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STATE OF MAINE

Margaret Fernald

Inter-Departmental Memorandum Date January 22, 1976

To Henry E. Warren

Dept. Environmental Protection

From John M. R. Paterson

Dept. Attorney General

Subject Site Location Law and Logging Roads

This memorandum is in answer to the following three questions posed by you in your memo of November 20, 1975:

1. Does the Site Location Law apply to logging roads?
2. If it does, how does DEP distinguish between those logging roads within the law and those roads not within the scope of the law?
3. What jurisdiction does LURC have over such roads and how might DEP and LURC divide their responsibility over this subject?

The site location law includes within the definition of a "development" in 38 M.R.S. §482(6)(B):

"parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated which causes a total project including any buildings to occupy a ground area in excess of 3 acres." P.L. 1975, c. 214.

Whether or not roads were subject to the Site Law prior to the adoption of this provision, it is now clear that roads are subject to the review of the Board of Environmental Protection. ^{1/} However, the law does not distinguish between various types of roads. The question is then, when is a road a road? The answer lies in the text of §582(6)(B).

The purpose of the above-quoted section is to subject to Site Law review those development activities falling within the generic category of "areas to be stripped and graded and not to be revegetated." Parking lots, roads, paved areas and wharves are specifically set forth as examples of such areas. However, even these specifically enumerated items can vary widely in form and manner of construction. Therefore, it is logical to make reference to the general language in §482(6)(B) as an aid to construction of those specifically enumerated terms. (Such interpretive technique is the reverse of the doctrine of "ejusdem generis" in which general words find their meaning by reference to specific words. See e. g. Sand, Statutes and Statutory Construction, §§47.17-47.18 (1973)). Generally, this language seems to indicate that the legislature intended to include within the Site Law activities which involved recontouring of the earth's surface in a substantially permanent manner.

^{1/} See our opinions of May 14, 1973 and September 26, 1973 both of which indicated that roads were subject to Site Law review even prior to this recent amendment.

Applying the statutory language and the above rationale to roads, and without analyzing an infinite variety of types of roads, we can establish some broad parameters to determine the point at which a way becomes a road within the meaning of §482(6)(B). A road bulldozed through a stand of trees to permit passage of skidder or tracked vehicles, that does not result in substantial recontouring of land, that is not gravelled and that is intended to be abandoned and naturally revegetated in a year or other comparably short period of time, would not be a road within the meaning of §482(6)(B) since it lacks those attributes contemplated by the scope of that section. Such a road would be the type associated with transitory wood harvesting operations (e.g. a skidder trail). However, a road that is constructed of gravel on a substantially recontoured site, that is designed to permit passage by most wheeled vehicles and that is not intended to be abandoned and revegetated within a short period time, is a "road" and subject to Site Law review. An example of such road would be those gravel roads of such permanence that they would ordinarily appear on the Maine Highway Atlas prepared by the Maine Department of Transportation. Between those extremes are an infinite number of factual variations. Whether a road has the necessary attributes thus described is a matter of fact to be determined by the Board of Environmental Protection within the above guidelines.

Of course, as with any opinion dealing with a general question, our legal opinion on particular situations will depend upon our thorough review of the facts then presented to us. This opinion is prepared essentially for the purpose of setting out general guidelines on the meaning of the statute.

Review of the provisions of the Land Use Regulation Commission (LURC) statute and the standards adopted by LURC indicates that LURC exercises limited review over roads. Roads associated with forest management programs (e.g. logging roads, or the so-called "Golden Road") have been exempted from LURC zoning by 12 M.R.S. §685-A(5) and permit review under §685-B by LURC's "Standards for Interim Land Use District Boundaries and Permitted uses." (See our opinion of April 22, 1975, attached). Other roads such as camp roads or subdivision roads are subject to LURC's review under 12 M.R.S. §685-B. In the event that such roads are over 3 acres, BEP exercises concurrent jurisdiction with LURC. Section 685-B states the relationship between LURC and BEP when they have concurrent jurisdiction. Both agencies may, consistent with this section and their respective laws, make such agreement as they believe are desirable to clarify the administration of these laws.

JOHN M. R. PATERSON
Assistant Attorney General
Natural Resources Division