

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date May 8, 1974

To Henry Warren, Jack Bader, Dept. Environmental Protection  
Hollis McGlaufflin  
From Donald G. Alexander, Assistant Dept. Attorney General  
Subject Interpretation of "subdivision" under the Site Location Law  
38 M.R.S.A. § 482(5)

Recently several questions have arisen as to what constitutes a "subdivision" so as to subject a housing development to approval or enforcement procedures under the site location law. The law is quite specific. It states that a development is subject to the law if it meets the following criteria:

1. Division of a "parcel" into 5 or more lots.
2. Any lot being less than 10 acres in size.
3. If the lots total more than 20 acres, and
4. Are to be offered for sale or lease within a 5-year period.

Some confusion seems to have arisen because of the word "parcel." A "parcel" should be considered to be the block of land a developer owns, regardless of size. The law, by assuming that lots larger than 10 acres may be included in a subdivision, clearly contemplates that where part of a large parcel is divided into small lots and the remainder is left as one undivided lot, that large, undivided lot is part of the subdivision for purposes of application of the site location law.

Another point of confusion is over the term "to be offered for sale." The language of this phrase clearly implies an element of intent, as all proposals the Department considers are, at the very least, statements of intent. However, to have a violation of the law, more than just a plan on paper, must be shown; there needs to be some overt act in furtherance of the intent, such as the beginning of construction (disturbing the soil) or an actual offering for sale through solicitation or otherwise without a permit.

A third point of confusion is the proper differentiation of individuals and corporations when property is being transferred. Generally individuals and corporations are regarded as separate and distinct entities. However, this may not be the case where an individual controls or owns a significant interest in a corporation. Where there is a transfer between an individual and a corporation in which such individual has a significant interest, and the apparent result of the transfer is to exempt from the law activities which, if done by the individual or the corporation alone, would be subject to the law, then the law may well apply regardless of the transfer. Each such case should be evaluated on its own in consultation with the Department of Attorney General.

**AN INFORMAL OPINION**

A final note; persons contemplating subdivisions of less than 20 acres should be aware that if the sale or offering for sale of lots on their parcel of land exceeds 20 acres within 5 years they will be in violation of the Site Location Law as to all lots, not merely those which exceed 20 acres. The first 20 acres are not free. A person is subject to the Site Law when he takes the first action in furtherance of an intent to develop or offer for sale more than 20 acres.



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**AN INFORMAL OPINION**

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