

MEMORANDUM

To: Aaron Adler, Legislative Counsel
 From: Ellen Czajkowski
 Date: November 15, 2018
 Subject: Exemptions to 10 V.S.A. Chapter 151 (Act 250)

The following is a list of all of the types of projects explicitly exempt from 10 V.S.A. Chapter 151 (Act 250) jurisdiction. The full text and citations of these exemptions follow the list as an attachment.

Short Name	Description	Citation
Certain Priority housing projects	Priority housing projects that: <ul style="list-style-type: none"> • Involve <75 units in a municipality of 6,000; • Involve <50 units in a municipality of 3,000; • Involve <25 units in a municipality of < 3,000; • Involve demolition of a building on the Historic Register or eligible to be on the Historic Register, if the Division of Historic Preservation has determined that the demolition will have no adverse effect • Are located in a town with a population > 10,000 people 	10 V.S.A. § 6001 (3)(A)(I)(cc)-(ff) 10 V.S.A. § 6001 (3)(D)(viii)
Improvements not ancillary to broadcast towers	Future improvements to a broadcast/communication tower that are not ancillary to the support structure	10 V.S.A. § 6001 (3)(A)(ix)(I)(bb)
Farming	The construction of improvements for farming purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)
Logging	The construction of improvements for logging purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)
Forestry	The construction of improvements for forestry purposes below the elevation of 2,500 feet	10 V.S.A. § 6001 (3)(D)(i)

Electric generation and transmission	The construction of improvements for an electric generation or transmission facility that has a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Natural gas facility	The construction of improvements for a natural gas facility that requires a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Telecommunications facility	The construction of improvements for a telecommunications facility that has obtained a certificate of public good	10 V.S.A. § 6001 (3)(D)(ii)
Agricultural fairs	The construction of improvements for an agricultural fair that is registered with the Agency of Agriculture, Food, and Markets, and that are open to the public 60 or less days per year, provided that if the improvement is a building, the building was constructed prior to 1/1/11	10 V.S.A. § 6001(3)(D)(iv)
Equine fairs	The construction of improvements for an equine fair	10 V.S.A. § 6001(3)(D)(v)
Remedial actions authorized by the Agency of Natural Resources (ANR)	No permit or permit amendment needed the construction of improvements for a remedial action authorized by ANR, as well as any abatement, remedial, or corrective action taken for water pollution control, waste management, or development soils	10 V.S.A. § 6001 (3)(D)(vi)(I)(aa)-(ff) 10 V.S.A. §6081 (w) (aa)-(ff)
Composting	The construction of improvements for a composting operation below 2,500 feet	10 V.S.A. § 6001(3)(D)(vii)
Long Trail lots	Lots created to convey to the State/organization to the preserve the Long Trail	10 V.S.A. § 6001 (19)(B)(i)
Conservation rights and interest lots	Lots created to convey to the State/organization for “conservation rights and interest”	10 V.S.A. § 6001 (19)(B)(ii)
Preexisting subdivisions	Subdivisions that were exempt under Department of Health regulations that were in effect on 1/21/70 or that received a permit from the Board of Health prior to 6/1/71	10 V.S.A. §6081 (b)
Preexisting developments	Construction that began before 6/1/70 and was finished by 3/1/71	10 V.S.A. §6081 (b)

State highways	State highways that had a hearing held prior to 6/1/70	10 V.S.A. §6081 (b)
Telecommunications facilities prior to 7/1/97	Telecommunications facilities constructed prior to 7/1/97	10 V.S.A. §6081 (b)
Solid waste facility	Solid waste management facility that has a provisional certificate under 10 V.S.A. § 6605d	10 V.S.A. §6081 (c)
Wastewater treatment facility	Municipal, county, or State wastewater treatment facility enhancements that do not expand capacity by more than 10%	10 V.S.A. §6081 (d)(1)
Water supply	Municipal, county, or State water supply enhancements that do not expand capacity by more than 10%	10 V.S.A. §6081 (d)(2)
Public schools	Public school expansion that does not expand capacity by more than 10%	10 V.S.A. §6081 (d)(3)
Municipal, county, or State building renovations	Municipal, county, or State building renovations or reconstruction that does not expand capacity by more than 10%	10 V.S.A. §6081 (d)(4)
Water or sewer lines	Municipal, county, or State water or sewer line replacement that does not expand capacity by more than 10 %	10 V.S.A. §6081 (e)
Earth removal sites associated with landfill closing	Earth removal sites associated with landfill closing (must obtain municipal zoning permit instead)	10 V.S.A. §6081 (g)
Closure of a landfill that began prior to 7/1/92	Closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of Title 10	10 V.S.A. §6081 (h)
Railroad repairs	Repair of railroad facilities with no expansion	10 V.S.A. §6081 (i)
Slate quarry	Slate quarry in operation prior to 6/1/70 and registered by 1/1/97	10 V.S.A. §6081 (j) 10 V.S.A. §6081 (l)
Preexisting telecommunications facility	Replacement or routine maintenance of preexisting telecommunications facility in existence since 7/1/97	10 V.S.A. §6081 (m)

Replacement of a telecommunication facility	Replacement of a permitted telecommunication facility or routine repairs	10 V.S.A. §6081 (n)
Mixed use and mixed income housing within designated center	A change to a mixed use and mixed income housing project located entirely within a designated center pursuant to 24 V.S.A. § 2793, provided certain requirements are met	10 V.S.A. §6081 (p)(1)
Priority housing project	Priority housing project in a designated center other than a downtown development district, provided that certain requirements are met	10 V.S.A. §6081 (p)(2)
Farming on prime ag soils	Farming that will occur on primary agricultural soils or will not conflict with any permit condition pursuant to this chapter	10 V.S.A. §6081 (s)(1)
Agricultural fair	No permit amendment is required for a building constructed before 1/1/11 if construction was before 1/1/11 and was for an agricultural fair	10 V.S.A. §6081 (u)(1) & (u)(2)
Development in a designated center	Development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under 10 V.S.A. § 6086b	10 V.S.A. §6081 (v)
Shooting range	A sport shooting range if it was in operation prior to 1/1/06, it has a lead management plan approved by the DEC; the change is to: improve the safety of range employees, users of the range, or the public; or to abate noise; or reduce impacts to air or water quality from the range	10 V.S.A. §6081 (w)
De minimis improvements	Construction will have no potential for significant adverse impact as defined in the rule	Act 250 Rule 2(C)(3)(c)

ATTACHMENT TO MEMORANDUM

Full Citations

10 V.S.A. § 6001. Definitions

In this chapter:

* * *

(3)(A) Development means each of the following:

* * *

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

* * *

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000.

(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000.

(ee) 25 or more, in a municipality with a population of less than 3,000.

(ff) Notwithstanding subdivisions (cc) through (ee) of this subdivision (3)(A)(iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

* * *

(ix) Any support structure proposed for construction, which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more above the highest point of an attached existing structure or 50 feet or more above ground level in the case of a proposed new support

structure, in order to transmit or receive communication signals for commercial, industrial, municipal, county, or State purposes, independently of the acreage involved.

(I) Under this subdivision (ix):

* * *

(bb) the word “development” shall not include future improvements that are not ancillary to the support structure and do not involve an additional support structure, unless they would otherwise be considered a development under this subdivision (3).

* * *

(D) The word “development” does not include:

(i) The construction of improvements for farming, logging, or forestry purposes below the elevation of 2,500 feet.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under 30 V.S.A. § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

* * *

(iv) The construction of improvements for agricultural fairs that are registered with the Agency of Agriculture, Food and Markets and that are open to the public for 60 days per year or fewer, provided that, if the improvement is a building, the building was constructed prior to January 1, 2011 and is used solely for the purposes of the agricultural fair.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for any one of the actions or abatements authorized in subdivision (I) of this subdivision (vi):

(I)(aa) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;

(bb) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;

(cc) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;

(dd) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

(ee) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title;

(ff) the management of "development soils," as that term is defined in 10 V.S.A. § 6602(39), under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

* * *

(vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that one of the following applies:

(I) The compost is produced from no more than 100 cubic yards of material per year.

(II) The compost is principally produced from inputs grown or produced on the farm.

(III) The compost is principally used on the farm where it was produced.

(IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm; and

(bb) unlimited clean, dry, high-carbon bulking agents from any source;

(V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:

(aa) manure produced on the farm;

(bb) up to 2,000 cubic yards per year of organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including food residuals or manure from off the farm, or both; and

(cc) unlimited clean, dry, high-carbon bulking agents from any source.

(VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the Agency of Natural Resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals.

(viii)(I) The construction of a priority housing project in a municipality with a population of 10,000 or more.

(II) If the construction of a priority housing project in this subdivision (3)(D)(viii) involves demolition of one or more buildings that are listed or eligible to be listed on the State or National Register of Historic Places, this exemption shall not apply unless the Division for Historic Preservation has made the determination described in subdivision (A)(iv)(I)(ff) of this subdivision (3) and any imposed conditions are enforceable in the manner set forth in that subdivision.

* * *

(19)(A) "Subdivision" means each of the following:

* * *

(B) The word "subdivision" shall not include each of the following:

(i) a lot or lots created for the purpose of conveyance to the State or to a qualified organization, as defined under section 6301a of this title, if the land to be transferred includes and will preserve a segment of the Long Trail;

(ii) a lot or lots created for the purpose of conveyance to the State or to a "qualified holder" of "conservation rights and interest," as defined in section 821 of this title.

* * *

10 V.S.A. § 6081. Permits required; exemptions

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(b) Subsection (a) of this section shall not apply to a subdivision exempt under the regulations of the Department of Health in effect on January 21, 1970 or any subdivision which has a permit issued prior to June 1, 1970 under the Board of Health regulations, or has pending a bona fide application for a permit under the regulations of the Board of Health on June 1, 1970, with respect to plats on file as of June 1, 1970 provided such permit is granted prior to August 1, 1970. Subsection (a) of this section shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971. Subsection (a) of this section shall not apply to a State highway on which a hearing pursuant to 19 V.S.A. § 222 has been held prior to June 1, 1970. Subsection (a) of this section shall not apply to any telecommunications facility in existence prior to July 1, 1997, unless that facility is a "development" as defined in subdivision 6001(3) of this title. Subsection (a) of this section shall apply to any substantial change in such excepted subdivision or development.

(c) No permit or permit amendment is required for activities at a solid waste management facility authorized by a provisional certification issued under section 6605d of this title; however, development at such a facility that is beyond the scope of that provisional certification is not exempt from the provisions of this chapter.

(d) For purposes of this section, the following construction of improvements to preexisting municipal, county, or State projects shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section:

(1) municipal, county, or State wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

(2) municipal, county, or State water supply enhancements that do not expand the capacity of the facility by more than 10 percent.

(3) public school reconstruction or expansion that does not expand the student capacity of the school by more than 10 percent.

(4) municipal, county, or State building renovations or reconstruction that does not expand the floor space of the building by more than 10 percent.

(e) For purposes of this section, the replacement of water and sewer lines, as part of a municipality's regular maintenance or replacement of existing facilities, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement does not expand the capacity of the relevant facility by more than 10 percent.

* * *

(g) The owners or operators of earth removal sites associated with a landfill closing, other than the landfill site itself, shall obtain a municipal zoning permit in lieu of a permit under this chapter, unless the municipality chooses to refer the matter to the District Environmental Commission having jurisdiction. At the District Commission level, the matter will be treated as a minor application. If municipal zoning bylaws do not exist, the excavation application shall be subject to the provisions of this chapter as a minor application.

(h) No permit or permit amendment is required for closure operations at an unlined landfill which began disposal operations prior to July 1, 1992 and which has been ordered closed under section 6610a or chapter 201 of this title. Closure and post-closure operations covered by this provision are limited to the following on-site operations: final landfill cover system construction and related maintenance operations, water quality monitoring, landfill gas control systems installation and maintenance, erosion control measures, site remediation, and general maintenance. Prior to issuing a final order for closure for landfills qualifying for this exemption, a public informational meeting shall be noticed and held by the Secretary with public comment accepted on the draft order. The public comment period shall extend no less than seven days before the public meeting and 14 days after the meeting. Public comment related to the public health, water pollution, air pollution, traffic, noise, litter, erosion, and visual conditions shall be considered. Landfills with permits in effect under this chapter as of July 1, 1994, shall not qualify for an exemption as described under this section.

(i) The repair or replacement of railroad facilities used for transportation purposes, as part of a railroad's maintenance, shall not be considered to be substantial changes and shall not require a permit as provided under subsection (a) of this section, provided that the replacement or repair does not result in the physical expansion of the railroad's facilities.

(j) With respect to the extraction of slate from a slate quarry that is included in final slate quarry registration documents, if it were removed from a site prior to June 1, 1970, the site from which slate was actually removed, if lying unused at any time after those operations commenced, shall be deemed to be held in reserve, and shall not be deemed to be abandoned.

* * *

(l)(1) By no later than January 1, 1997, any owner of land or mineral rights or any owner of slate quarry leasehold rights on a parcel of land on which a slate quarry was located as of June 1, 1970, may

register the existence of the slate quarry with the District Commission and with the clerk of the municipality in which the slate quarry is located, while also providing each with a map which indicates the boundaries of the parcel which contains the slate quarry.

(2) Slate quarry registration shall state the name and address of the owner of the land, mineral rights, or leasehold rights; whether that person holds mineral rights, or leasehold rights or is the owner in fee simple; the physical location of the same; the physical location and size of ancillary buildings; and the book and page of the recorded deed or other instrument by which the owner holds title to the land or rights.

(3) Slate quarry registration documents shall be submitted to the District Commission together with a request, under the provisions of subsection 6007(c) of this title, for a final determination regarding the applicability of this chapter.

(4) The final determination regarding a slate quarry registration under subsection 6007(c) of this title shall be recorded in the municipal land records at the expense of the registrant along with an accurate site plan of the parcel depicting the site specific information contained in the registration documents.

(5) With respect to a slate quarry located on a particular registered parcel of land, ancillary activities on the parcel related to the extraction and processing of slate into products that are primarily other than crushed stone products shall not be deemed to be substantial changes, as long as the activities do not involve the creation of one or more new slate quarry holes that are not related to an existing slate quarry hole.

(m) No permit is required for the replacement of a preexisting telecommunications facility, in existence prior to July 1, 1997, provided the facility is not a development as defined in subdivision 6001(3) of this title, unless the replacement would constitute a substantial change to the telecommunications facility being replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a preexisting telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

(n) No permit amendment is required for the replacement of a permitted telecommunications facility unless the replacement would constitute a material or substantial change to the permitted telecommunications facility to be replaced, or to improvements ancillary to the telecommunications facility, or both. No permit is required for repair or routine maintenance of a permitted telecommunications facility or of those ancillary improvements associated with the telecommunications facility.

* * *

(p)(1) No permit or permit amendment is required for any change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title.

(2) No permit or permit amendment is required for a priority housing project in a designated center other than a downtown development district if the project remains below any applicable jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions of any existing permit or permit amendment issued under this chapter that applies to the tract or tracts on which the project will be located. If such a priority housing project will not comply with one or more of these conditions, an application may be filed pursuant to section 6084 of this title.

* * *

(s)(1) No permit amendment is required for farming that:

(A) will occur on primary agricultural soils preserved in accordance with section 6093 of this title; or

(B) will not conflict with any permit condition issued pursuant to this chapter.

* * *

(u) A building constructed prior to January 1, 2011 in accordance with subdivision 6001(3)(D)(iv) of this title shall not be subject to an enforcement action under this chapter for:

(1) construction or any event or activity at the building that occurred prior to January 1, 2011; and

(2) any event or activity at the building on or after January 1, 2011 if the building is used solely for the purpose of an agricultural fair.

* * *

(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.

(w)(1) A permit or permit amendment shall not be required for a change to a sport shooting range, as defined in section 5227 of this title, if a jurisdictional opinion issued under subsection 6007(c) of this title determines that each of the following applies:

(A) The range was in operation before January 1, 2006 and has been operating since that date.

(B) The range has a lead management plan approved by the Department of Environmental Conservation under chapters 47 and 159 of this title that requires implementation of best management practices to mitigate environmental impacts to soil and water.

(C) The change is for the purpose of one or more of the following:

(i) To improve the safety of range employees, users of the range, or the public.

(ii) To abate noise from activities at the range. A qualified noise abatement professional may certify that a change in a sport shooting range is for this purpose and this certification shall be conclusive evidence that a purpose of the change is to abate noise from activities at the range.

(iii) To remediate, mitigate, or reduce impacts to air or water quality from the range or the deposit or disposal of waste generated by the range or its use.

* * *

(x)(1) No permit or permit amendment is required for the construction of improvements for any one of the actions or abatements authorized in this subdivision:

(A) a remedial or removal action for which the Secretary of Natural Resources has authorized disbursement under section 1283 of this title;

(B) abating a release or threatened release, as directed by the Secretary of Natural Resources under section 6615 of this title;

(C) a remedial or removal action directed by the Secretary of Natural Resources under section 6615 of this title;

(D) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under section 6615b of this title;

(E) a corrective action authorized in a corrective action plan approved by the Secretary of Natural Resources under chapter 159, subchapter 3 of this title; or

(F) the management of "development soils," as that term is defined in subdivision 6602(39) of this title, under a plan approved by the Secretary of Natural Resources under section 6604c of this title.

(2) Any development subsequent to the construction of improvements for any one of the actions or abatements authorized in subdivision (1) of this subsection shall not be exempt from the provisions of this chapter.

Act 250 Rule 2(C)(3)(c) Definitions

* * *

(3) "Construction of improvements" means any physical change to a project site except for:

* * *

(c) construction which the person seeking the exemption demonstrates (i) is de minimis and (ii) will have no potential for significant adverse impact under any of the criteria of 10 V.S.A. § 6086(a)(1) through (10) directly attributable to such construction or to any activity associated with such construction.

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