

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

March 30, 1984

Honorable Judy C. Kany, Senate Chair  
Honorable Donald M. Hall, House Chair  
Joint Standing Committee on  
Energy & Natural Resources  
State House  
Augusta, Maine 04333

Dear Senator Kany and Representative Hall:

You have asked, on behalf of the Joint Standing Committee on Energy and Natural Resources, for the Opinion of this Office on the applicability of the Site Location of Development law, 38 M.R.S.A. § 481, et seq., to a subdivision consisting entirely of lots located on an island except for a single piece of land located on the mainland. The sole purpose of the mainland portion of the development is to provide parking space and water access for the owners of subdivision lots located on the island.<sup>1/</sup> Legislative Document 2274 current pending before the Committee, proposes to "clarify...the site location of development law" by expressly providing that such a mainland lot shall not be considered in determining whether such a subdivision is subject to the Site Location of Development law. For the reasons which follow, it is the Opinion of this Department that, although the matter is not entirely free from doubt, such a subdivision is subject to the permit requirements of the existing law.

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<sup>1/</sup> The Department of Environmental Protection was asked for, and issued pursuant to 5 M.R.S.A. § 9001, an advisory opinion with respect to the same development. The advisory opinion concluded that the subdivision was subject to the permit requirements of the Site Location law. Letter of Donald Kale dated February 6, 1984 to Donnelly S. Douglas, Esq.

The Site Location law requires a permit for "subdivisions," as that term is defined in law:

A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period if such lots make up an aggregate land area of more than 20 acres except for the following:

. . .

C. All the lots are at least 5 acres, but do not make up a total of more than 100 acres and the lots less than 10 acres are of such dimension as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

38 M.R.S.A. § 482(5).

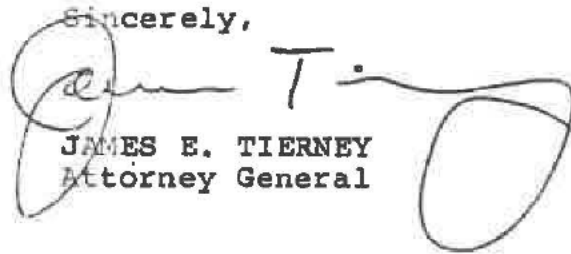
As this Department understands them, the facts relevant to your question are as follows: The subdivision in question contains more than 5 lots which were offered for sale to the general public during a period of less than 5 years, and that those lots have a total acreage of greater than 20 acres but less than 100 acres. Each residential lot in the subdivision is greater than 5 acres and less than 10 acres, and of a configuration falling within the language of the exemption of Section 482(5)(C). However, one portion of the development is a piece of land on the mainland, less than 5 acres in size, designed for parking and water access. Together with the sale of each island residential lot, the developer has conveyed an easement in this mainland land. Thus, the dispositive question is whether the mainland parking area was "offered for sale or lease to the general public," since it was available for sale only to purchasers of residential lots.<sup>2/</sup>

<sup>2/</sup> There is little question that the mainland piece of land is properly considered a "lot," as that term has been construed by the Maine Supreme Judicial Court. Town of Arundel v. Swain, 374 A.2d 317 (Me. 1977) and Board of Environmental Protection Rules c. 371, § 1(I). Furthermore, the physical separation of the mainland lot does not sever it from the remainder of the development for Site Location purposes. Board of Environmental Protection v. Bergeron, 434 A.2d 25 (Me. 1981) and BEP Rules, c.371, § 1(C).

In this case, an easement interest in the mainland lot was conveyed to purchasers of island residential lots together with the residential lot. It is not suggested that the purchasers of residential lots are anything other than members of the "general public."<sup>3/</sup> The purchasers are members of the general public when acquiring an easement in the mainland lot, just as they are when purchasing an island lot. Thus, since a legal interest in the mainland lot has been conveyed, and that lot is clearly separate and distinct from the lots on the island, it is the conclusion of this Office that the mainland lot would be considered as a separate lot under the Site Location law. Therefore, the subdivision includes at least one lot of less than 5 acres sold to the general public, and it requires a permit from the Board under existing provisions of the Site Location law.<sup>4/</sup>

If this Office may be of further assistance to you and the Committee, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James E. Tierney', written over a printed name and title.

JAMES E. TIERNEY  
Attorney General

JET:sl

cc: Henry E. Warren, Commissioner  
Department of Environmental Protection  
Representative E. Christopher Livesay

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<sup>3/</sup> By regulation, the Board of Environmental Protection has defined the term "offered for sale or lease to the general public" to mean "any transfer of title, right or interest," unless the conveyance is a "bona fide private" or "bona fide personal, non-profit" conveyance. Board of Environmental Protection Rules, c. 731, § 1(K). Since it cannot be argued that the conveyance of the mainland lot is not a part of a commercial development, the limited exceptions in the regulatory definition are inapplicable to the subdivision at issue here.

<sup>4/</sup> Needless to say, the Department expresses no opinion on the legislative policy underlying this interpretation of the statute or in that underlying L.D. 2274.