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

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August 1, 2016

Michael Malesky
PO Box 387
North Anson, ME 04958

Subject: ADVISORY RULING AR 16-06; Lot #3.81 on Tax Plan 09, Madrid Twp., Franklin County

Dear Mr. Malesky:

Thank you for the information provided in your request for an Advisory Ruling, submitted on behalf of your clients, Todd and Rhonda Harlow. You have asked our opinion on a proposed division of land in Madrid Township owned by the Harlows, currently designated lot #3.81 on Tax Plan 09. Lot #3.81 is 8.43 acres in size with approximately 380 feet of frontage on East Madrid Road. I have enclosed an excerpt of Madrid Tax Plan 09 showing Lot #3.81 and related lots as discussed below.

You have asked questions about a proposed division of the Harlows' combined lot, and lay out of a proposed right-of-way on Lot #3.81, as discussed in more detail below. 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 this matter. 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 our permit files and records available through the Franklin County Registry of Deeds.

Land Division & Development History
(Note: The following history does not address any property now or formerly owned by the Hinkleys on the northeast side of East Madrid Road).

March 31, 1970; Book 402, Page 537 (including Lot #2): Inhabitants of the Town of Madrid transferred multiple parcels in the then Town of Madrid to Malcolm Hood.

October 10, 1988; Book 1075, Page 331: Mr. Hood conveyed a lot on Center Road to Merit and Sarah Bean out of the parcels he acquired by the deed filed in Book 402, Page 537. It appears that this lot does not abut Lot #2 subsequently acquired by the Harlows.

June 24, 1996, Parent Parcel, Hinkley Lot (including Lot #3.81): Based upon the information provided by you, it appears that the parent parcel for the Hinkley property, as of June 24, 1996, consisted of merged Tax Lots #3.8 (69.94 acres) and #3.81, with a combined area of 78.37 acres, and owned Wilson and Eva Hinkley at that time. As of that date, the Hinkleys also owned land directly across East Madrid Road from Lots #3.8 and #3.81.

Wilson Hinkley passed away at some time after 1996, and ownership of the Hinkley parent parcel transferred to Eva Hinkley as widow of Wilson Hinkley; and Carson Hinkley, Kendall Hinkley and Belinda Smith as heirs of Wilson Hinkley (hereinafter "Hinkley Heirs")

July 19, 2000; Book 1941, Page 348: Malcolm Hood transferred Lot #2 out of the parcels he acquired by the deed filed in Book 402, Page 537 to Todd and Rhonda Harlow.

November 25, 2003; Book 2441, Page 176: Eva Hinkley and the Hinkley Heirs transferred one thirteenth of an acre of Lot #3.8 to the Madrid Cemetery Association, abutting the Association's Lot #3.9 on Tax Plan 09, to bring the Association's lot size to 0.26 acres.

November 25, 2003; Book 2388, Page 53: Eva Hinkley and the Hinkley Heirs transferred the remainder of the Hinkley lot to Eva Hinkley and Kendall Hinkley.

July 18, 2006; Building Permit BP 13339: This permit was issued to Todd and Rhonda Harlow authorizing the construction of an addition onto the existing pre-Commission camp on Lot #2. A survey plan, prepared by you, was found in this file and indicates that Lot #2 is 0.823 acres in size, or 35,850 square feet.

December 21, 2006; Book 2851, Page 240: Todd and Rhonda Harlow acquired abutting Lot #3.81 on Tax Plan 09 from Kendall Hinkley and Eva Hinkley to bring their combined lot size to 9.25 acres.

October 20, 2008; Book 3085, Page 286: Eva Hinkley and Kendall Hinkley transferred their lot as described by the deed filed in Book 2388, Page 53 to Eva Hinkley, Kendall Hinkley and Carson Hinkley, except reserving a lifetime estate to Belinda Smith to live in a house on the property and excluding Lot #2 sold to the Harlows (Book 2851, Page 240), a lot transferred to Thomas and Brigida Belanger (Book 3051, Page 131) and a lot transferred to Robert and Betty Gould (Book 3051, Page 133). It appears that the Belanger and Gould lots are located on the northeast side of East Madrid Road.

October 30, 2009; Book 3200, Page 227: Todd and Rhonda Harlow transferred Lot #2 to Brent D. Potter Enterprises. This is the same parcel that was acquired by the Harlows from Mr. Hood (Book 1941, Page 348).

August 20, 2012; Building Permit BP 14858: This permit was issued to Todd and Rhonda Harlow authorizing installation of a mobile home as a single family dwelling on Lot #3.81. The mobile home has been installed on the lot.

June 7, 2012; Book 3445, Page 262: Kendall Hinkley transferred all of his interest in property described by the deed filed in Book 3085, Page 286 to Eva Hinkley and Carson Hinkley.

Proposed Land Division & Right-of-way

The Harlows now propose to divide their remaining parcel (Lot #3.81) into a 7.43 acre lot, including the mobile home permitted under Building Permit BP 14858, and a 1- acre undeveloped lot, with both lots to be conveyed to other parties. The proposed 1-acre lot would not have any frontage on East Madrid Road.

The Harlows also propose to establish a 66 foot wide right-of-way adjacent to, and along the entire length of the Harlows' property line with Potter Enterprises' Lot #2 to provide road access to the proposed 1-acre lot and potentially other future lots to be created out of the Harlows' lot. They also propose to extend the right-of-way an additional 125 feet along the westerly property line of the proposed 1- acre lot as a 30 foot wide right-of-way to provide for driveway access for that lot.

The proposed lots and rights-of-way are shown on your draft survey plan received by the Commission on June 24, 2016.

Relevant Standards regarding Land Divisions

- Section 10.02, (186), of the Commission's Land Use Districts and Standards states that "except as provided in 12 M.R.S. § 682-B, "subdivision" means a division of an existing parcel 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."

- Under provisions of Section 10.25,Q,1,g,(8) of the Commission's Standards, a lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:

  (a) Approval of the subdivision under 12 M.R.S. §685-B was denied by the Commission and record of the Commission's decision was recorded in the appropriate registry of deeds;
  (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S. §685-B and record of the Commission's decision was recorded in the appropriate registry of deeds;
  (c) The Commission has filed a notice of violation of 12 M.R.S. §685-B with respect to the subdivision in the appropriate registry of deeds; or
  (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S. §682-B(5)

- Under provisions of Section 10.25,Q,1,g,(3) of the Commission's 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 are maintained as a single merged parcel of land for a period of 5 years. Where a lot is

transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for (among other exceptions) lots that are part of a subdivision approved by the Commission.

- Under the provisions of Section 10.11,E,2 of the Commission's Standards, a lot which has an established use or structure to which dimensional standards apply may not be divided or altered in a manner that makes the lot, or any structure or use, nonconforming or more nonconforming.

- Under the provisions of Section 10.11,E,5 of the Commission's Standards, two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where: a. Such lots are part of a subdivision approved by the Commission, or b. Each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed. Under these two circumstances the lots may be conveyed separately or together.

- Under the provisions of Section 10.26,D of the Commission's standards, the minimum required lot size for residential uses is 40,000 square feet (sf) per dwelling and the minimum required road frontage is 100 feet per dwelling.

Relevant Standards regarding Rights-of-Way

Under the provisions of Section 10.27,H,3, the minimum property line setback for a residential driveway is 15 feet. Under the provisions of Section 10.27,H,3,b the minimum property line setback standard does not apply to crossings along easements or rights of way; and a reduced property line setback may be allowed with a permit upon written permission of the abutting landowner. I have enclosed a copy of Section 10.27,H for your reference.

Section 10.25,D of the Commission's standards, classifies roadways for subdivisions and other developments and establishes standards for these classes of roads. Under the provisions of Section 10.25,D,4 a Class 2 roadway is considered generally appropriate for low-intensity commercial or industrial projects surrounded by a relatively sparse development pattern and for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern. A Class 3 roadway is generally considered appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern. Under the provisions of Section 10.25,4,e, the minimum required travel width for a Class 2 roadway is 14 feet, or 8 feet with turnouts provided every 500 feet; and the minimum required travel width for a Class 3 roadway is 8 feet. I have enclosed a copy of Section 10.25,D for your reference.

Interpretation

Proposed Land Division:

You have submitted a letter signed by long-time Madrid resident Melvyn Webber, who was a town official for 10 years prior to the de-organization of Madrid Township, stating that East Madrid

Road: a) was maintained by the Town of Madrid for over 60 years prior to the town's de-organization, and b) the road was and is considered a public road. You have also stated that you believe the East Madrid Road dates back to the 1840s. Assuming that the right-of-way under East Madrid Road is publicly owned and not owned by the adjacent lot owners, as Mr. Webber's statement implies, the Hinkley parent parcel relevant to this inquiry is limited only to the Hinkley land that was on the southwesterly side of East Madrid Road and does not include the Hinkleys' land that was on the northeasterly side of East Madrid Road.

Assuming that East Madrid Road is owned in fee by the entity that maintains it, and is not owned by the adjacent lot owners, the road divides lots on either side of it. Accordingly, for the purposes of this request the Commission will consider only the land division history of the relevant parcels located on the southwest side of the road – the same side of the road as subject Lot #3.81.

In responding to your inquiry regarding the proposed land division we first determined the status of the Harlows' existing Lot #3.81 and formerly held Lot #2. Subsections a) – g) of Section 10.25,Q,1,g(8) of the Commission's standards do not apply to either lot. Therefore, to determine the current status of each lot we traced each lot back more than 20 years pursuant to Section 10.25,Q,1,g(8) in order to determine the parent parcel for each lot. We then tracked the parent parcels to the present to determine whether more than two "subdivision" lots had been created out of either parent parcel within any 5-year period as defined by the Commission's statutes and rules. A summary of our research is provided under the "Land Division & Development History" section above.

Regarding Lot #2, the first lot owned by the Harlows, it appears that the lot was legally created in accordance with the Commission's statutes and rules in that, at most, its conveyance to the Harlows in 2000 created only two lots from the parent parcel within a 5-year period: Lot #2 and the remainder of any adjacent land retained by Mr. Hood, if any.

Regarding Lot #3.81, the subject lot, the exemption for transfers to abutters under Section 10.25,Q,1,g,(3) did not apply to the transfer of it to the Harlows in 2006. Even though the Harlows were abutting lot owners at the time they acquired Lot #3.81, Section 10.25,Q,1,g,(3) does not apply because the Harlows subsequently divided their merged Lots #2 and #3.81 within 5 years of their acquisition of Lot #3.81. Since Lot #3.81 is not exempt under Section 10.25,Q,1,g,(3), we evaluated whether the transfer of Lot #3.81 from Eva Hinkley and Kendall Hinkley to the Harlows in 2006 constituted a subdivision as defined by the Commission. We concluded that even without the abutter exemption, the transfer of Lot #3.81 to the Harlows did not constitute a subdivision as defined by the Commission, because the only other prior transfer out of the Hinkley parent parcel was the 2003 transfer to the Madrid Cemetery Association, an abutting lot owner. The abutter exemption under Section 10.25,Q,1,g,(3) does apply to the 2003 transfer to the Cemetery Association in that the Cemetery Association still owns its original lot merged with the land it acquired from the Hinkleys.

The transfer of Lot #2 with the pre-Commission camp, from the Harlows to Potter Enterprises in 2009, did not create a subdivision as defined by the Commission, either. Specifically, that transfer created only two lots: transferred Lot #2 and retained Lot #3.81.

However, the transfer lot of Lot #2 to Potter Enterprises in 2009, even though it was in its original configuration when acquired by the Harlows in 2000, does not conform to the provisions of Section

10.11,E,2 of the Commission's Standards. Specifically, the merged Lots #2 and #3.81, when owned together by the Harlows, met the Commission's minimum dimensional requirements for a residential lot with two dwellings i.e., 200 feet of road frontage and 80,000 square feet of lot size. However, when the Harlows transferred Lot #2 to Potter Enterprises in 2009, that created a new nonconforming lot under Section 10.11,A,2 in that Lot #2 is smaller than the minimum required lot size of 40,000 square feet per dwelling in effect at the time of transfer in 2009. Accordingly, in order to bring Lot #2 into conformance with Section 10.11,A,2, Potter Enterprises must acquire additional land to bring its lot size up to 40,000 square feet. We strongly recommend that your clients modify their proposed lot layout to allow for conveyance of an additional 4150 square feet to Potter Enterprises to bring their lot into conformance, while still maintaining at least 40,000 square feet for the proposed mobile home lot and the proposed undeveloped lot. It appears that this would require only minor adjustments to the proposed lot lines.

Proposed rights-of-way:

Given the proposed lot size and the Commission's current minimum lot size requirements, it appears likely that any future subdivision of the proposed mobile home lot would be limited to less than 15 lots. Accordingly, a future subdivision road would likely be considered a Class 2 or 3 roadway with a minimum width of 8 to 14 feet wide. It appears likely, assuming no significant site limitations, that the proposed 66 foot wide right-of-way along the Lot #2 property line would be sufficient to accommodate the minimum required property line setback of 15 feet from the Lot #2 property line (if the access way is a driveway) and future upgrade of the driveway to a Class 2 or 3 roadway, 8- 14 feet wide under the Commission's current road standards, assuming 3-foot wide side slopes for road banks and associated ditching. The driveway property line setback requirement applies to the Lot #2 property line, but not to the property line of the proposed 1 acre lot or the edge of the driveway right-of-way under the provisions of Section 10.27,H,3,b. Accordingly, the proposed driveway right-of-way extension to the proposed 1-acre lot appears to be sufficiently wide to accommodate a typical 12 – 15 foot wide residential driveway, although we recommend that you consider extending the 66 foot wide portion of the right-of-way as needed to ensure that any future driveway can be located at least 15 feet from the southwest corner pin of Lot #2. *Please note that Commission staff makes no findings regarding the site suitability of either proposed right-of-way for road and/or driveway construction.*

Other Comments:

As shown on the enclosed zoning map for existing Lot #3.81, there is a (P-WL2) Wetland Protection Subdistrict located across the entire width of Lot #3.81 within approximately 300 feet of East Madrid Road. Construction of residential dwellings is not allowed within this zone, and other land uses are regulated or prohibited in accordance with the provisions of Section 10.23,N a copy of which is attached for your reference.

Lastly, please note that our interpretations are based upon the Commission's current statutes and standards. The status of the proposed land division may change in the future should relevant statutes and/or standards be amended. Please also be aware that any land division activities other than those which you have described within your request may, or may have, require(d) prior Commission review and/or rezoning, 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 Ms. Sara Brusila at our West Farmington Office at (207) 670-7493.

Sincerely,

Jean A. Flannery

Jean A. Flannery, Permitting and Compliance Manager
Department of Agriculture, Conservation & Forestry
Division of Land Use Planning

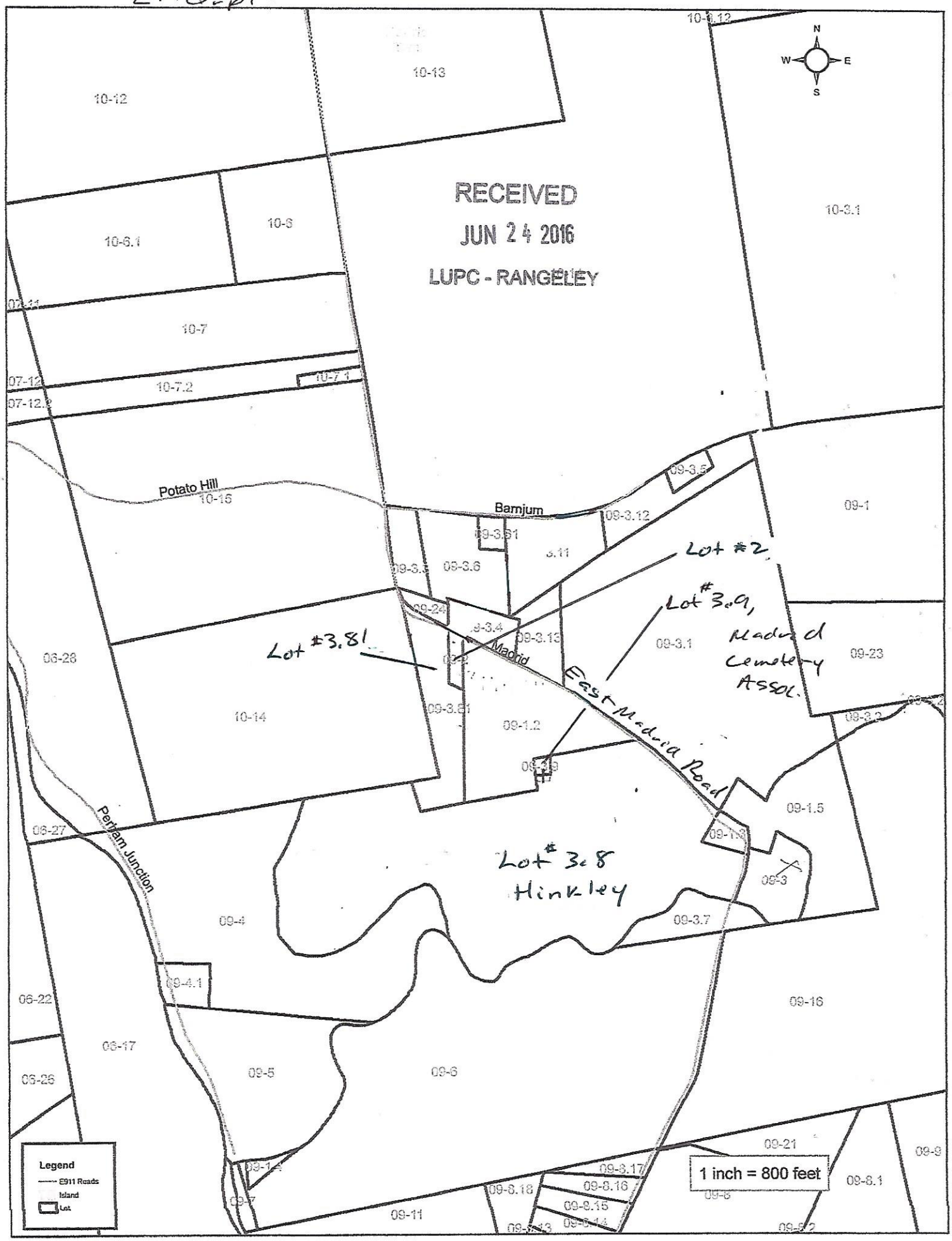
JF/slb

Enclosures: Excerpt, Madrid Tax Plan 09
Zoning Map Overlay, Plan 09 – Lot 3.81
Section 10.27,H, Residential Driveways
Section 10.25,D, Vehicular Circulation, Access and Parking
Section 10.23,N, Wetland Protection Subdistrict (P-WL)

xc: Geo File, Madrid Twp.

Madrid Tax Plan 09 Excerpt

AR 16-06



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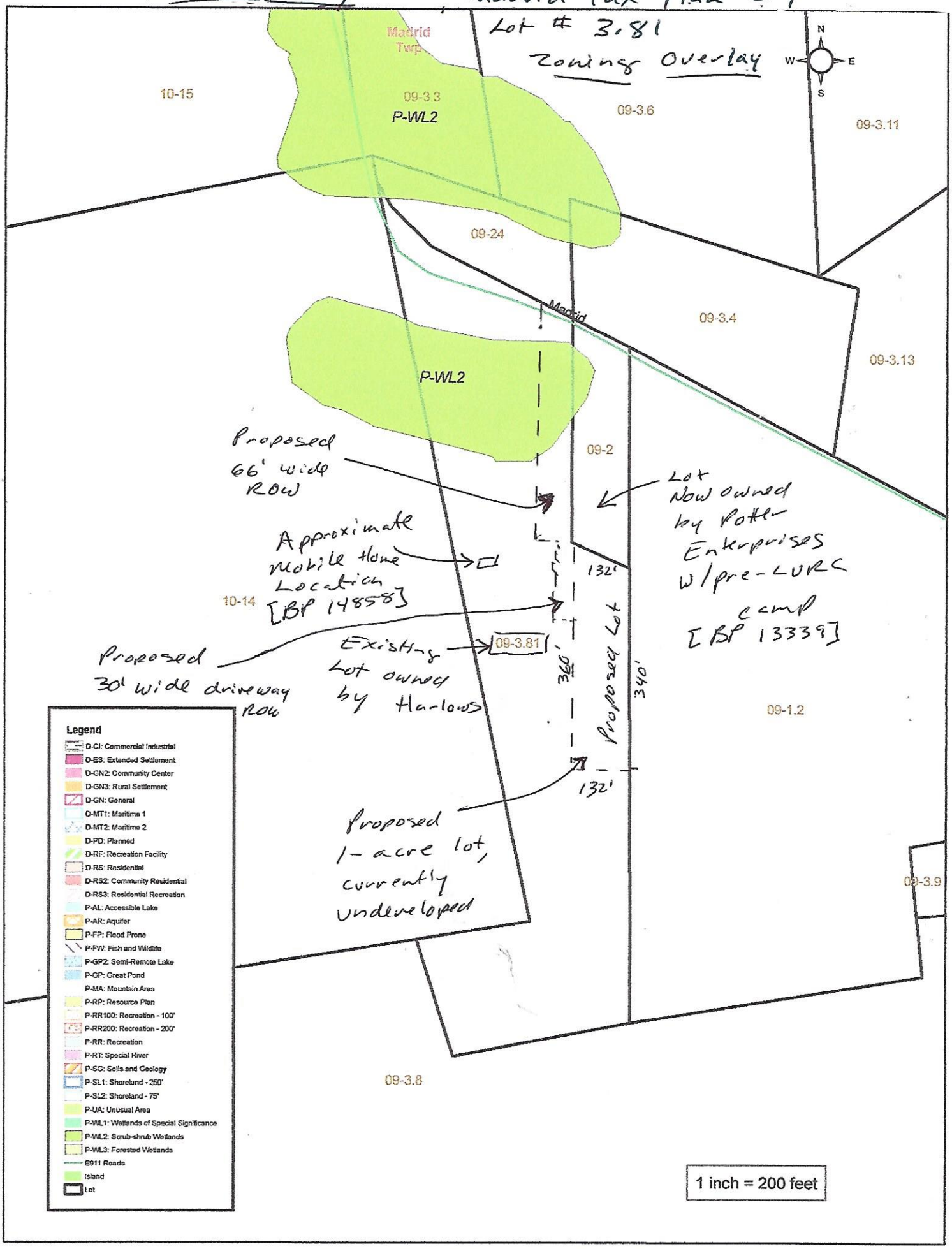
Proposed Land Division + Rights-of-Way

AR 16-06

Madrid Tax Plan 09

Lot # 3.81

Zoning Overlay



H. DRIVEWAYS ASSOCIATED WITH RESIDENTIAL STRUCTURES AND USES

Driveways not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

1. Applicability.

The following requirements apply to the construction of driveways for single family and two family dwelling units in all subdistricts where driveways associated with residential uses are allowed without a permit. These standards, along with the standards of Section 10.25,D,4, may be used as guidance in processing an application for driveways to be located in those subdistricts where driveways require a permit from the Commission.

a. **Other Permits.** If a permit has been issued for the development of the lot to be served by the driveway or if the lot is part of a subdivision for which a permit has been issued, conditions of the building permit or subdivision permit regarding construction of driveways supersede provisions of this subsection.

b. **Length.** If the length of a proposed driveway is greater than 1,000 feet, it is regulated as a road and requires a permit from the Commission unless it qualifies as a land management road.

2. Water Body Setback.

a. **Minimum Setback.** The minimum water body setback for a driveway which accesses an undeveloped lot or a lot having residential structures is:

(1) 100 feet from the nearest shoreline of a flowing water draining 50 square miles, and a body of standing water greater than 10 acres in size;

(2) 75 feet from the nearest shoreline of a coastal wetland; and

(3) 50 feet from the upland edge of minor flowing waters and mapped P-WL1 wetlands.

b. **Exceptions to Water Body and Wetland Setback Requirements.**

(1) The water body and wetland setback requirements do not apply to approaches to water body or wetland crossings.

(2) A lesser setback may be allowed with a permit in the following instances provided no other reasonable alternative exists and appropriate techniques are used as needed to prevent sedimentation of the water body.

(a) In the case of legally existing nonconforming structures located in the shoreland area, the driveway may extend to the portion of the principal structure farthest from the normal high water mark of the water body, but in no case closer than 50 feet from the normal high water mark of the water body; or

(b) To allow access to permitted facilities located nearer to the shoreline due to an operational necessity as described in Section 10.26,G,5.

3. **Property Line Setback.**

   a. **Minimum Setback.** The minimum property line setback for a driveway is 15 feet.

   b. **Exceptions to Property Line Setback.**

      (1) A shared driveway need not meet the minimum setback.

      (2) The minimum setback standard does not apply to authorized approaches to and crossings of property lines or to crossings along easements or rights of way established in deed or lease.

      (3) A lesser setback may be allowed with a permit upon written permission of the abutting landowner.

4. **Road Frontage.** The lot to be served by the driveway must have a minimum of 100 feet of road frontage.

5. **Entry onto Roadways, including State Highways.** The entry must not be located on a curve and must be placed so as to allow adequate line of sight for safe entry onto the roadway. The driveway must be designed such that vehicles may exit the premises without backing onto the roadway or shoulder. If a driveway is to enter directly onto a state or state-aid highway, the person wishing to construct the driveway must first obtain written permission from the Maine Department of Transportation.

6. **Crossings of Flowing Waters.** If a driveway will cross a flowing water, the crossing must be accomplished in accordance with the standards for installation of water crossings set forth in Section 10.27,D,2.

7. **Wetlands Alteration.** The driveway must not alter any portion of a mapped P-WL1 subdistrict or more than 4,300 square feet of a mapped P-WL2 or P-WL3 subdistrict without a permit.

8. **Maximum Slope.** The driveway must not have a sustained slope of more than 8%.

9. **Erosion and Sedimentation Control.**

   a. The driveway must be located, designed and constructed so that:

      (1) It will not erode or create any undue restriction or disruption of existing surface water drainage ways;

      (2) It will divert runoff to a vegetated buffer strip so as to prevent it from directly entering a water body, mapped P-WL1 wetland, or roadway.

   b. Except for the travel surface of the driveway, all areas of disturbed soil must be promptly reseeded and mulched to prevent soil erosion.

10. **Fill Material.** Fill material used in the construction of a driveway must not contain demolition debris, trash, rubbish, or hazardous or toxic materials.

D. VEHICULAR CIRCULATION, ACCESS AND PARKING

1. **General circulation.** Provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along existing roadways and within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.

2. **Access management.** Access onto any roadway shall comply with all applicable Maine Department of Transportation safety standards. For subdivisions and commercial, industrial and other non-residential development, the following standards also apply:

   a. The number and width of entrances and exits onto any roadway shall be limited to that necessary for safe entering and exiting.

   b. Access shall be designed such that vehicles may exit the premises without backing onto any public roadway or shoulder.

   c. Shared access shall be implemented wherever practicable.

   d. Access between the roadway and the property shall intersect the roadway at an angle as near to 90 degrees as site conditions allow, but in no case less than 60 degrees, and shall have a curb radius of between 10 feet and 15 feet, with a preferred radius of 10 feet.

   e. The Commission may require a traffic impact study of roadways and intersections in the vicinity of the proposed project site if the proposed development has the potential of generating significant amounts of traffic or if traffic safety or capacity deficiencies exist in the vicinity of the project site.

3. **Parking layout and design.** The following standards apply to all subdivisions and commercial, industrial and other non-residential development, except for parking areas associated with trailered ramps and hand-carry launches which are regulated under the provisions of Section 10.27,L:

   a. Sufficient parking shall be provided to meet the parking needs of the development. The minimum number of parking spaces required shall be based on parking generation rates determined in accordance with standard engineering practices. In cases where it is demonstrated that a particular structure can be occupied or use carried out with fewer spaces than required, the Commission may reduce number of required spaces upon finding that the proposed number of spaces will meet the parking needs of the structure or use and will not cause congestion or safety problems.

   b. Parking areas and access roads shall be designed such that runoff water is discharged to a vegetated buffer as sheet flow or alternatively collected and allowed to discharge to a concentrated flow channel, wetland or water body at a rate similar to pre-construction conditions. If runoff water is discharged to a concentrated flow channel, wetland or water body, a sediment basin shall be constructed to collect sediment before the runoff water is discharged.

   c. **On-street parking.** In areas where on-street parking already exists, new development shall have on-street parking where practicable and if there are sufficient spaces available in the immediate vicinity. Otherwise, parallel or diagonal on-street parking is permitted where the

Commission finds that it will adequately meet the parking needs of the development and will not cause congestion or safety problems. Perpendicular on-street parking is prohibited.

d. Off-street parking for commercial, industrial and other non-residential development.

(1) Where practicable, off-street parking shall be located to the side or rear of the principal structure.

(2) Notwithstanding the dimensional requirements of Section 10.26, the Commission may reduce the minimum road setback requirement by up to 50 percent for development utilizing on-street parking in accordance with Section 10.25,D,3,c or for development whose parking area is located to the rear of the principal structure, except where the Commission finds that such parking will cause an undue adverse impact to the natural resources or community character of the area.

(3) Off-street parking shall not be directly accessible from any public roadway. Ingress and egress to parking areas shall be limited to driveway entrances.

(4) Off-street parking areas with more than two parking spaces shall be arranged so that each space can be used without moving another vehicle.

e. Parking spaces shall not be placed in the required roadway vegetative buffer. However, a "sight triangle" shall be maintained 25 feet in length on each side of the intersection of the driveway and the roadway right-of-way, with the third side connecting the other two sides. Within each sight triangle, no landscape plants, other than low growing shrubs, shall be planted. These shrubs must be maintained to be no more than 30 inches in height above the driveway elevation.

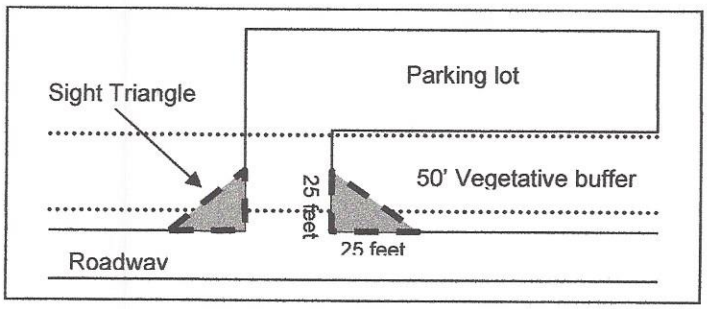


Figure 10.25,D-2. Sight triangle within a vegetative buffer.

f. Except for sight triangles, parking areas for commercial, industrial or other non-residential development shall be visually buffered from the roadway by planting and maintaining a vegetative buffer of trees and shrubs or by locating parking areas to the rear of the principal structure.

g. When parking areas associated with commercial, industrial or other non-residential development are adjacent to residential structures or uses, landscaping and/or architectural screens shall be used to provide an effective visual buffer and separation between property lines and the edge of the parking area.

h. For parking areas associated with commercial, industrial or other non-residential development that are greater than one acre in size, a landscaping plan shall be developed and implemented that indicates planting locations, type and maintenance. The plan shall include the following:

(1) Parking areas shall have landscaped strips along the perimeter, as well as landscaped islands within the parking area.

(2) Expanses of parking area shall be broken up with landscaped islands that include shade trees and shrubs. Where possible, the area of ground left uncovered around the base of a tree must be at least equal to the diameter of the branch area or crown at maturity. Where not possible, adequate measures, including but not limited to soil enhancement techniques and underground irrigation, shall be used to ensure sufficient space for root growth and vegetative survival.

4. Subdivision and Development Roadway Design Specifications. The following standards apply to Level B and Level C road projects:

a. Classification of roadways. The Commission shall determine which roadway classification is most appropriate for a particular project. For the purposes of Section 10.25,D,4, the following general criteria shall apply:

(1) Class 1 Roadway. Generally appropriate for most projects surrounded by a relatively compact development pattern, for high-intensity commercial or industrial projects, and for residential subdivisions with 15 or more lots.

(2) Class 2 Roadway. Generally appropriate for low-intensity commercial or industrial projects surrounded by a relatively sparse development pattern and for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern.

(3) Class 3 Roadway. Generally appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern or located on an island.

b. In making its determination on the appropriate roadway classification, the Commission shall consider the following factors:

(1) The number of lots served by the roadway or projected level of use;

(2) The nature of roadways accessing the project site;

(3) Location in relation to surrounding patterns of development;

(4) The level of development within the vicinity of the project;

(5) Natural and imposed limits on future development;

(6) The type and intensity of the proposed use; and

(7) Service by utilities or likelihood of service in the future.

c. Where practicable, roadways shall be designed to minimize the use of ditching, fit the natural topography of the land such that cuts and fills are minimized, and protect scenic vistas while preserving the scenic qualities of surrounding lands.

d. Roadways in towns and plantations within the Commission's jurisdiction that are proposed to be dedicated to the town or plantation shall also comply with the town's or plantation's roadway construction and design standards. The applicant shall clearly specify the ownership of all roadways proposed to be dedicated and shall submit a maintenance plan that includes roadway construction and design standards in accordance with the Commission's standards.

e. Roadways shall adhere to the applicable standards of Section 10.27,D and Section 10.27,H and the roadway specifications outlined in Table 10.25,D-1, below, unless the applicant utilizes site-specific best management practices and the Commission determines that proposed alternative roadway specifications will meet the needs of the development and will not cause erosion or safety problems.

Maximum sustained grade for Class 1 roadways may be increased by up to five percent over that specified in Table 10.25,D-1 below, if no other option is practicable, provided that the roadway portion exceeding the maximum sustained grade standard is no longer than 300 feet in length and is greater than 150 feet from the next down-hill road intersection, and the Commission determines that the proposed alternative grade will not cause unreasonable drainage, erosion or public safety impacts.

	Class 1 Roadway	**Class 2 Roadway**	**Class 3 Roadway**
Minimum roadway surface width	18 ft. or 14 ft. with turnouts every 500 feet, on average.	14 ft. or 8 ft. with turnouts every 500 feet, on average.	8 ft.
Minimum base (coarse gravel)	18 in.	12 in.	As needed.
Minimum wearing surface	3 in. fine gravel or 2.5 in. bituminous concrete.	3 in. fine gravel or 2.5 in. bituminous concrete.	2 in. fine gravel.
Maximum sustained grade	10 percent	15 percent	15 percent

Table 10.25,D-1. Roadway construction specifications.

f. Roadways that will be co-utilized for forest management purposes shall include turnouts that are large enough to accommodate wood haulers and other large vehicles.

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 harvesting[21];
(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.

[21] 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.