

## OVERVIEW OF 30 V.S.A. § 248a

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- The developer of a telecommunications facility has the *option* of seeking a Certificate of Public Good (“CPG”) pursuant to 30 V.S.A. § 248a in lieu of Act 250 and local zoning. If a developer elects to use section 248a it does not have to get an Act 250 permit or a local permit.
  
- In 248a there are three categories:
  - **De minimis.** This category relates to equipment upgrades or the placement of additional equipment at an existing facility. The developer of a de minimis project gives notice to the Department and the town. If no one objects within 30 days a CPG is to be issued.

To qualify:

- Height of existing structure not increased.
  - No more than 300 square feet of new impervious surface.
  - New antennas do not extend up or out more than ten feet from the support structure.
  - New antennas do not increase surface area of antennas on the facility by more than 75 square feet.
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- **Limited size and scope.** To qualify the tower cannot be more than 140’ tall and there can be no more than 10,000 square feet of earth disturbance. The developer must give *at least* 60 days advance notice of its intent to file an application to various state agencies, the town, and adjoining landowners. Once the application is filed those parties have 30 days to raise any objections. If there are no objections (vast majority of cases) the CPG is to be issued within 60 days of the filing of a complete application. If there are objections, and the Board agrees they are worthy of further inquiry (i.e., written briefing and/or a hearing), then the CPG has to be issued within 90 days of the filing of a complete

application.

- **All other projects (e.g., tall towers).** Anything not within the definitions of de minimis or limited size and scope, i.e., towers taller than 140 feet. The developer must give *at least* 60 days advance notice of its intent to file an application to various state agencies, the town, and adjoining landowners. If no issues, CPG to be issued within 60 days of the filing of a complete application; if issues are raised and PUC agrees they are worth of further inquiry, CPG must be issued within 180 days.
- **Review standards:**
  - **Tall towers:** the proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of I-89 and I-91 or any other highway that has officially been designated as a scenic road or scenic byway, all with due regard to the relevant Act 250 criteria.
  - **Limited Size and Scope Projects:** The above criteria are waived except for Act 250 criteria related to floodways and aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat. However, if in response to objections and input from the parties the Commission determines a proposed project raises issues beyond these criteria it can apply all the criteria applicable to “tall towers.”
  - **Tall Towers and Limited Size *and* Scope Projects:**
    - Proposed facility cannot reasonably be co-located on or at an existing telecom facility. Specific sub-criteria bear on the co-location possibility inquiry.
    - PUC must give “substantial deference” to: (a) the relevant town’s town plan, (b) the recommendations of the town’s Selectboard and/or Planning Commission (which recommendations can be

based on the local zoning regulation or telecom ordinance).

- **De Minimis Projects:** No substantive review unless the status of a project as being “de minimis” is successfully questioned.
- **Other Features of the 248a Process:**
  - If requested an applicant is obligated to meet with a Selectboard and/or Planning Commission during the 60-day pre-file period, with the Department also being required to be present.
  - a Selectboard and/or Planning Commission’s has an absolute right to appear and participate in 248a cases.
  - The PUC is obligated to consider and address in its decision a Selectboard and/or Planning Commission’s comments and recommendations.
  - A town has the right to ask the Department to retain an expert.