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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

September 2, 2003

Chris Noury, Esquire
North Myrtle Beach City Attorney
1018 Second Avenue South
North Myrtle Beach, South Carolina 29582

Dear Mr. Noury:

You have requested an opinion from this Office regarding whether a person, individual, organization, association, partnership, or other entity can subdivide the beach seaward of the baseline, setback line, or landowner's lot to the mean high-water mark of the Atlantic Ocean. By way of background, you have indicated that you have examined the Coastal Tidelands and Wetlands Act, S.C. Code Ann. Sections 48-39-10 et seq. (Supp. 2002), and the Land Development Regulation Act, S.C. Code Ann. Sections 6-29-1110 et seq. (Supp. 2002), in addition to the code sections regarding plats, maps, and surveys and can find nothing which would prohibit the subdivision or platting of property seaward of the baseline, setback line, or landowner's lot to the mean high water mark. You further indicate that the City of North Myrtle Beach has recently received several requests from developers who wish to plat or subdivide what has been traditionally referred to as the public beach.

Upon review of the relevant portions of the Code that you referenced, there appears to be no statute that specifically comments on your question. However, certain provisions of the Code are relevant to your inquiry. In particular, inasmuch as one of the major points of emphasis in the Coastal Tidelands and Wetlands Act ("the Act") is to preserve the beach/dune system, there are severe limitations on the ways that such land can be used. See, e.g., Section 48-39-30(B)(4). Section 48-39-290 details limitations for areas both seaward of the baseline and the land between the setback line and baseline. Furthermore, Section 48-39-130(A) provides that "(n)inety days after July 1, 1977, no person shall utilize a critical area for a use other than the use the critical area was devoted to on such date unless he has first obtained a permit from the department [the Department of Health and Environmental Control]." The term "critical area" is defined by Section 48-39-10(J) to include "coastal waters; tidelands; beaches; beach/dune system which is the area from the mean high-water mark to the setback line as determined in Section 48-39-280."

The Department of Health and Environmental Control (DHEC) is given a mandate to "develop a comprehensive coastal management program", which shall include "a regulatory system which the department shall use in providing for the orderly and beneficial use of the critical areas." Section 48-39-80. Section 48-39-80(B)(11) provides that DHEC "shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." Accordingly, it seems clear from these statutory provisions that DHEC has been granted broad authority and discretion by the General Assembly to regulate the usage and development of the beach/dune systems of this State.

Based on the limitations in the Act and the significant regulatory authority that has been given to DHEC regarding beach/dune systems, it would be advisable for any individual or entity who wishes to subdivide and plat such lands to consult with DHEC to ensure compliance with the comprehensive coastal management plan as well as all permitting requirements. This Office would defer to that state agency for its application of the relevant regulations that pertain to the development or usage of the beach/dune systems. I am confident that DHEC would also be aware of any relevant federal law on the subject.

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General