

* * * Certain Transportation Projects; Subdivision Exemption * * *

Sec. xx. 10 V.S.A. § 1974 is amended to read:

§ 1974. EXEMPTIONS

Notwithstanding any other requirements of this chapter, the following projects and actions are exempt:

* * * [Text not reproduced] * * *

(7) the subdivision of an unimproved or improved lot or campground where the subdivision occurs due to state or municipal condemnation for highway construction, including lots created as a result of a settlement of an action for condemnation and lots created by a transfer in lieu of condemnation, provided that the transfer is for a project that is part of the State's Transportation Program established by the General Assembly pursuant to 19 V.S.A. § 10g or for an emergency project within the meaning of 19 V.S.A. § 10g(h).

Current Condition:

- *10 V.S.A. Chapter 64 (Potable Water Supply and Wastewater System Permit) does not address the issue of exemption when the State or a municipality acquires land or easements for highway or other transportation projects through condemnation or by conveyance in lieu of condemnation.*
- *ANR/DEC's Wastewater System and Potable Water Supply Rules do contain the following exemption:*

Section 1-304 Exemptions.

(a) The following are exempt from the permitting requirements of this Subchapter provided the specified conditions are met (Note: more than one exemption may apply in a particular situation):

* * *

(13) the subdivision of an unimproved or improved lot or campground where the subdivision occurs due to state or municipal condemnation for highway or utility

construction, including lots created as a result of a settlement of an action for condemnation and lots created by a transfer in lieu of condemnation, provided that the state has held a hearing pursuant to 19 V.S.A. § 502 or a municipality has held a necessity hearing pursuant to 19 V.S.A. § 709.

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See Code of Vermont Rules (CVR) 12-033-001 (2015).

- *In practice, this regulatory exemption has proven too narrow for VTrans and cooperating municipalities.*
- *Both the State (in the case of state highway projects) and municipalities (in the case of town highway projects) often acquire additional land and rights needed for highway projects without having to begin the condemnation process. Indeed, in recent years, VTrans and cooperating municipalities have redoubled their efforts to avoid the need to invoke condemnation, which is confrontational, expensive and time consuming.*
- *For state highway projects, a 19 V.S.A. § 502 pre-condemnation hearing is not held where the affected property owners are willing sellers.*
- *Similarly, for municipal highway projects, a 19 V.S.A. § 709 necessity hearing is not held where the affected property owners are willing sellers.*

Proposed Changes:

- *The proposed amendment would add an explicit exemption to 10 V.S.A. § 1974 to exempt acquisition of land or easements by the State or a municipality for highway or other improvements through condemnation or by conveyance in lieu of condemnation where the acquisition is for a project that is party of the State's Transportation Program established by the General Assembly or for an emergency project within the meaning of 19 V.S.A. § 10g(h). The proposed amendment tracks the language of the existing regulatory exemption, except that for conveyances in lieu of condemnation it deletes references to commencement of the condemnation process and substitutes reference to the project's inclusion in the legislatively approved Transportation Program.*