

Follow-up To Questions – Land Use Reform Municipal Training – 12/19/2024

Can you confirm that if a parcel that has a current Act 250 permit and a new project is proposed the original Act 250 trumps?

If the project is one of the types of exempt projects and is in one the exempt areas, then it is exempt from Act 250 even if the parcel it's located on has a previous Act 250 permit. Here is a list of the types of projects that have interim Act 250 exemptions and where they are exempt. <https://act250.vermont.gov/interim-act-250-housing-exemptions>

Important clarifications: any previous Act 250 permits on the parcel are still in effect – the interim Act 250 exemptions do not nullify previous permits; they just mean some new development does not need a new permit. Any additional development that does not fall under one of the different types of Act 250 exemptions will need a new Act 250 permit (technically an amendment to the existing permit).

So, you must have both zoning and subdivision bylaws to be eligible for interim Act 250 exemptions? When does Act 250 acknowledge that a town has both zoning and subdivision?

(Note: this question came from a representative of a town that has a designated Village Center, adopted zoning and subdivision bylaws, and adequate soils for septic – so it would seem to meet the requirements to be eligible for interim Act 250 exemptions – but was not listed as eligible on the Interim Act 250 Exemption Map <https://experience.arcgis.com/experience/d96022b7dce64945a326e7bf98a2f365/>)

This specific instance is likely because, at the time that the town received its Village Center designation (2017), the town had adopted zoning bylaws but did not adopt its subdivision bylaws until after it received the designation (2020). The town's Village Center likely is actually eligible for interim Act 250 exemptions, but the town needs to contact the Natural Resources Board/Land Use Review Board to advise them that they now have adopted bylaws.

*This is also important for towns that do not currently have subdivision bylaws but intend to adopt them soon. The presentation emphasized that many towns have Village Centers but will not be eligible for interim Act 250 exemptions until they adopt subdivision bylaws. So, the new to do item below is both for towns that have adopted subdivision bylaws after receiving their state designation (like the town whose representative asked the question) and for towns that have not yet adopted subdivision bylaws but plan to.

New To Do: If you adopt subdivision bylaws, tell the Natural Resources Board.

<https://act250.vermont.gov/contact-us>

How can we tell if an area has adequate soils for septic?

For designated Village Centers, Act 181 gives interim Act 250 exemptions for housing projects up to 50 units located entirely within “areas of a designated village center and within one-quarter mile of its boundary with permanent zoning and subdivision bylaws and served by public sewer or water services or soils that are adequate for wastewater disposal” - this means that the entire Village Center is not eligible for interim Act 250 exemptions, just the areas with the above qualifications.

The soil suitability data set behind the Interim Act 250 Exemption Map is at <https://geodata.vermont.gov/datasets/VCGI::vt-data-onsite-sewage-disposal-soil-ratings/explore> and an explanation of the different soil types is at <https://anrmaps.vermont.gov/websites/SOILS/2008%20Soil%20Suitability%20Groups%20for%20Soil-based%20Residential%20Wastewater%20Disposal-January2008.pdf>

Essentially, there are five categories (I – V) of soil, each with a bunch of different subcategories (for example IIIb). Categories I – III are suitable for septic, IV is not suitable, and V is unmapped.

Should housing developers be steered to the mapping tool or our town’s zoning staff?

We would recommend steering developers toward the Interim Act 250 Exemption Map <https://experience.arcgis.com/experience/d96022b7dce64945a326e7bf98a2f365/> and emphasizing to them that the map is a helpful tool, not the final word on whether their project is exempt from Act 250 permitting. The final word is a Jurisdictional Opinion from the Natural Resources Board/Land Use Review Board. The developer would have to apply for this Jurisdictional Opinion, but it’s a much less onerous process than the full Act 250 permit application.

Do the new Federal Housing Administration (FHA) Mortgage Insurance requirements include that septic disposal areas must be elevated at least 2’ above the National Flood Insurance Program’s mapped Base Flood Elevation?

The new FHA requirements do not appear to address the elevation of wastewater disposal areas, just the elevation of the lowest floor of the house. Note that the VT Department of Environmental Conservation’s Model Flood Hazard Bylaws – which the presentation suggested that towns adopt and which are generally more restrictive than federal standards – do not prohibit septic disposal areas from being constructed in the floodplain or require any elevation of septic disposal areas.