acres provided the unreclaimed area is less than 15 acres; and
 - (c) structures essential to the extraction activity having a total gross floor area of no more than 2,000 square feet;
- (11) Peat extraction affecting an area less than 30 acres in size;
- (12) Portable mineral processing equipment;
- (13) Recreational lodging facilities:
 - (a) Level A;
 - (b) Level B;
 - (c) Level C;
 - (d) Level D (inside the geographic allowance area); and
 - (e) Level C facilities, and Level D facilities (inside the geographic allowance area), that are commercial sporting camps legally existing as of August 5, 2013 may provide fuel and dining to the public, subject to the fuel dispensing provisions for public fuel sales, provided a permit is issued for such use within 3 years of August 5, 2013;
- (14) Residential: Single and two-family dwellings;
- (15) Road projects: Level C road projects;
- (16) Sawmills and chipping mills on sites of less than 5 acres;
- (17) Signs which are not in conformance with the standards of Section 10.27,J;
- (18) Solid waste disposal facilities affecting an area less than 2 acres in size;
- (19) Structures: Non-commercial structures utilized for educational, scientific, or nature observation purposes; structures devoted to composting of sludge, septage or other

residuals affecting an area less than 5 acres in size; and structures devoted to the storage of sand or salt;

- (20) Subdivisions: Level 2 subdivisions;
- (21) Trailered ramps: Parking areas, roads, signs and similar facilities associated with commercial and private trailered ramps and such facilities addressed in Section 10.22,A,3,b which are not in conformance with the standards of Section 10.27,L;
- (22) Truck and equipment storage;
- (23) Utility facilities, excluding service drops; and wire and pipe line extensions which do not meet the definition of service drops;
- (24) Water impoundments;
- (25) Wind projects: Community-based offshore wind energy projects, as defined in Title 12 M.R.S.A., Section 682, Subsection 19; offshore wind power projects, as defined in Title 38 M.R.S.A., Section 480-B, Subsection 6A, and wind energy development in accordance with Title 35-A, M.R.S.A., Chapter 34-A in areas identified in Appendix F herein;
- (26) Other structures, uses, or services that are essential to the uses listed in Section 10.22,A,3,a through c; and
- (27) Other structures, uses, or services which the Commission determines are consistent with the purposes of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources or uses they protect, and are of similar type, scale and intensity as other allowed uses.

d. Special Exceptions

The following uses may be allowed within the M-GN subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that there is no alternative site in a development subdistrict which is both suitable to the proposed use and reasonably available to the applicant:

- (1) Home occupations: Major home occupations in the following plantations:
 - Dallas Plantation,
 - Rangeley Plantation, and
 - Sandy River Plantation.

The following uses may be allowed as special exceptions provided the applicant also shows by substantial evidence that such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

- (2) Maple Sugar Processing Subdivisions: Subdivisions containing lots created by lease for the purpose of establishing and operating commercial maple sugar processing operations provided that:
 - The maximum number of leased lots shall be no more than one (1) per every 300 acres of the lot or parcel being subdivided³;
 - The maximum size of each leased lot shall be no more than 4 acres;
 - Any two leased lots in a maple sugar subdivision may be located less than 1,000 feet from each other; these lots will be considered a set of lots for the purpose of determining leased lot separation;

³ Calculated by dividing the total acreage of the lot or parcel being subdivided by 300 and rounding down to the nearest whole number.

- Each set of leased lots must be separated from any other leased lot or set of leased lots in the subdivision by a minimum of 1,000 feet, measured horizontally from the closest point between lots or sets of leased lots; and

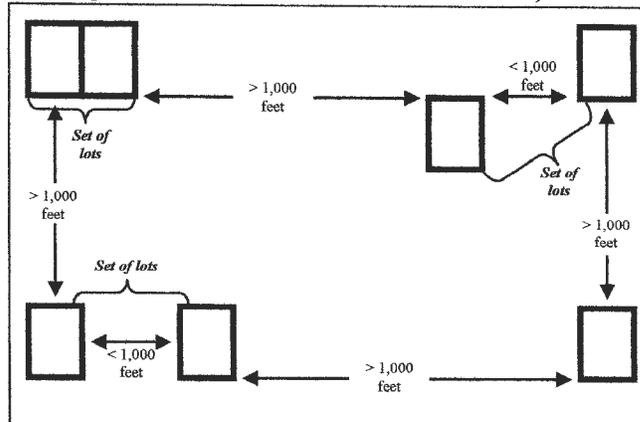


Figure 10.22,A-1. Leased lots in maple sugar subdivisions.

- Fee ownership in each of the leased lots shall only be transferred as part of a sale of the entire parcel originally so subdivided, or with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds.

The following uses may be allowed as special exceptions, either singly or in combination, provided the applicant shows by substantial evidence, that (a) the use can be buffered from those other uses within the subdistrict with which it is incompatible; (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan; (c) that there is sufficient infrastructure to accommodate the additional traffic and activity generated by the facility; and (d) that surrounding resources and uses that may be sensitive to such increased traffic and activity are adequately protected:

- (3) Recreational lodging facilities:
 - (a) Level C (occupancy may exceed the standard in Section 10.27,Q,1, Table A up to the Expanded Access occupancy limit, provided that the majority of occupancy is accommodated at campsites);
 - (b) Level C – Expanded Access (inside the geographic allowance area); and
 - (c) Level D – Expanded Access (inside the geographic allowance area).

e. Uses Regulated by the Maine Forest Service

Pursuant to Statute, the following uses are not regulated by the Commission within M-GN subdistricts but are regulated by the Maine Forest Service.

- (1) Gravel extraction less than 5 acres in size;
- (2) Land management roads; and
- (3) Timber harvesting.

f. Prohibited Uses

All uses not expressly allowed, with or without a permit or by special exception, shall be prohibited in M-GN subdistricts.

N. WETLAND PROTECTION SUBDISTRICT (P-WL)

1. Purpose

The purpose of the P-WL subdistrict is to conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform.

Preserving wetlands will promote the public health and safety of persons and protect property against the hazards of flooding and drought by holding back water during floods and retaining water during dry periods. Wetlands also maintain water quality for drinking, store nutrients from upland run-off in plant tissue, serve as settling basins for silt and sediment from upland erosion, stabilize water supply by maintaining the groundwater table and groundwater recharge and discharge areas, and provide plant, fish and wildlife habitat. Wetlands function as integral and irreplaceable parts of a larger natural system, influencing our climate, economy, environment, and natural heritage.

Insofar as this protection subdistrict also includes the area enclosed by the normal high water mark of surface water bodies within the Commission's jurisdiction, the purpose of this subdistrict shall also be to help insure compatible surface water uses on those water bodies where there is the potential for conflict with other uses and values of such water bodies.

2. Description

- a. Water bodies and areas meeting the definition of coastal or freshwater wetlands shall be included in P-WL subdistricts as described below:
 - (1) **P-WL1:** Wetlands of special significance:
 - (a) Areas enclosed by the normal high water mark of flowing waters and bodies of standing water, except for constructed ponds less than 10 acres in size which are not fed or drained by flowing waters;
 - (b) Coastal wetlands, together with areas below the normal high water mark extending seaward to the limits of the State's jurisdiction; or
 - (c) Freshwater wetlands, as follows:
 - (i) Within 250' of the normal high water mark of a coastal wetland or any body of standing water greater than 10 acres;
 - (ii) Containing at least 20,000 square feet in total of the following: aquatic vegetation, emergent marsh vegetation, or open water, unless the wetlands are the result of constructed ponds less than 10 acres in size which are not fed or drained by flowing waters;
 - (iii) That are inundated with floodwater during a 100 year flood event;
 - (iv) Containing significant wildlife habitat;
 - (v) Consisting of, or containing, peatlands, except that the Commission may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance;
 - (vi) Within 25 feet of the normal high water mark of a flowing water; or
 - (vii) Containing a natural community that is critically imperiled (S1) or imperiled (S2).

(2) **P-WL2:**

- (a) Scrub shrub and other nonforested freshwater wetlands, excluding those covered under P-WL1; and
- (b) Constructed ponds less than 10 acres in size which are not fed or drained by flowing waters.

(3) **P-WL3:** Forested freshwater wetlands, excluding those covered under P-WL1 and P-WL2.

- b. Areas meriting protection as P-WL1, P-WL2, or P-WL3 subdistricts will be identified by the Commission after consideration of relevant data including, without limitation, identification of freshwater and coastal wetlands 15,000 square feet or larger by the National Wetlands Inventory and, when on-site delineation is required, identification of freshwater and coastal wetlands of any size by methods described in the "Corps of Engineers Wetlands Delineation Manual" (1987).
- c. P-WL subdistricts described in Section 10.23,N,2,a above and identified on the Commission Land Use Guidance Maps may contain inclusions of upland areas or other wetland types smaller than 15,000 square feet that do not conform to the description of P-WL subdistricts in Section 10.23,N,2,a. Such inclusions will be regulated in accordance with the mapped P-WL subdistrict in which they are located.

3. Land Uses**a. Uses Allowed Without a Permit**

The following uses shall be allowed without a permit from the Commission within P-WL subdistricts:

- (1) Boating, with the exception of the use of personal watercraft on bodies of standing water listed in Appendix D of these rules;
- (2) Docking structures: Temporary docking structures, and moorings for non-commercial use;
- (3) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (4) Fish weirs and traps;
- (5) Forest management activities, except for timber harvesting²⁰;
- (6) Motorized vehicular traffic on roads and trails, and snowmobiling;
- (7) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
- (8) Sea or ski plane use;
- (9) Surveying and other resource analysis; and
- (10) Wildlife and fishery management practices.

²⁰ Explanatory note: Timber harvesting is not prohibited in this subdistrict, but instead is regulated by the Maine Forest Service. (See P.L. 2011, ch. 599.) Refer to subsection "e. Uses Regulated by the Maine Forest Service."

b. Uses Allowed Without a Permit Subject to Standards

The following uses shall be allowed without a permit from the Commission within P-WL subdistricts, subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Agricultural management activities, excluding cranberry cultivation;
- (2) Constructed ponds: Creation, alteration or maintenance of constructed ponds of less than 4,300 square feet in size within P-WL2 or P-WL3 subdistricts which are not fed or drained by flowing waters, provided they are constructed and maintained in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (3) Draining, dredging or otherwise altering less than 4,300 square feet of a P-WL2 or P-WL3 subdistrict;
- (4) Driveways associated with residential uses within P-WL2 and P-WL3 subdistricts;
- (5) Filling and grading or otherwise altering less than 4,300 square feet of a P-WL2 or P-WL3 subdistrict;
- (6) Hand-carry launches: Commercial, private and public hand-carry launches within a P-WL2 or P-WL3 subdistrict or below the normal high water mark of flowing waters or bodies of standing water;
- (7) Mineral exploration activities: Mineral exploration to discover or verify the existence of mineral deposits, including the removal of specimens or trace quantities, provided such exploration is accomplished by methods of hand sampling, including panning, hand test boring and digging and other non-mechanized methods which create minimal disturbance and take reasonable measures to restore the disturbed area to its original condition;
- (8) Motorized recreational gold prospecting within the normal high water mark of flowing waters;
- (9) Road projects: Level A road projects;
- (10) Service drops for telephone or electrical service, including associated vegetative clearing, provided:
 - (a) the line extension does not cross or run beneath a coastal wetland, or flowing water;
 - (b) the placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon an established utility line easement, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and
 - (c) the total length of the extension is less than 2,000 feet;
- (11) Signs;
- (12) Trailered ramps: Public trailered ramps within a P-WL2 or P-WL3 subdistrict or extending below the normal high water mark of flowing waters or bodies of standing water;
- (13) Trails, provided that any associated vegetation clearing or filling and grading are in conformance with the standards of 10.27,B,1,b and c,2, and 4 and 10.27,F, and provided the trails are constructed and maintained so as to reasonably avoid sedimentation of water bodies; and
- (14) Water crossings of minor flowing waters, except water crossings of minor flowing waters on/for land management roads.

c. Uses Requiring a Permit

Except as provided for in Section 10.23,N,3,b,(3) and (5), the following uses may be allowed within P-WL subdistricts upon issuance of a permit from the Commission according to 12 M.R.S.A. §685-B and subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Constructed ponds: Creation, alteration or maintenance of constructed ponds which are not fed or drained by flowing waters
 - (a) of less than 4,300 square feet in size within a P-WL2 or P-WL3 subdistrict which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
 - (b) 4,300 square feet in size or greater within a P-WL2 or P-WL3 subdistrict; and
 - (c) within a P-WL1 subdistrict;
- (2) Cranberry cultivation;
- (3) Docking structures: Temporary docking structures and moorings associated with commercial marinas and recreational lodging facilities, and moorings established for rent or lease on a commercial basis in areas not regulated by a harbor master;
- (4) Dredging, other than for riprap associated with water crossings and except as provided for in Section 10.23,N,3,b;
- (5) Driveways associated with non-residential uses within P-WL2 and P-WL3 subdistricts; driveways associated with residential uses within P-WL2 and P-WL3 subdistricts which are not in conformance with the standards of Section 10.27,H; driveways within P-WL1 subdistricts;
- (6) Filling and grading except as provided for in Section 10.23,N,3,b;
- (7) Hand-carry launches addressed in Section 10.23,N,3,b which are not in conformance with the standards of Section 10.27,L;
- (8) Motorized recreational gold prospecting which is not in conformance with the standards of section 10.27, G;
- (9) Peat extraction affecting an area less than 30 acres in size;
- (10) Road projects: Level B road projects, other than crossings of minor flowing waters as provided for in Section 10.23,N,3,b;
- (11) Shoreland alterations, including reconstruction of permanent docking structures; but excluding marinas, new or expanded permanent docking structures, water access ways, trailered ramps, hand-carry launches, water crossings of minor flowing waters, and motorized recreational gold prospecting;
- (12) Signs which are not in conformance with the standards of Section 10.27,J;
- (13) Trailered ramps: Trailered ramps addressed in Section 10.23,N,3,b which are not in conformance with the standards of Section 10.27,L;
- (14) Trails which are not in conformance with the standards of Section 10.27,B,1,b and c,2, and 4 and 10.27,F;
- (15) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D, except water crossings of minor flowing waters on/for land management roads; and water crossings of coastal wetlands, bodies of standing water, and of major flowing waters, except water crossings of coastal wetlands, bodies of standing water, and of major flowing waters on/for land management roads;
- (16) Water impoundments;
- (17) Wind projects: Community-based offshore wind energy projects, as defined in Title 12 M.R.S.A., Section 682, Subsection 19; offshore wind power projects, as defined in Title 38 M.R.S.A., Section 480-B, Subsection 6A, and wind energy development in accordance with Title 35-A, M.R.S.A., Chapter 34-A in areas identified in Appendix F herein;

- (18) Other structures, uses or services that are essential to the uses listed in Section 10.23,N,3,a through c; and
- (19) Other structures, uses or services which the Commission determines are consistent with the purposes of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources or uses which they protect, and are of similar type, scale and intensity as other allowed uses.

d. Special Exceptions

Except as provided for in Section 10.23,N,3,b,(3) and (5), the following uses may be allowed within P-WL subdistricts as special exceptions upon issuance of a permit from the Commission according to 12 M.R.S.A. §685-A(10) and subject to the applicable requirements set forth in Sub-Chapter III provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses or resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

- (1) Docking structures: New or expanded permanent docking structures;
- (2) Draining or altering of the water table or water level for other than mineral extraction;
- (3) Hand-carry launches, except as provided for in Sections 10.23,N,3,b and c;
- (4) Lobster sheds and fish sheds, as provided for in Section 10.25,T,2,p,(6);
- (5) Marinas;
- (6) Mineral exploration activities: Level A mineral exploration activities, except as provided for in Section 10.23,N,3,b,(8), and Level B mineral exploration activities;
- (7) Road projects: Level C road projects;
- (8) Trailered ramps: Trailered ramps except as provided in Section 10.23,N,3,b and c;
- (9) Utility facilities, including service drops except as provided for in Section 10.23,N,3,b; and
- (10) Water-access ways.

e. Uses Regulated by the Maine Forest Service

Pursuant to Statute, the following uses are not regulated by the Commission within P-WL subdistricts but are regulated by the Maine Forest Service.

- (1) Land management roads;
- (2) Timber harvesting; and
- (3) Water crossings of minor flowing waters, major flowing waters, bodies of standing water and coastal wetlands on/for land management roads.

f. Prohibited Uses

All uses not expressly allowed, with or without a permit or by special exception, shall be prohibited in P-WL subdistricts.