

MAINE STATE LEGISLATURE

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Site

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Some Questions on Coverage and Property Boundaries Relating to the
Site Location Law Relating to the Smuggler's Cove Development

The following questions have come up in administering the Site
Location Law:

1. Should property in the inter-tidal zone be included in determining coverage of the Site Law?
2. What are the Maine Rules as to ownership of tidal flats and submerged lands?
3. Does property beside the highway include the highway?

Discussion:

1 and 2. Property in the inter-tidal zone should be included in determining coverage of the Site Law.

A Massachusetts Colonial Ordinance of 1641 determined that an owner of upland adjoining tidewater owns to the low water mark, but not exceeding 100 rods below the high water mark. Ogunquit Beach District v. Perkins, 138 Me. 54 (1941). Low water means ordinary low water, not extreme low tide. Gerrish v. Proprietors of Union Wharf, 26 Me. 384, 395 (1847).

This rule is unique to Maine and Massachusetts. "Ordinarily a person owning land abutting on navigable waters does not, by reason of such ownership, have title to any land underlying such water." 65 C.J.S., Navigable Waters, 93(b)(2).

The Land below the high water mark is most often considered owned by the State. But in Maine, the State only owns submerged lands beneath the tidal estuary below the low water mark (or 100 rods beyond the high water mark). Opinion of the Justices, Me., 216 A.2d 656, 660 (1966).

The low water mark rule also applies to Great Ponds, and non-tidal streams, riparian owners are considered to own the bed of the stream to the thread of the stream (or the mid-point if no thread is determinable). Opinion of the Justices, 118 Me. 503 (1920); Wilson & Son v. Harrisburg, 107 Me. 207 (1910).

The rule for determining boundary lines on tidal flats is as follows:

"In determining the side lines of shore or flats adjoining upland located on tide water, under the Colonial Ordinance, a base line is usually drawn between the termini of the side lines at high water and lines projected at right angles therefrom to low water or for a 100 rods, and by a

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method of equalization, the side lines of the shore or flats are thereby established." Ogunquit Beach District v. Perkins, supra, 62-63; Emerson v. Taylor, 9 Me. 42 (1832)

Briefly stated, the rule is: draw a base line between the point where the property lines touch the high water mark and project lines out from that base line at a 90 degree angle to low water mark. Where such lines intercept, as in coves, or where such lines do not touch, as on points, split the difference.

3. Chapter 505 of the 1973 Laws specifies the rules for property abutting highways. Abutters own to the center line of the highway (33 M.R.S.A. § 465), except for roads that are owned in fee simple by the State or municipalities (33 M.R.S.A. § 466), or in instances where the public easement for the road was acquired in unequal portions (33 M.R.S.A. § 467).

Deed conveyances are deemed to convey the grantors interest in the highway except where the grantor specifically reserves his interest in the deed, (33 M.R.S.A. § 460).

These are the general rules. But past deeds can create exceptions from these rules as where a past grantor has specifically kept his interest in the highway or sold either his upland property or his tidal flat property while reserving the other. Both of these situations can occur and have occurred, under Maine laws.

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