# Chapter 371: DEFINITIONS OF TERMS USED IN THE SITE LOCATION OF DEVELOPMENT LAW AND REGULATIONS

SUMMARY: This chapter defines and clarifies the terms used in the Site Location of Development Law (38 M.R.S.A. Sections 481 et. seq. and in the regulations interpreting the Site Location of Development Law.

**1. Definitions.** The following terms, as used in the Site Location of Development Law (38 M.R.S.A. Section 481 et. seq.) and in these regulations (Chapter 371-376) shall have the following meanings, unless the context-otherwise indicates:

**A. Board**. "Board" means the Board of Environmental Protection.

**B. Borrow pit**. "Borrow pit", as used in 38 M.R.S.A. Section 482(2), means an excavation for sand, fill or gravel.

(1) Borrow pits in existence before January 1, 1970, which are expanded or intended to be expanded by five acres or more after that date, do not qualify for exemption under 38 M.R.S.A. Section 482(2), unless regulated by the Maine Department of Transportation.

**C. Common Scheme of Development**. "Common scheme of development" means a plan or process of development which:

(1) Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and

(2) Exhibits characteristics of a unified approach, method, or effect such as:

(a) unified ownership, management, or supervision;

(b) sharing of common equipment or labor; or

(c) common financing.

**D. Department**. "Department" means the Department of Environmental Protection.

**E. Developer**. "Developer" means a person as defined in 38 M.R.S.A. Section 482(4):

(1) Constructing, causing to be constructed or intending to construct a development;

(2) Operating, causing to be operated, or intending to operate a development; or

(3) In the case of a subdivision, selling or leasing, causing to be sold or leased, offering for sale or lease, or intending to sell or lease lots in a development.

**F. Division**. "Division", as used in 38 M.R.S.A. Section 482(5), means some overt act beyond drawing or marking lots on a plot or plan in furtherance of an intent to offer for sale or lease lots falling within the specifications of 38 M.R.S.A. Section 482(5).

NOTE: The required overt act may include, but is not limited to, beginning construction, advertising lots for sale, selling lots, or recording a plot plan with the Registry of Deeds. Exploratory soil test pits for the purpose of detailed soils mapping or for assessing adequacy for on-site sewage disposal would not be considered an overt act under this subsection.

**G. Excavating**. "Excavating", as used in 38 M.R.S.A. Section 482(2), means the moving, removing or uncovering of natural resources, such as topsoil, clay, peat, rock or other materials, but does not include:

(1) Borrow pit operations for sand, fill or gravel of less than five acres, or when regulated by the Maine Department of Transportation;

(2) Normal agricultural practices, excluding the stripping of topsoil; or

(3) Digging pits or holes by manual labor for activities such as the harvesting of clams or worms.

**GG*.* Hazardous activity exemptions**. In accordance with 38 M.R.S.A. Section 482, Sub-section 2-C, activities which consume, generate or handle any of the following substances and/or are non-hazardous expansions to existing developments are exempt from the requirements of 38 M.R.S.A. Section 483, Sub-section 1:

(1) Non-Hazardous Waste

(a) (i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewage system to a publicly-owned treatment works for treatment.

NOTE: "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended.

NOTE: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being handled before discharge , nor does it exclude sludges that are generated by industrial wastewater treatment.

(c) Irrigation return flows.

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(e) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(f) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels).

(g) Wastes resulting from agricultural activities, as defined by 38 M.R.S.A. Section 1303, Sub-section 16.

(h) Mining overburden returned to the mine site.

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(j) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(2) Non-Hazardous Matter

(a) Substances which are designated as hazardous matter by the Legislature and the Board under Chapter 800, the consumption, generation or handling of which in the following quantities for the specified categories is considered to be non-hazardous for purposes of this regulation:

 Category X - 1 pound (0.454 kg) or less per month

 Category A - 10 pound (4.54 kg) or less per month

 Category B - 100 pounds (45.4 kg) or less per month

 Category-C - 1000 pounds (454 kg) or less per month

 Category D - 5000 pounds (2270 kg) or less per month

 The above categories are those into which substances are placed according to the EPA regulations promulgated under Section 311 of the Clean Water Act and published in 40 CFR 117 (revised as of July 1, 1980).

(b) A substance which is being or has been used in the normal household activity in a quantity which is reasonable for that activity.

(3) Oil. Any storage of oil, as defined in 38 M.R.S.A. Section 542, in any combination of above ground containers or tanks capable of holding 21,000 gallons (500 barrels) or less, or in any combination of underground containers or tanks capable of holding 21,000 gallons (500 barrels) or less.

(4) Road Salt. Any handling of road salt (sodium chloride or calcium chloride) of one ton or less at a municipal, county, state, or private facility.

(5) Expansion of an Existing Development. An enlargement of, or addition to an existing development is a non-hazardous expansion for purposes of this regulation if it consumes, generates or handles non-hazardous waste, non-hazardous waste matter, oil or road salt, as defined by this chapter of the regulations, or if it meets all of the following conditions:

(a) The enlargement or addition must be physically attached to a primary building within the development;

(b) The enlargement or addition cannot extend across a ground water divide into another primary sand and gravel recharge area;

(c) The enlargement or addition must be less than one-fourth the size of the primary building to which it is physically attached;

(d) Any hazardous substance consumed, generated or handled within the enlargement or addition must be a substance which is currently being utilized in the operation of the existing development;

(e) Any hazardous substance consumed, generated or handled within the enlargement or addition must be utilized in a manner that does not constitute a significant change in the operation of the existing development.

NOTE: "Primary building" refers to a building which houses all, or part of the manufacturing process associated with the development. For example, in a pulp and paper facility, one "primary building" may exist which houses both the pulp and paper manufacturing process. However, it is more likely that the pulp making facilities and the paper making facilities will be located in two separate buildings. If this is the case, both buildings are considered to be "primary".

**H. In existence**. "In existence", as used in 38 M.R.S.A. Section 488, means utilizing a parcel of land so that the parcel is known in the neighborhood as being used for a given purpose. Mere contemplated or intended use, standing alone, is not sufficient to establish the "existence" of a development.

1. If plans for a development in existence are changed substantially by a developer after January l, 1970, the development no longer qualifies for the exemption in 38 M.R.S.A. Section 488, and the entire development must be approved by the Board before further construction or operation is undertaken.

**I. Lot**. "Lot", as used in 38 M.R.S.A. Section 482(5), means a portion of a parcel of land measured and marked out by metes and bounds or by some other approved surveying technique.

**J. Natural buffer strip**. "Natural buffer strip" means an area or belt of land which:

(1) Is covered with trees or other vegetation;

(2) Runs along the border between a development site and an adjacent piece of land, body of water, or other specified area; and

(3) Serves to protect the piece of land or body of water from adverse effects of the development or preserves same existing quality or use in the area of the development.

**K. Offered for sale or lease to the general public**. "Offered for sale or lease to the general public", as used in 38 M.R.S.A. Section 482(5), means communicated as available for sale or lease and does not include consideration of who initiated the offer.

(1) Any transfer of title, right or interest, except those described in Paragraph 2, shall be considered a sale or lease.

(2) Unless intended to circumvent the Site Location Law, the following transactions shall not be considered offers for sale or lease:

(a) Bona fide private transactions such as the offering of lots for sale or lease to an abutting owner or to a spouse, child, parent, grandparent, or sibling of the developer;

(b) Bona fide personal, non-profit transactions such as the transfer of lots by gift or devise.

**L. Parcel of land**. ''Parcel of land" means the block or piece of land a developer owns or has sufficient title, right or interest in regardless of size, regardless of whether the block of land is divided into lots, and regardless of whether individual lots within the block are contiguous, as long as the lots treated together are all part of a common scheme of development.

(1) In calculating the aggregate land area of a parcel of land, the following shall be considered:

(a) The acreage of the parcel of land proposed for development;

(b) The acreage of all lots within the parcel already offered for sale or lease by the developer within the preceding five years; and

(c) The acreage within the parcel which the developer intends to develop within the next five years.

(2) In determining the area of a parcel of land, property in the intertidal zone shall be included as part of the property of the adjoining shoreland owner, unless specifically excluded by deed.

(a) An owner of property located on tidewater owns on all land down to the ordinary low water mark or 1650 feet (100 rods) below the high water mark, whichever is less, unless specifically excluded by deed.

(b) The side lines on flats adjoining property located on the tidewater shall be determined as follows:

(i) draw a base line between the points where the property lines touch the high water mark.

(ii) project lines out from those points at a 90 degree angle from the base line and extend the lines to the ordinary low water mark or for 1650 feet (100 rods), whichever is less.

(iii) where lines of adjacent owners intersect, as in coves, or do not touch, as on points, split the difference between adjacent owners.

(3) In determining the area of a parcel of land, the following considerations shall be taken into account:

(a) Riparian owners of property on non-tidal streams own the bed of the stream to the thread of the stream; or to the mid-point of the stream, if no thread is determinable;

(b) Owners of property located adjacent to a great pond own all the land down to the natural low water mark;

(c) Ownership of roads, ways, or highways, or portions of roads, ways, or highways, by adjacent landowners, should be determined in. accordance with 33 M.R.S.A., Section 465.

NOTE: 33 M.R.S.A. Section 465 is the section of the Maine statutes dealing with the ownership of roads, ways, and highways or their parts by persons owning land abutting the roads, ways, and highways.

**M. Person**

(1) Each "person", as defined in 38 M.R.S.A., Section 482 (4), shall be regarded as a separate and distinct entity, except that at combination of persons shall be treated as a single person for the purpose of the Site Location Law if:

(a) Together they- pursue a common scheme of development which is subject to the Site Location Law even though Individual person in the combination own separate parcels which may not be- subject to the Site Location Law if the parcels were, developed separately; or

(b) One person engages in. a transaction, with another person with the intent to evade the intent and purpose of the Site Location Law.

**N. Possession of applicable state or local licenses**. "Possession of applicable state and local licenses", as used in 38 M.R.S.A. Section 488, means actual possession by the developer of licenses or written evidence of approval which would have permitted construction or operation of the development to begin lawfully. Mere preliminary conditional approval of a license application, a mere right to approval of a license application, or any other interest short of actual possession of a license or other written evidence of approval are insufficient to satisfy the possession requirement.

**0. Road**. "Road", as used in 38 M.R.S.A. Section 482(6)(B), means a way or course which is:

(1) Constructed or formed by substantial recontouring of land;

(2) Designed to permit passage by most wheeled vehicles;

(3) Not intended to be abandoned and revegetated within a short period of time; and

(4) Designed to be permanent or intended to be used for a significant period of time.

NOTE: For example, a passage bulldozed through a stand of trees to permit the movement of a skidder or tracked vehicle, that does not result in substantial recontouring of the land, and that is intended to be abandoned and naturally revegetated within a year or less, is not a road within the meaning of Section 482(6)(B).

**P. Site Location Law**. "Site Location Law" means the Site Location of Development Law, 38 M.R.S.A. Section 481 et. seq..

**Q. Staff**. "Staff" means the staff of the Department of Environmental Protection.

**R. Transmission line**. "Transmission line", as used in 38 M.R.S.A. Sections 484 and 488, means electrical transmission line and does not include a natural gas pipeline, an oil pipeline, a highway, or any other means of conveyance.

**S. Under construction**. "Under construction", as used in 38 M.R.S.A. Section 488, means the developer's having expended a substantial amount of money or effort towards the completion of a development. The test of the substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the development.

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