

MUNICIPAL ENHANCED ENERGY PLANNING IN VERMONT

Best Practices and Resources



Northwest Regional Planning Commission
with assistance of Windham Regional Commission and Bennington Regional Commission
on behalf of Vermont Association of Planning & Development Agencies

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Module 1 – Developing a Municipal Enhanced Energy Plan



The Putney School | Putney, VT



Plug-in Hybrid Vehicle of Vermont State Fleet



Cover Home Repair, Inc | White River Junction, VT

Introduction

Module 1 of this guide intends to help municipalities develop an enhanced energy plan as enabled by [24 V.S.A. §4352](#). An enhanced energy element that is consistent with energy planning standards receives greater weight in the Section 248 review process than a typical municipal plan. This guide provides an outline of the required elements of an enhanced energy plan and an overview of the process to receive an affirmative determination of energy compliance. Best practices and resources discussed in this guide are based on the experience of regional and municipal planners that developed municipal enhanced energy plan between mid-2017 through mid-2018.

Plan Preparation

Before developing an enhanced municipal enhanced energy plan, it is important to generally understand the requirements of such plan and to reflect on the municipality's readiness to engage in an in-depth, months-long planning process. Review the following points to assess local interest:

- **Before you start: Evaluate local capacity to take on this process.** On average, development of enhanced energy elements has taken no less than 3 months and up to 18 months (the latter includes adoption process). Municipalities tend to spend the most time on the “pathways and policies” and “mapping” sections of the plan, though experiences differ, and along the way wrestle with serious debates like individual property rights versus conservation priorities.
- **Understand Requirements.** Enhanced Energy Planning is an optional process for municipalities. It is recommended that municipal officials and volunteers take time to understand what is required to complete enhanced energy planning by reviewing state statute (24 V.S.A. 4352) and the Vermont Department of Public Service's (DPS) “[Introduction to Act 174 Regional and Municipal Energy Standards](#)” (see link below).
- **Review Existing Municipal Plan.** Review the existing municipal plan to understand what the plan currently does to address the already required energy element in 24 V.S.A. §4382.
- **Build Consensus.** Before beginning the project, build general consensus among municipal boards (Selectboard, Planning Commission, Conservation Commission, Energy Committee, etc.) about the need to develop an enhanced energy plan.
- **Determine Responsibilities.** Take time to determine which municipal group will be primarily responsible for developing the plan. In most communities the Planning Commission, Energy Committee, or an ad hoc committee have taken the lead in developing the municipal enhanced energy plan. Once a municipal board has been designated, determine how other municipal boards and the community in general will be kept informed during plan development.



Figure 1 – Act 174 Meeting in Hyde Park, VT

- **Develop Project Schedule.** Develop a tentative project schedule to guide plan development and to ensure that important deadlines are met. Consider allocating at least 3 to 10 months to draft an enhanced energy plan. That timeframe will likely expand with the adoption process to about 12-18 months.

- **Stand Alone Plan or Integrated Plan.**

Determine if the enhanced energy plan will be “integrated” into the existing municipal plan or if the enhanced energy plan will be a “stand alone” plan that will be referenced in the existing

municipal plan. Integrated energy chapters have the advantage of being juxtaposed with rest of the municipality’s policies in the municipal plan. A standalone plan may allow for more detailed inventory of local energy use and policies. When beginning the drafting process, consider the format of the rest of the plan for consistency. Note that the new energy chapter - whether integrated or standalone - will be considered together with the full municipal plan when reviewed for approval under Act 174.

- **Consult with Regional Planning Commission (RPC).** Consulting early in plan development with your RPC will better ensure a successful project. Ask your RPC for a general summary of the Regional Energy Plan to better understand regional energy policy. Investigate what resources and technical assistance the RPC may be able to provide to the municipality.

Plan Preparation Resources:

- 24 V.S.A. § 4352. Optional determination of energy compliance; enhanced energy planning: (<http://legislature.vermont.gov/statutes/section/24/117/04352>).
- Vermont DPS – *Introduction to Act 174 Regional and Municipal Energy Standards*: http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Standards%20Overview.pdf
- Vermont DPS - *Guidance for Municipal Enhanced Energy Planning Standards*: http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Municipal%20Guidance_Final.pdf

Analysis and Targets

DPS municipal “determination” standards require that municipal enhanced energy plans contain an analysis of current energy resources, needs, scarcities, costs, and problems across all energy sectors, including electric, thermal, and transportation. Municipalities must also identify **targets** for future energy use across all energy sectors and for renewable energy generation (referred to generally as “targets”). Creating this data can be a tall task, but several resources exist to help municipalities meet the requirements. Here are some recommended steps that municipalities can take to develop their energy analysis:

- **Review RPC Data.** RPCs have developed analysis data and target data for all municipalities in Vermont. Per the DPS “determination” standards, a municipality that uses analysis and target data developed by the RPC will automatically be presumed to meet the standards.

Some municipalities may choose not to use RPC data, yet it is recommended that every municipality consult RPC data to gain a general idea of energy resources, needs, scarcities, costs, and problems that currently exist in the municipality as well as an understanding of the scale of future energy reduction and fuel switching targets. Ensure that all municipal board members understand the data provided.

- **Add Graphics.** Use graphics and other visuals (charts, maps) to display the municipal analyses and targets. This may make some data easier for citizens to understand and interpret. Contact your RPC for ideas and assistance and see Appendix B for examples from other energy plans.
- **Optional: Conduct Your Own Municipal Analysis.** There are several tools and resources that have been developed by DPS to help a municipality to conduct its own analysis (see links below). These tools include written explanations of how municipalities can meet the “determination” standards and Excel spreadsheets that the municipality can use to auto-calculate analysis and target data.

Another approach would be for the municipality to refine or supplement the data provided by the RPC. Some communities have decided to integrate specific data on municipal and school energy consumption and costs, for example. Municipalities may also elect to develop their own unique methodologies to provide analysis and target data. Regardless of the municipality’s approach, it is important that the municipality fully explain the methodology used to develop the data analysis and targets.

The Energy Action Network (EAN) developed the [Vermont Community Energy Dashboard](#), tool to help municipalities understand their current energy use, develop their own target data, and identify implementation steps using the comprehensive list provided for individuals and municipalities. In addition, the Dashboard provides tools for municipalities to track progress toward their energy goals, report case studies of success, and launch local energy campaigns. The Dashboard uses slightly different data projections from those provided to municipalities by RPCs, but municipal planners and residents may still find the data and other tools on the Dashboard helpful.

CommunityEnergyDashboard

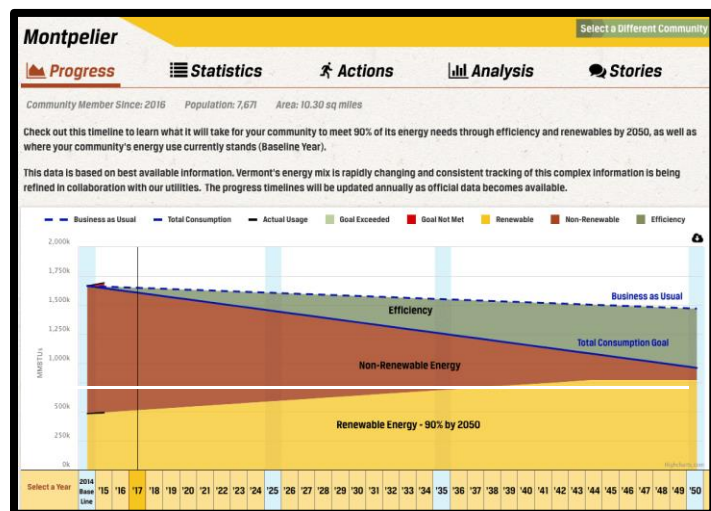


Figure 2 - Screenshot from Vermont Community Energy Dashboard

- **Remember that Data are Estimates (That is OK!).** With the exception of electricity use data provided by Efficiency Vermont, all data - as provided by the RPC or as developed by the municipality - are estimates. While estimates should be as accurate as possible, it is helpful to think of the baseline analysis and the future targets as guideposts and not as absolutes. Adjustments can and should be made to data estimates in future plan updates.

Analysis and Target Resources:

- RPC Analysis and Target Data: See Appendix A for links to RPC websites
- Vermont DPS – *Analysis and Targets Aid – Municipality*, Vermont DPS – *Municipal Consumption Template*, and Vermont DPS – *Generation Scenarios Aid*:
<http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>
- Vermont Community Energy Dashboard: <http://www.vtenergydashboard.org/>

Pathways (Implementation)

After current energy use and generation has been analyzed, and targets for future energy use and generation established, municipalities must develop “pathways” to achieve the identified targets.



Figure 3 - Enhanced Energy Planning Elements

Pathways are actions and policy statements that the municipality, municipal boards, businesses, non-profits, and residents can actively pursue during the plan timeline to implement the plan. When developing municipal pathways, the municipality should keep the following in mind:

- **Review Existing Policies.** All municipalities with an adopted and regionally-approved plan have an element that addresses energy. Additionally, the land use, transportation, and natural resources elements of the municipal plan will have content that is useful. In particular, policies in the land use and natural resources chapters can inform land conservation measures to be applied in Section 248 proceedings. Use these chapters as building blocks for developing policies, not only as a helpful first step but also to build off of strategies the municipality has already pursued.
- **Get Ideas from Similar Communities.** While each municipality is unique and needs to identify pathways suited to their own circumstances, there are many examples available for reference to help begin this process. See DPS Guidance document (link below) and Appendix C for example pathways.
- **Municipal Capacity.** Pathways should be within the municipality’s capacity to accomplish during the plan timeline. Municipalities may want to establish short-term, mid-term, and long-term pathways dependent on municipal capacity. Municipalities should keep in mind that they must provide evidence that they are “engaged in a process to implement their plan” if seeking

regional approval of their plan under 24 V.S.A. § 4350. Regional approval of the plan is required in order for the municipal plan to receive “determination” under 24 V.S.A. § 4352.

- **Municipal Jurisdiction.** Municipalities can see quick progress by identifying tangible goals for the municipality itself such as undertaking a municipal buildings energy audit. Plans may include pathways that are within their jurisdiction to accomplish either on their own or within the cooperation of other regional and statewide partners (RPCs, Efficiency Vermont, public utilities, etc.). Plans can also suggest actions for businesses, residents, and local institutions like schools and support these groups in pursuing their own projects independently.
- **Delegate Responsibility.** It is recommended that municipalities delegate implementation actions to specific municipal boards or citizen groups. However, municipal boards that are appointed by the local legislative body and given a mandate to execute municipal energy planning actions may be most effective in moving the energy plan’s implementation strategy forward.
- **Integrate into Capital Budgeting.** For municipalities that undertake capital budgeting, integrating pathways from the enhanced energy plan into the municipal capital budget will help fund pathways that require some capital investment.

Pathways Resources:

- Vermont DPS - *Guidance for Municipal Enhanced Energy Planning Standards*: http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Municipal%20Guidance_Final.pdf
- Vermont Community Energy Dashboard: <http://www.vtenergydashboard.org/>
- Example Municipal Pathways: See Appendix C

Mapping

Municipal energy mapping is another required element of municipal enhanced energy planning. Several municipal energy maps must be created to meet the DPS determination standards. Generally, the maps must show electrical energy generation potential (e.g. solar resource potential) and “constraints” to electrical energy generation (e.g. floodplains, wetlands, etc.). The maps are intended to be planning tools that provide the municipality, citizens, and developers with a better idea of where new electrical energy generation facilities may or may not be located within the municipality.

- **Review RPC Maps.** RPCs have developed municipal energy maps for all municipalities in Vermont. **Per the DPS determination standards, if a municipality that uses municipal energy maps developed by the RPC the municipality will automatically be presumed to meet the standards.**

While some municipalities may choose not to use RPC-developed maps, it is recommended that RPC-developed maps be reviewed by every municipality to gain a general idea about the type of energy resources and natural resources constraints that exist in the municipality and to ensure consistency with the Regional Energy Plan maps.

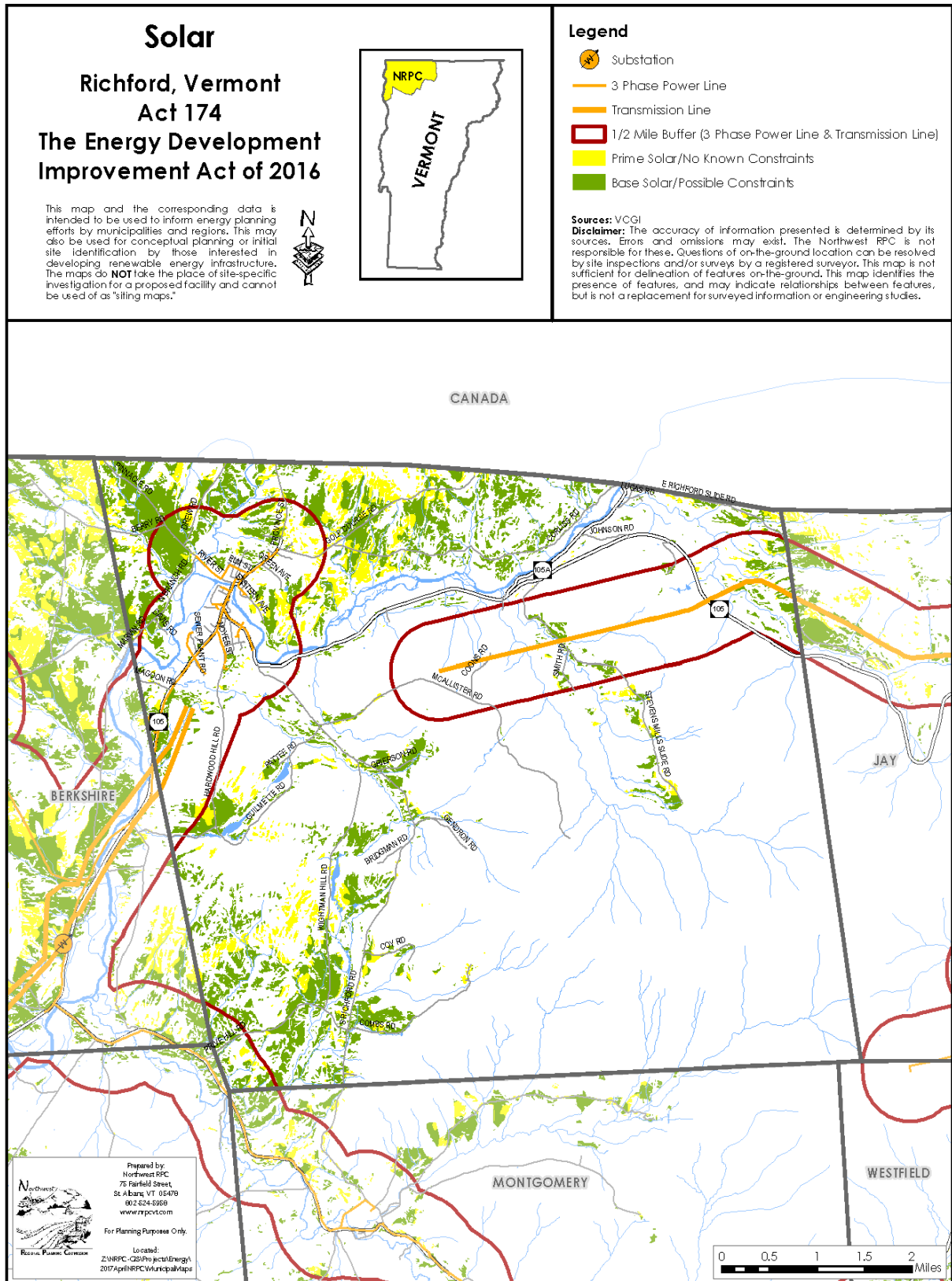


Figure 4 - Town of Richford, Vermont Solar Map

- **Identify Municipal “Preferred Areas,” “Local Constraints” and/or “Unsuitable Areas.”**

Municipalities are encouraged to designate locally-preferred locations and unsuitable areas for renewable energy development. **Local constraints and/or unsuitable areas can be identified only if municipal land use policies in the area are similarly prohibitive of other types of development.** Preferred, constrained, and unsuitable areas may apply to specific *types* and *scales* of renewable energy development. For example, some preferred sites may be suitable for large-scale solar development, whereas other preferred sites are suitable for smaller scales of solar development. See the following page and Appendix D for information on developing clear policy language for such distinctions. See [DPS Regional Guidance document](#) for more details on these designations.

- Preferred areas are specific sites and/or types of sites where the municipality has determined that future renewable energy generation is highly encouraged. If designated, these sites attract development since preferred sites confer permitting and pricing benefits to developers. There are numerous ways to identify preferred areas, but many municipalities have used a combination of two approaches. One approach is to identify specific land parcels as preferred sites for development. To help its municipalities with this approach, the Bennington County Regional Commission developed a [guidance document on the preferred site designation](#) (see link below). Another approach is to develop a set of criteria a site must meet to receive a preferred designation (i.e., establish a policy basis for the municipality’s granting of a preferred site designation). This approach may be more accessible for municipalities lacking the time or resources to pursue outreach campaigns to landowners about specific land parcels. Of course, municipalities may use both of these strategies in their plans and are encouraged to do so. Having preferred site criteria or a policy basis for preferred site designation will support municipal decision making beyond specific parcel identification.
- Local constraints can also be incorporated on the maps. Municipal, or ‘local’ constraints are areas where the municipality has determined that additional renewable generation facilities and similar development should likely not be located, typically because of the presence of one or more environmental, historic, or other public resources located in the area. These constraints are applied in addition to statewide and regional constraints that have already been identified and fall into absolute (‘Known’) or flexible (‘Possible’) categories. See the [DPS determination standards](#) for the list of environmental constraints identified by DPS. Contact your RPC for any constraints specifically identified by the RPC. Appendix A contains links to municipal plans where municipal constraints have been identified. Remember that local constraints must be consistent with existing land use policies in the municipal plan (or another planning document) that restrict similar forms of development. Municipalities must reference these policies when they apply for a Determination of Energy Compliance from their RPC, so keep records of the constraint identification process.
- Unsuitable areas are areas that are not suited for future renewable generation and in this way are similar to municipal constraint areas. Exactly how local constraint areas and unsuitable areas differ has depended on how municipalities define and apply these terms in their plans.

In practice, a difference has been that unsuitable area designations are absolute restrictions (similar to the State-level “Known Constraints”), whereas local constraints are regarded by municipalities as both known and possible constraints. Some municipalities only identify local known and possible constraints and choose not to use the term ‘unsuitable areas’. If defining unsuitable areas, as with the other local designations, it is important for a municipality to consider the *scale* and *type* of renewable facility being restricted. An area within a municipality (e.g. a conservation land use district or overlay) may be unsuitable for large-scale wind facilities but may be able to accommodate “residential” or small-scale solar facilities, for example. This differentiation may depend on the language in a municipality’s land use policies.

- **Develop clear statements of policy to accompany resource maps.** DPS Standards require that plans include strong policy statements that can be clearly interpreted by the Public Utility Commission (PUC) in Section 248 proceedings regarding the siting of renewable energy facilities. Examples of such policy language are provided in Appendix D and in Module 2 contains more detail about how enhanced energy plans will be referenced by the PUC in Section 248 proceedings. Ensure that the map and the text describing the policies are complementary to ensure that any policy or land conservation measure that might be given substantial deference is clearly identifiable should a map lack sufficient clarity. If designating preferred, constrained, or unsuitable areas, define these terms and be internally consistent in their application.

Mapping Resources:

- RPC Municipal Energy Mapping Data: See links to example municipal plans in Appendix A
- Vermont Community Energy Dashboard: <http://www.vtenergydashboard.org/>
- Vermont Center for Geographic Information - Act 174 – Energy Planning Mapping Standards: <http://vcgi.vermont.gov/opendata/act174>
- BCRC Guidance on Preferred Sites Designation: <http://www.bcrcvt.org/energy-planning.html>
- Example Policy Language Regarding Siting of Renewable Energy Facilities: See Appendix D

Plan Adoption and “Determination”

Once a draft of the municipal enhanced energy plan has been completed it is recommended that the municipality take the following steps before local adoption of the plan and submission to the RPC for a “determination of energy compliance:”

- **Review for Consistency with Municipal Plan.** Review the draft enhanced energy plan or plan element for consistency with the remainder of municipal plan. Address any inconsistencies before beginning the plan adoption process. Take a close look at the Land Use, Natural Resources, Transportation, Housing, and Community Facilities sections of the current plan.
- **Build Local Support.** Actively seek input on the draft enhanced energy plan from citizens, public utilities, businesses, and other local stakeholders. Use social media, Front Porch Forum, email list serves, etc. to spread the message about the plan. Address community concerns and build local support before proceeding to local adoption of the plan.

- **Request Preliminary RPC Review.** Request that the RPC perform a preliminary review of the proposed enhanced energy chapter and full municipal plan before the plan is locally adopted. RPCs may also be able to provide feedback on early drafts of an energy chapter. This will provide the RPC an opportunity to comment on the full plan and an opportunity for the municipality to understand any outstanding issues that should be addressed before adoption.
- **Request RPC Review for Determination of Energy Compliance.** After the plan is locally adopted, the municipality can submit a request to the RPC for Determination of Energy Compliance. With a positive determination, the municipality's plan will receive substantial deference in Section 248 proceedings. Requests should generally include the following but confirm with your RPC to clarify their review guidelines. The request will likely include:
 - The locally adopted plan as amended to include an enhanced energy element
 - Completed "Energy Planning Standards for Municipal Plans" checklist
 - Minutes for the meeting in which the plan was adopted
 - A brief report on the internal consistency between the energy plan and the other elements of the municipal plan.

The RPC's process for Determination will take no more than 60 days and will involve a public hearing on the plan.

Plan Adoption and "Determination" Resources:

- DPS - *Municipal Plan Determination Checklist* and Plans Submitted for a Determination of Energy Compliance: <http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>
- DPS – Plans Submitted for a Determination of Energy Compliance (example determination decisions): <http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>

Module 2 – Municipal Plans in the Section 248 Process



Taftsville Hydro Station | Woodstock, VT



Public Utilities Commission Hearing | May 2018



Georgia Mountain Community Wind | Georgia, VT

Introduction

After adopting a municipal enhanced energy plan, municipalities can choose to implement their plans in several ways. The “pathways” identified in each plan should provide an array of options for implementation. Implementation may mean completing a physical project outlined in the plan (e.g. constructing an electric vehicle charging station at a municipal building) or it may mean further planning work (e.g. determining ways the municipality can reduce its own energy use).

One way that municipal enhanced energy plans are automatically implemented is through the use of the plan in the “Section 248” process. The term “Section 248” refers to Vermont statute: [Title 30 V.S.A. §248](#). This statute outlines the criteria and procedures used to review proposed electricity generation facilities. All facilities that produce electricity and are connected to the electric grid must go through the Section 248 process to receive a Certificate of Public Good (CPG) from the Vermont Public Utility Commission (PUC). **The intent of this process is to guarantee proposed projects meet eleven specific criteria in the statute that assess need for a facility, its reliability, economic benefit, environmental impacts, and the “land conservation measures” in the municipal plan.**

The review of a proposed renewable electricity generation facility’s compliance with the “land conservation measures” of municipal plan is given due consideration by the PUC per the criteria in Title 30 V.S.A. §248. However, a municipal plan with an “affirmative determination of energy compliance” receives a more favorable standard of review in the Section 248 process than a typical municipal plan. This is due to such land conservation measures and specific policies in municipal plans being given the benefit of a more deferential legal standard (“substantial deference” standard of review) than typical municipal plans (“due consideration” standard of review).

The following module reviews the role of municipalities and municipal plans in Section 248. An overview of the Section 248 process and criteria opens the module. The module continues by providing guidance on how municipalities can be effective parties in proceedings before the PUC. The module closes by reviewing the differences between the “substantial deference” and “due consideration” legal standards, and an exploration of how municipal enhanced energy plans may be interpreted by the PUC.

The Section 248 Process

Overview

This guidance provides a brief introduction to Section 248 proceedings. It is not possible to describe all relevant information about this process or recommended engagement approaches in one review. Readers interested in understanding more about the Section 248 process should begin by consulting the [Citizens Guide to Section 248](#) published by the Department of Public Service (DPS). That resource is slightly dated, but its guidance on participating in Section 248 procedures is valuable. Relevant sections of the Vermont Statute and in PUC rules provide more detailed information. In addition, staff at the Department of Public Service and regional planning commissions are available to answer questions about the basics of the Section 248 process for municipal officials seeking general information.

Types of Applications

The following is a review of the different types of applications that can be filed with the PUC for electricity generation facilities.

Net-Metering

Net-metering is the most common type of application that is reviewed under Title 30 V.S.A. §248. These facilities are relatively small in size and generate electricity that is associated with, or “assigned,” to a particular property. There are rules that are specific to net-metering facilities ([PUC Rule 5.100](#)) which vary based on the size of the facility and the type of renewable energy involved (solar, wind, hydro, etc.). The following are the three classes of applications considered under the net-metering rules:

- Registration of Hydroelectric Facilities, Ground-Mounted Photovoltaic Facilities of Up to 15 kW in Capacity, and Roof-Mounted Photovoltaic Net-Metering Systems of Any Capacity Up to 500 kW
- Applications for Ground-Mounted Photovoltaic Net-Metering Systems Greater Than 15 kW and Up to and Including 50 kW and for Facilities Using Other Technologies Up to and Including 50 kW
- Applications for Net-Metering Systems Greater Than 50 kW That Are Not Roof Mounted Photovoltaic Systems or Hydroelectric Facilities

Please note that these “classes” of net-metering applications are distinct from the “categories” of net-metering facilities defined in the net-metering rules. “Categories” are used to more broadly define what types of net-metering applications can be approved by the Public Utility Commission and the price at which electricity generated from the net-metering facilities may be sold.

Utility-Scale Projects

Projects that do not meet net-metering rules are typically referred to as “utility-scale” projects. This is a broad category of projects that includes almost all projects larger than 500 kW in capacity. Utility-scale projects can be approved by the Public Utility Commission under several different types of regulatory programs. These programs are not easily summarized. Despite the variety of programs each utility-scale project is reviewed using the same approval process and criteria outlined in the sections below.

Net-Metering and Net-Metering Categories

Net-metering makes it easier and more cost-effective for Vermonters to generate their own electricity. In 1997, the Vermont legislature passed H.605, which allowed net-metering in Vermont. Net metering requires electric utilities to permit an individual customer or group of individual customers (referred to as group net-metering) to generate their own power using small-scale renewable energy systems and qualified combined heat and power systems using non-renewable fuels. The excess power they generate can be fed back to their utilities. (Source: Vermont Department of Public Service).

The following categories of net-metering systems are defined in Vermont’s net-metering rules:

“Category I Net-Metering System” means a net-metering system that is not a hydroelectric facility and that has a capacity of 15 kW or less.

“Category II Net-Metering System” means a net-metering system that is not a hydroelectric facility that has a capacity of more than 15 kW and less than or equal to 150 kW, and that is sited on a preferred site.

“Category III Net-Metering System” means a net-metering system that is not a hydroelectric facility, that has a capacity of greater than 150 kW and less than or equal to 500 kW, and that is sited on a preferred site.

“Category IV Net-Metering System” means a net-metering system that is not a hydroelectric facility, that has a capacity of greater than 15 kW and less than or equal to 150 kW, and that is not located on a preferred site.

(Source: Vermont Department of Public Service)

If a utility-scale project has been proposed in your municipality, consult with your regional planning commission and/or legal counsel to better understand the particular program that the applicant is proposing to utilize. Common programs used to approve utility scale projects include:

- [Standard Offer Program](#)
- Power Purchase Agreements with Electric Utilities
- Public Utility Regulatory Policies Act (PURPA) process

Utility-scale projects may be developed by electric utilities (e.g. Green Mountain Power, Vermont Electric Coop, etc.). They may also be developed by “merchant utility,” third parties that own the electric generation facility and sell the electricity to an electric utility.

Section 248 Parties – Who can participate and how?

There are two ways to participate in the Section 248 process: (1) as a “party” (often referred to as a “formal party”) to the case or (2) as a member of the public. **A formal party is a person, organization, or entity that may provide testimony and participate in evidentiary hearings**, whereas a member of the public may only speak at public hearings and submit written comments to the PUC.

Title 30 V.S.A. §248 outlines the parties that may be involved in a Section 248 proceeding. Some of these parties are “automatic” formal parties. These are parties that automatically have a right or interest in any Section 248 proceeding. The term “automatic”

does not mean that these parties are exempt from the rules governing Section 248 proceedings.

“Automatic” parties are still required to file a Notice of Appearance and Notice of Intervention if they would like to be actively participating parties in a Section 248 proceeding. Failure to file a Notice of Appearance and/or Notice of Intervention may lead to disqualifications of an entity from being a formal party in the docket.

Other parties may also be involved in the Section 248 process. Potential parties may include adjoining landowners, non-profits, the Vermont Agency of Agriculture, Vermont Division of Historic Preservation, or other members of the public. These potential parties must demonstrate a specific interest in the project in order to be permitted by the PUC to be a formal party in a Section 248 proceeding. To demonstrate this specific interest, these parties must also file a “Notice of Appearance” and “Notice of Intervention” with the PUC.

Interested individuals or groups may decide they are content to participate as members of the public instead of participating as a formal party. Members of the public may speak at public hearings and send written comments to the PUC by mail or email. This choice is suitable for a person or group (including municipalities) whose interests are sufficiently represented by a formal party already participating in a Section 248 process, such as the regional planning commission or the Vermont DPS Public Advocate Division.

“Automatic” Parties

- Applicant
- Department of Public Service
- Agency of Natural Resources
- Regional planning commission in which the project is proposed
- Municipality in which the project is proposed
- The electric utility

Section 248 Proceedings – What are the steps in the process?

Like Act 250, Section 248 is a quasi-judicial process. However, full Section 248 proceedings are much more rigid and structured than most Act 250 proceedings. Formal rules and procedures govern these proceedings and apply to all parties whether or not they are represented by legal counsel. For more information about legal representation and municipal engagement in the Section 248 process, please see section below about Municipalities as “Formal Parties” in Section 248.

The following is an overview of the Section 248 process for both net-metering and utility-scale projects. This is followed by some additional information that municipalities should consider while participating in the Section 248 process.

Net-Metering Applications

Net-metering applications are reviewed under a simplified version of the Section 248 process. This is due to their relatively small size.

Small net-metering facilities (these include both roof-mounted and ground-mounted solar under 15kW (which would commonly be installed to power a single-family home), small hydro facilities, and larger roof-mounted solar facilities on commercial and industrial structures), only require filing a registration form with the Public Utility Commission in order to receive a Certificate of Public Good. There are no notice requirements for projects in this category.

Larger net-metering facilities are required to complete the first step in the formal Section 248 process which entails providing a 45-day notice of application to all of the parties outlined in the next subsection. This notice of application allows other parties to file comments and questions with the applicant and the PUC regarding the project. Municipalities are highly encouraged to submit comments during this stage in the process. Comments received by the applicant during the 45-day notice of application must be summarized by the applicant in their full application to the PUC. Further, the applicant must respond to issues raised in the comments filed and address what steps the applicant may, or may not, make to address the comments in the full project application.

Once the applicant files a full application for larger net-metering projects, parties have 30 additional days in which to file comments addressing whether an application should be issued a Certificate of Public Good. Per the net-metering rules, if a party wishes to submit “contrary evidence” or “challenge the accuracy of information contained in an application” the party may request a hearing. If a hearing is requested the normal Section 248 process as outlined for utility-scale projects generally applies.

If no parties request a hearing, larger net-metering projects are reviewed by the PUC, or PUC hearing officer, and the Certificate of Public Good is issued administratively.

For more detailed information see [Public Utility Commission Rule 5.100](#). The process for amendments to existing net-metering facilities may vary.

Utility-Scale Projects

The following is an overview of the typical Section 248 process for utility-scale projects.

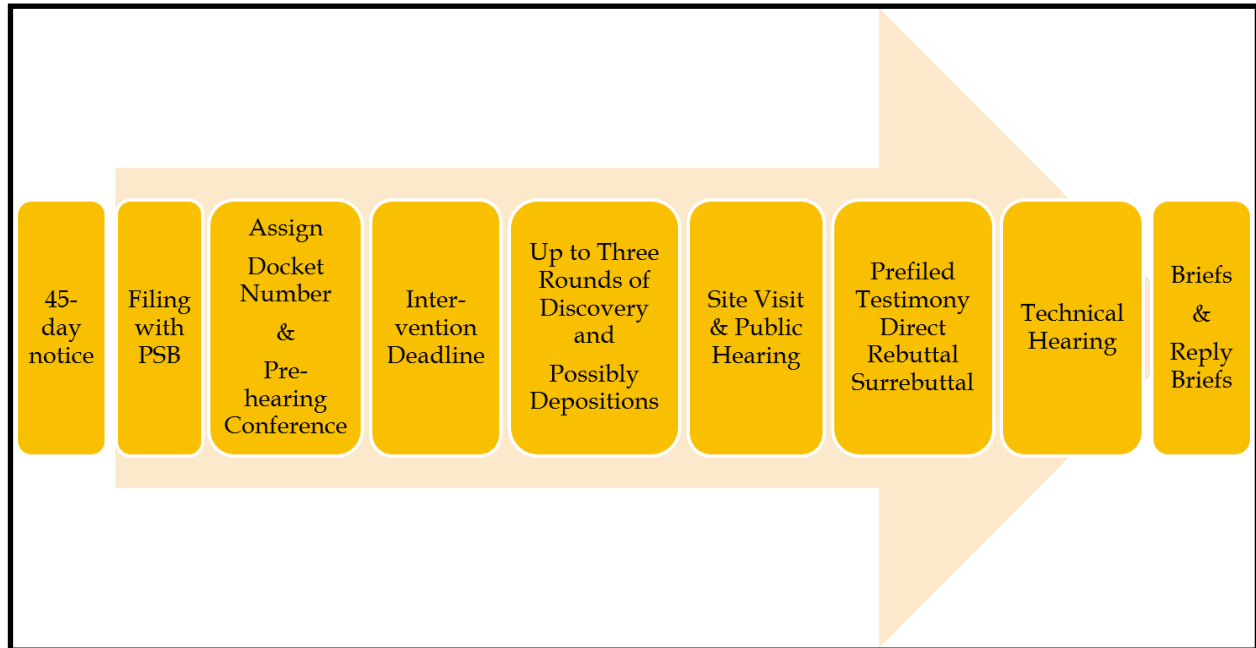


Figure 5 - Section 248 Process

45-Day Notice of Application

Utility-scale projects are required to provide notice to municipal planning commissions, municipal legislative bodies, and regional planning commissions of no less than 45 days prior to filing a full application with the PUC (30 V.S.A. 248(f)). This notice is required to contain the following per [PUC Rule 5.400](#):

identification and analysis of aesthetic impact; project plans in as much detail as the petitioner reasonably can provide (including a schematic); a description of how equipment and materials will be transported to the site; and plans which indicate the approximate location of all proposed new infrastructure (e.g., transmission, substation, roads, etc.) relative to the existing conditions. With the construction plans, the petitioner shall include a description of its evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.

During the 45-day notice period, a municipal planning commission and/or regional planning commission may choose to hold a public hearing on the application. This is an opportunity to learn more about the proposed project and to hear public input regarding what is proposed. The municipal planning commission or regional planning commission may request or compel the applicant (also known as the “petitioner”) and/or the Department of Public Service to attend the public hearing.

After a public hearing, a planning commission or legislative body may also choose to make recommendations to the applicant. The applicant is required to address any recommendations submitted to them in their full application to the PUC. The planning commission is required per statute to submit recommendations to the applicant within 40 days of receiving the 45-day notice from the applicant.

A municipal planning commission or regional planning commission may choose to waive the 45-day requirement per statute. However, this practice is generally discouraged since it typically provides no benefit to the municipality or citizens of the municipality.

Filing of Application

Next, the applicant files an application with the PUC. This is done through the ePUC website, but applicants may provide a hard copy to the PUC and the municipality. Once the application is filed, municipal officials should “follow” the case on the ePUC website. For more information on how to use the ePUC website see: <http://puc.vermont.gov/epuc-information>.

Pre-hearing Conference

The PUC will hold a pre-hearing conference after a full application is filed. The pre-hearing conference is open to the public and all parties, or potential parties, may choose to attend, but attendance is not required. This conference is a way for the PUC to better understand which parties will likely “intervene” or become active members of the case. It is also a time where the PUC and parties can discuss the any potential issues with the application.

Often the most important part of the pre-hearing conference is the discussion of a schedule. This will include discussion about a deadline to “intervene,” or request to be a formal party in the case, and deadlines for other parts of the process. This includes when discovery must be served on the applicant, when a site visit may occur, and when a technical hearing may be held.

Municipalities are highly encouraged to attend the pre-hearing conference in person, especially if the municipalities anticipates being an active participant in the docket. If a municipality sends a representative to the pre-hearing conference, it is imperative that it consider who may best represent the municipality. A Selectboard member, municipal staff member, or municipal attorney are all possible choices to represent a municipality.

Municipalities may be able to participate in the pre-hearing conference via conference call. For more information, please contact the PUC Clerk (psb.clerk@vermont.gov).

March 7, 2014	Deadline for filing motions to intervene
March 14, 2014	Deadline to file responses to motions to intervene
March 20, 2014	First round of discovery requests due to be filed on VGS
April 4, 2014	VGS due to file responses to first round of discovery requests
April 18, 2014	Second round of discovery requests to be filed on VGS
May 7, 2014	Site Visit and Public Hearing
May 16, 2014	Non-petitioners due to file direct testimony
May 23, 2014	Discovery requests due to be served on non-petitioners prefiled testimony

Figure 6 - Example of a Scheduling Order

A few days after the pre-hearing conference, the PUC will issue a Scheduling Order setting the schedule for the remainder of the Section 248 proceeding. Please note that the PUC may amend this Scheduling Order so it is important to review all documents issued by the PUC to ensure that important deadlines have not changed.

Intervention

Intervention is the process through which a person or group (including a municipality) becomes a formal party in a Section 248 proceeding. This requires filing a Notice of Intervention with the PUC by a date set by the PUC in a Scheduling Order. The Notice of Intervention should be accompanied by a Notice of Appearance which outlines who will be representing the municipality in the Section 248 proceeding. These notices should be filed by a representative of the municipality (a PC member, Selectboard member, staff, or an attorney) through the ePUC website. Municipalities' request to intervene are typically approved by the PUC within a few days of filing.

The Notice of Intervention must identify the municipality's "interest" in the case in relation to the Section 248 criteria in statute. Municipalities are most often concerned with the 'orderly development and natural resources-based criteria (criteria (b)(1) and (b)(5)). See section below on Section 248 Criteria.

Intervention should not be requested by a municipality without considerable thought since participation requires considerable time, expertise and potentially money if an attorney will represent the municipality. Here are some questions that a municipality should ask before deciding to intervene:

- May community concerns be resolved by revising project plans with the applicant during the 45-day notice period?
- What is the project's potential impact, both positive and negative, on the community?
- What are the benefits of intervening? What are the costs?
- Which Section 248 criteria are of concern of the municipality?
- Will other parties that share the same interests? Is there possibility to cooperate with these parties?
- What is the position of the Vermont Department of Public Service Public Advocate Division (PAD)? What is the position of the regional planning commission? Do their interests align with the municipality's interests?
- Will the legislative body support intervention and commit the required resources (ex. time and money)?
- May other possible courses of action that could be more effective in influencing the project and meeting community concerns?

If intervention is granted by the PUC, it is encouraged that the municipality organize and establish a chain of command for dealing with the case as it progresses. The legislative body should also allocate funding to ensure continued ability to be involved in the case. The municipality should begin to work collaboratively with parties with shared interests. Collaboration can potentially cut costs and improve effectiveness in the Section 248 proceeding.

For more information on intervention and municipal involvement in the Section 248 process, see the "Municipal Considerations" subsection below. Examples of a Notice of Intervention and a Notice of Appearance can be found on the [PUC website](#).

Site Visit and Public Hearing

The PUC may order that a site visit be conducted. This site visit is not part of the evidentiary record, but can aid parties in understanding the size and scale of a proposed project.

The PUC will also hold a public hearing in the community in which a facility is proposed. The PUC public hearing allows the public to make comments and raise concerns regarding a project, but does not permit the public to ask questions directly to the applicant. This type of format may be confusing to members of the public who are accustomed to alternative public hearing formats.

Often public hearings are held early in the process – typically before prefiled testimony and rebuttal testimony have been filed. For a major project, the municipality may want to propose that the PUC hold a second public hearing nearer to the time of the technical hearing so the public can benefit from the prefiled and rebuttal testimony and the perspectives provided therein. Public comments at the public hearing may inform cross examination during the technical hearings by parties to the proceedings, as well as by the PUC.

In addition, municipalities may engage with the applicant directly and conduct their own public hearing. This type of hearing would not be a part of the evidentiary record and would be separate from the Section 248 process.

Discovery and Depositions

Discovery is a formal process through which parties ask each other questions about their respective testimony and evidence. These questions are called “interrogatories.” The responses to interrogatories are provided under oath and may become part of the evidence in a case. There are typically several different rounds of discovery over the course of several months.

If a municipality plans on participating in discovery, it is recommended that the municipality focus on the “orderly development” criterion (criterion (b)(1)) and the natural resources-based criterion (criterion (b)(5)). These are criteria under which municipalities hold considerable expertise since they deal with municipal planning, natural resources, and aesthetics.

In some larger cases, parties may depose other parties involved in the case. A “deposition” is the process of an individual being questioned and providing evidence under oath.

Pre-filed Testimony

Parties may pre-file testimony of any witnesses, including “expert” witnesses, with the PUC to support their position in the case. This pre-filed testimony is entered into the evidentiary record under oath. The purpose of filing pre-filed testimony is to save time during the technical hearings by avoiding direct examination of witnesses.

Technical Hearings

Technical hearings are highly structured. These hearings are comparable to a trial. Since all testimony is pre-filed, however, the technical hearing consists primarily of the cross-examination of witnesses on their pre-filed testimony and exhibits. During the technical hearings the PUC may ask questions that have not been raised in pre-filed testimony. Evidence is entered into the docket through exhibits filed during the technical hearings. All parties may conduct cross-examination.

In larger cases, the full PUC will attend the technical hearings. In smaller cases, only a PUC hearing officer or another staff member may hear testimony and ask questions.

Briefs

Briefs may be filed by parties after the technical hearings and are typically filed in two rounds: initial and reply. Briefs provide the parties with another opportunity to cite facts from the record, link them to applicable statutes, rules and regulations, and present any legal argument they believe will influence the decision of the hearing officer or PUC. Parties may also file Proposals for Decision through which they advise what conclusions are supported by the evidence in the docket. The PUC encourages parties to stipulate to facts and enter into agreements when possible before a PUC decision is issued.

Decision and Appeal

After briefs, the PUC will issue a written decision. This decision will be based on the evidentiary record and include findings of fact and conclusions of law indicating whether or not Section 248 criteria are met by the project. In smaller cases, a hearing officer may issue a draft written decision, called a “proposal for decision,” on behalf of the PUC. In such cases, the hearing officer may provide parties with an opportunity to comment on the proposal for decision or ask for an oral argument before the full PUC.

All parties may ask the PUC to reconsider a decision or appeal a decision to the Vermont Supreme Court. The appeal period is 30 days from the date of the PUC’s Final Order.

Section 248 Criteria – What will the PUC review?

The Public Utility Commission considers 11 statutory criteria when considering an application for a Certificate of Public Good. The following section will focus on two of the criteria where municipalities may most effectively “weigh in” during a Section 248 proceeding.

Criterion 248(b)(1) Orderly Development

This criterion is discussed in detail in the next section of this module. It is under this (b)(1) criterion that a municipal plan, including an enhanced energy plan, will be considered in Section 248.

Criterion 248(b)(5) Natural Resources, Aesthetics, Historic Sites

This criterion ensures that no facility may have “an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety...” It is under this criterion that several of the criteria in Act 250 related to natural resources and aesthetics (Criterion 1 through Criterion 8 and Criterion 9(K)) are to be addressed by the applicant.

Most municipalities have spent a considerable amount of time planning for land conservation measures in their municipal plan. This includes the mapping required to complete enhanced energy planning. Municipal plans often contain detailed information about natural resources and aesthetics. Clear, written standards in municipal plans regarding natural resource protection and aesthetics can be very effective at influencing a Section 248 proceeding under this (b)(5) criterion.

Other Criteria

There are several other criteria that a municipality may be interested in considering when reviewing a Section 248 application. These criteria deal with the need for a proposed project to meet present and future electric demand, electric system stability and reliability, and economic benefit to the State and its residents. Generally, municipalities are not considered “experts” on these criteria. Other parties, such as the Department of Public Service and public electric utilities, are seen as having more expertise regarding these criteria. Municipalities are encouraged to reach out to these other parties and seek cooperation if they are concerned about a projects’ ability to meet these criteria.

Municipalities as “Formal Parties” in Section 248

How to Engage

Municipalities must consider how vested they are in the outcome of PUC proceedings before determining how they may or may not engage in the Section 248 process. Each application should be treated individually depending on the specifics of the application. If a municipality decides to actively engage in the Section 248 process it must determine if it will hire legal counsel or represent itself in the docket (pro se representation).

Effective legal counsel will understand PUC procedure and process, precedent, and will have sufficient knowledge of the technical aspects of the proposal, which will guide strategy and tactics. Legal counsel may also be costly and the benefits of legal services must be weighed against the financial costs.

Pro se representation, or representation for oneself without counsel, is certainly allowed, but lack of familiarity with rules and procedure can put a party at a disadvantage. The learning curve related to procedure alone, from the formatting of documents to conducting cross-examination during a technical hearing, can consume considerable time while the party may also be trying to get a handle on a variety of technical, legal and regulatory aspects of the proposed project itself. The PUC tends to be very patient with parties that participate pro se during technical hearings, but that may not compensate for weak engagement in the process. And the other parties will likely object to any engagement that does not follow rules and procedure. Lack of knowledge and experience will not be given a pass.

As a municipality deliberates its engagement strategy (i.e. should the municipality participate as an intervenor/formal party, or as a member of the public collaborating with formal parties to the process? Should the municipality secure legal counsel?), it is recommended that it consult with the Department of Public Service Public Advocate Division (PAD) staff to get their perspective on the standing of the municipal plan and policies in the specific docket early in the process. The PAD cannot and will not advise whether or not counsel should be retained, but if it is clear that the PAD will support the positions of the municipality, support from the PAD through its engagement in the docket may be sufficient depending upon the application.

Municipalities, however, should remember that the PAD represents the Department of Public Service in PUC proceedings as a separate party. While it may have similar interests as the municipality, it is ultimately responsible for providing the voice of the Commissioner of Public Service in PUC dockets. That’s the case for all other parties too (including regional planning commissions). Parties may support one another, but ultimately each must represent and speak for themselves.

In general, if a municipality is heavily vested in the outcome of the PUC proceeding, it is strongly advised to retain legal counsel so that it may fully and effectively participate in the docket.

Writing Effective Enhanced Energy Plans For Use in Section 248

Overview

This section contains detailed exploration of the current legal context for use of municipal plans in Section 248 proceedings. Discussion centers on the legal concepts the PUC has applied in the past to interpret municipal plans, as well as how PUC interpretations may change moving forward for municipal plans that have received a determination of energy compliance.

Orderly Development in the Region

Under Vermont law, 30 V.S.A. § 248(a)(2), no company or person may begin site preparation for or construction of an electric generation or transmission facility unless the PUC first finds that the facility will promote the general good of the State and issues a certificate to that effect.

Prior to issuing a certificate of public good, the PUC is required to make findings under the criteria listed in § 248(b) of Title 30. The first criterion, §248(b)(1), provides that, before the PUC may issue a certificate of public good, it shall find that the facility:

*will not unduly interfere with the orderly development of the region **with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.***

Section 248(b)(1) also contains additional or modified standards for the review of natural gas transmission lines, ground mounted solar electric facilities, and in-state electric generation facilities where a regional or municipal planning commission, or municipal legislative body, has taken steps to adopt a plan, bylaw or ordinance provision related to the facilities.

Undue Interference and Regional Development

The concepts of “undue interference” and “orderly development in the region” lie at the heart of § 248(b)(1). Regarding these concepts, there are two important issues to note.

First, the language of § 248(b)(1) does not prohibit all interference with orderly regional development. Only “undue” interference is prohibited. What is “undue” is a matter of PUC interpretation and discretion although, as discussed below, the statute identifies certain factors that the PUC is required to consider in connection with its assessment of whether any interference is undue.

Second, § 248(b)(1) is focused on regional impacts – as the Vermont Supreme Court has emphasized, “the statutory requirement relates to orderly development *of the region*, not to a particular municipality within the region.” *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶9. Thus, while the PUC may determine, in certain instances, that localized impacts interfere with orderly development due to their character or severity, the statute’s focus is on the broader regional context. Absent evidence of region-wide impacts, the PUC’s assessment of whether a proposed facility’s impact is “undue” generally will not turn on factors that are primarily local in nature. *Id.* at ¶12.

Due Consideration and Substantial Deference

Due Consideration

To evaluate whether interference with orderly development is undue, § 248(b)(1) requires the PUC to give “due consideration” to three factors: (1) the recommendations of the municipal and regional planning commissions; (2) the recommendations of the municipal legislative bodies; and (3) the land conservation measures contained in the plan of any affected municipality.

In *City of South Burlington v. VELCO*, 133 Vt. 438 (1975), the Vermont Supreme Court held that the use of the phrase “due consideration” in § 248(b)(1) “at least impliedly postulates that municipal enactments, in the specific area, are advisory rather than controlling.” *Id.* at 447. In other words, due consideration means that the PUC is *not bound* by municipal or regional pronouncements or enactments. Rather, in evaluating whether a proposed facility will “unduly” interfere with orderly

development of the region, the PUC must consider certain municipal and regional recommendations and municipal plan provisions related to land conservation. However, the consideration that the PUC must give to these factors is a matter of broad discretion.

As § 248(b)(1) states, the PUC need only give relevant recommendations and land conservation measures the consideration that is “due” under the circumstances of the case. This is consistent with the Vermont Supreme Court’s general pronouncement in *In re UPC Vt. Wind, LLC*, 2009 VT 19, that when the PUC evaluates a petition for a CPG under 30 V.S.A. § 248, it is engaging in a legislative, policy-making process and, consequently, the PUC must exercise its “particular expertise and informed judgment” to determine, in any particular case, whether a facility’s interference with regional development is undue.

Substantial Deference

The due consideration standard generally applicable under § 248(b)(1) must be contrasted with the “substantial deference” standard that is now applied to land conservation measures **and** specific policies contained in a duly adopted municipal or regional plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352, as further discussed below. Under 30 V.S.A. § 248(b)(1)(C), substantial deference means that a land conservation measure or specific policy “shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy.” In other words, while the PUC has broad discretion under § 248(b)(1) in evaluating municipal and regional recommendations, § 248(b)(1)(C) substantially limits the PUC’s ability **not** to enforce a specific municipal or regional conservation measure or specific policy in particular circumstances (i.e., where the municipality or regional planning commission has received an affirmative determination of energy compliance).

While the PUC retains authority under § 248(b)(1)(C) to refuse to enforce a land conservation measure or specific policy “according to its terms,” it may do so only on the basis of a “clear and convincing demonstration” that other factors impacting the general good of the State outweigh enforcement of the measure or policy at issue.¹ This clear and convincing standard suggests that the PUC must find with reasonable certainty that other factors of State-wide significance exist and outweigh the conservation measures and specific policies stated in a municipal or regional plan, that has obtained an affirmative determination of energy compliance, not to defer to and enforce those municipal or regional measures and standards. To date, very limited guidance exists regarding how the PUC will engage in this balancing on a case-specific basis. As more municipalities and regional planning commissions obtain determinations of energy compliance, and their conservation measures and specific policies are tested in the context of CPG proceedings, the potential benefits (and potential drawbacks) of substantial deference should become apparent. To obtain any benefit arising from the substantial deference standard, however, municipalities and regional planning commissions must first take the steps necessary to obtain an affirmative determination of energy compliance.

Recommendations of Municipal and Regional Planning Commissions and Municipal Legislative Bodies

Both the PUC and the Vermont Supreme Court tend to interpret § 248 in a manner that avoids giving a single municipality the power to “subvert utility projects statewide in scope and broadly entrusted to a

¹ Black’s Law Dictionary (6th ed. 1990) defines “clear and convincing proof,” in part, as “that proof which results in reasonable certainty of the truth of the ultimate fact in controversy.”

single planning and supervisory agency.” *City of South Burlington v. VELCO*, 133 Vt. 438, 448 (1975). However, the PUC does use municipal and regional planning commission recommendations, as well as the recommendations of municipal legislative bodies, to inform its decisions under § 248(b)(1). The “weight” that the PUC gives to these recommendations -- and the depth of its consideration of municipal and regional recommendations -- may be affected by factors both simple and complex.

For example, **timeliness and the extent of municipal and regional participation** in Certificate of Public Good proceedings may be important factors in the PUC’s “due consideration” or “substantial deference” calculus. Both 30 V.S.A. § 248(f) and PUC Rule 5.402 establish deadlines for municipal and regional planning commissions to provide comments and recommendations to both the Certificate of Public Good applicant and the PUC. These comments and recommendations may be submitted irrespective of whether a regional or municipal planning commission, or a legislative body, exercises its statutory right to appear as a party in a § 248 case. In the event that a municipal or regional planning commission, or municipal legislative body, does intervene in a § 248 proceeding, and elects to present evidence and argument relating to § 248(b)(1), that evidence and argument is entitled to due consideration by the PUC. *In re Petitions of VELCO* (Northwest Reliability Project), Docket No. 6860, Order of 1/28/2005, at 201.

The **reasonableness of municipal or regional recommendations, and the basis for those recommendations**, are also important factors influencing the weight that the PUC gives to municipal and regional recommendations. In the related context of 30 V.S.A. 248a (regarding communications facilities), the PUC has suggested that municipal recommendations will be adopted when reasonable and when the proponent has “articulated a reasonable basis for th[e] recommendation.” *In re Petition of Vermont RSA Limited Partnership and Celco Partnership*, Docket No. 8601, Order of 9/21/2017, at 21. On the other hand, recommendations premised only on demands for strict compliance with land use and zoning requirements are far less likely to be adopted by the PUC than recommendations that are **based on well-established and specific planning goals**. *Id.* Even where recommendations are reasonable and grounded in the language of duly adopted planning documents, however, the PUC still has the discretion to reject them. Where recommendations are reasonable, premised on legitimate planning goals, and relate to land conservation measures and other specific policies contained in a plan that has received a determination of energy compliance, however, the substantial deference given to such measures and policies should improve the potential that those recommendations will be adopted by the PUC.

This essential approach to municipal recommendations is also reflected in § 248(b)(1)(B), regarding screening requirements for ground-mounted solar electric generation facilities which municipalities may adopt per 24 V.S.A. § 4414. Under the statute, such facilities are required to comply with screening requirements contained in a municipal bylaw or ordinance, and with the recommendations of a municipality applying the bylaw or ordinance, but the bylaw, ordinance and recommendations must be **fundamentally reasonable**. If the PUC finds that compliance would “prohibit or have the effect of prohibiting the installation of the facility or have the effect of interfering with the facility’s intended functional use,” then the PUC has the discretion not to enforce the bylaw, ordinance or recommendation.

Land Conservation Measures and Specific Policies

Land Conservation Measures

In its final order granting a Certificate of Public Good to VELCO for the so-called “Northwest Reliability Project,” the PUC addressed the question of what constitute “land conservation measures” in municipal plans. *In re Petitions of VELCO*, Docket No. 6860, Order of 1/28/2005, at 201. Applying the language of § 248(b)(1), the PUC found that such **measures “are those that are specifically directed toward land conservation, and not general policy statements that apply indiscriminately throughout the municipality.”** *Id.* at 201-202.

By way of example, the PUC stated that “a general statement in a municipal plan calling for all transmission lines to be buried, regardless of whether they would be located in a developed or undeveloped portion of the municipality, would not by itself constitute a ‘land conservation measure.’” *Id.* at 202. Moreover, applying Act 250 precedent, the PUC further concluded that “for a provision in a municipal plan to constitute a ‘measure’ that is cognizable under Section 248(b)(1), that provision must ‘evinced a sufficiently specific policy’” promoting land conservation. *Id.*²

In an Act 250 context, it is well-established that plan language that is aspirational, and that contains “broad policy statements phrased as ‘non-regulatory abstractions,’” will not be enforced under Criterion 10. *In re Molgano*, 163 Vt. 25, 31 (1994). By contrast, unambiguous, mandatory language in a municipal or regional plan is enforceable. Mandatory language typically includes terms like “must” and “shall” and it establishes a requirement rather than a recommendation. *In re B&M Realty, LLC*, 2016 VT 114, ¶35. Of course, municipal and regional plans generally are not written like zoning bylaws – it is relatively rare for such documents to contain words like “prohibited,” “must not,” “shall not” or similar regulatory language. Nonetheless, as noted above, the PUC has held that specific, mandatory language, directed toward land conservation, is necessary to enforce plan provisions as “land conservation measures” under § 248(b)(1). **Therefore, it is critical to identify areas and resources intended for conservation as specifically as possible (including through mapping) in municipal and regional planning documents, and to use mandatory language, as appropriate, to help ensure their protection in a § 248 context.** If a municipality feels strongly that a property or properties should be conserved, regardless of use, it should establish an unambiguous, prescriptive policy position in the municipal plan related to that conservation purpose and property.

Applying § 248(b)(1)’s land conservation standards, the PUC has recently rejected a proposed 2 megawatt AC solar generating facility for being inconsistent with relevant municipal plan language and with the recommendations of municipal representatives contained in that plan. *In re Petition of Chelsea Solar, LLC*, Docket No. 8302, Order of 2/16/2016 at 34, the PUC rejected the recommendation of the Hearing Officer regarding the project’s impact on orderly development in the region, finding that mandatory language in the 2016 Bennington Town Plan regarding the Town’s Rural Conservation District constituted a land conservation measure made specifically applicable to the proposed project site. *Id.* at 37. Based on its review of the Town Plan, the PUC concluded that the project as proposed for the Rural Conservation District would “unduly interfere with the orderly development of the region because the

² In support of this conclusion, the Commission found that non-specific provisions of municipal plans should not carry more weight under § 248(b)(1) than would be afforded similar provisions in the Act 250 context, given that § 248(b)(1) requires only due consideration of the land conservation measures of the municipal plans, rather than a finding of conformance, as is required by Act 250, Criterion 10. *Id.*

Town Plan articulates specific land conservation measures applicable to the Project site that would be violated if the Project were to be constructed.”³ *Id.* at 38.

Ensuring that a plan contains effective land conservations measures may be the most important part of writing an effective enhanced municipal energy plan. Municipalities are encouraged to work with their Town Attorney and the regional planning commission to draft effective land conservation measures. Appendix D also contains examples of land conservation measures used by municipalities in Vermont.

As discussed above, § 248 contains language that limits the PUC’s discretion not to apply land conservation measures contained in a municipal or regional plan in certain circumstances. Under § 248(b)(1)(C), the PUC is required to give substantial deference to the land conservation measures and specific policies contained in a municipal or regional plan that has received an affirmative determination of energy compliance under § 4352 of Title 24, unless other factors affecting the general good of the State outweigh the application of the land measure or specific policy.

Specific Policies

Notably, the “specific policy” language of § 248(b)(1)(C) is a relatively recent addition to the statute. While there is not yet a PUC decision or rule interpreting this language, it is clear that the substantial deference standard may apply to specific policies contained in a municipal or regional plan that are unrelated to land conservation. However, given the statutory requirement that any policy be **specific** to receive substantial deference from the PUC, it is reasonable to conclude that the PUC will analyze asserted specific policies in a municipal or regional plan in a manner similar to its analysis of conservation measures. That is, to qualify as a specific policy, plan language must be directed toward orderly development in the region and contain mandatory language before the PUC is willing to give it legal effect and the benefit of the substantial deference standard.

As described in Module 1, Section 4352 describes a two-step process for obtaining a determination of energy compliance. First, the regional planning commission submits its duly adopted regional plan to the Commissioner of the Department of Public Service, who then makes findings that the regional plan complies with the requirements of § 4352(c) and allows for the siting in the region of all types of renewable generation technologies. 24 V.S.A. § 4352(a). Thereafter, if the Commissioner has issued an affirmative determination for the regional plan, a municipal legislative body within the region may submit its adopted plan to the regional planning commission for a determination similar to that made by the Commissioner under § 4352(c) and a finding of consistency with the regional plan. *Id.* at § 4352(b).

³ While the Vermont Supreme Court’s decision in *In re Rutland Renewable Energy, LLC*, expresses the Court’s view that the word “region” denotes more than one municipality, the Commission’s ruling in *Chelsea Solar* suggests that, in appropriate circumstances, the Commission is prepared to construe the term “region” more narrowly. Thus, in *Chelsea Solar*, the Commission found undue interference with orderly regional development even where such interference primarily involved land areas and districts only within the Town of Bennington. In this instance, the Commission appears to have exercised its discretion to apply § 248(b)(1)’s land conservation measures language in a manner very similar to the manner the similar standard is applied in Act 250 – that is, the Commission identified a sufficiently specific policy in the Town Plan promoting land conservation, applicable to the project site, and concluded that because the project would violate this “specific land conservation measure” it would not meet the requirements of § 248(b)(1).

A determination of energy compliance, once issued, remains in effect until the time for re-adoption or expiration of the plan to which it applies, as provided in § 4352(h).

Conclusion

Navigating Section 248 is complex. The nuance of navigating the process and criteria can be challenging. Being well prepared, having a clear, well-written municipal plan, and having a clear understanding of the stakes and what the municipality is seeking through its participation in the Section 248 process can benefit any municipality hoping represent their interests effectively in the Section 248 process.

For more detailed information, reading statute and PUC rules is greatly encouraged. In addition, municipalities may want to consult the [Citizen's Guide to the Vermont Public Service Board's Section 248 Process](#). This document is slightly dated, but contains valuable and detailed information about how to be an effective party in the Section 248 process. Lastly, staff members at the Department of Public Service and regional planning commissions are available to answer questions about the basics of the Section 248 process for municipal officials seeking general information.

Appendix A: Municipal Plans and Regional Planning Commission Links

Municipal Plan Links

Links to example municipal enhanced energy plans are below. Please note some of the municipal enhanced energy plans referenced may still be in draft form, may be subject to change, and may not always be immediately accessible via the internet. Contact town or RPC staff for assistance.

Town of Bakersfield: Town of Bakersfield (<http://townofbakersfield.org/>) and/or Northwest Regional Planning Commission (<http://www.nrpcvt.com/>) websites.

Town of Chester: Town and Chester (<https://www.chestervt.gov/>) and/or Southern Windsor Regional Planning Commission (<http://swcrpc.org/>) websites.

Town of Dorset: Town of Dorset (<http://dorsetvt.org/>) and/or Bennington County Regional Commission (<http://www.bcrpcvt.org/>) websites.

Town of Huntington: Town of Huntington (<https://www.huntingtonvt.org/>) and/or Chittenden County Regional Planning Commission (<https://www.ccrpcvt.org/>) websites.

Town of Johnson: Town of Johnson (<http://townofjohnson.com/>) and/or Lamoille County Planning Commission (<http://www.lcpcvt.org/>) websites.

Town of Morgan: Town of Morgan (<http://townofmorgan.com/>) and/or Northeastern Vermont Development Association (<http://www.nvda.net/>) website.

Town of Norwich: Town of Norwich (<http://norwich.vt.us/>) and/or Two-Rivers Ottauquechee Regional Commission (<http://www.trorc.org/>) websites.

Town of Salisbury: Town of Salisbury (<https://www.townofsalisbury.org/>) and/or Addison County Regional Planning Commission (<http://acrpc.org/>) websites.

Town of Sudbury: Rutland County Regional Planning Commission (<https://www.rutlandrpc.org/>) website or the following Department of Public Service link (http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Sudbury/Sudbury%20Town%20Plan.pdf).

Town of Warren: Town of Warren (<http://www.warrenvt.org/>) or Central Vermont Regional Planning Commission (<http://centralvtplanning.org/>) websites.

Town of Windham: Town of Windham (<http://townofwindhamvt.com/>) and/or Windham Regional Commission (<http://www.windhamregional.org/>).

Regional Planning Commission Links

Addison County Regional Planning Commission: <http://acrpc.org/>

Bennington County Regional Commission: <http://www.bcrcvt.org/>

Central Vermont Regional Planning Commission: <http://centralvtplanning.org/>

Chittenden County Regional Planning Commission: <http://www.ccrpcvt.org/>

Lamoille County Planning Commission: <http://www.lcpcvt.org/>

Northeastern Vermont Development Association: <http://www.nvda.net/>

Northwest Regional Planning Commission: <http://www.nrpcvt.com/>

Rutland Regional Planning Commission: <https://www.rutlandrpc.org/>

Southern Windsor County Regional Planning Commission: <http://swcrpc.org/>

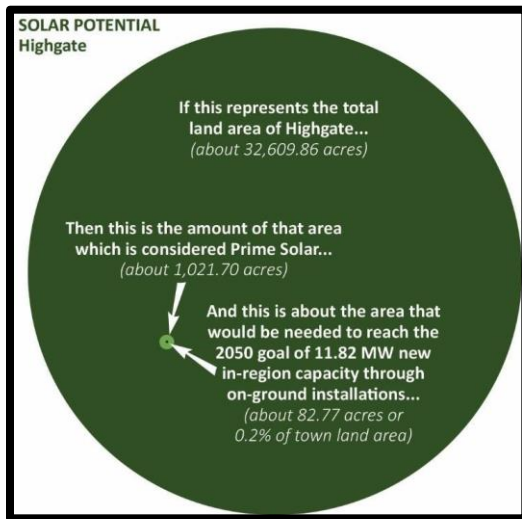
Two Rivers-Ottauquechee Regional Commission: <http://www.trorc.org/>

Windham Regional Commission: <http://windhamregional.org/>

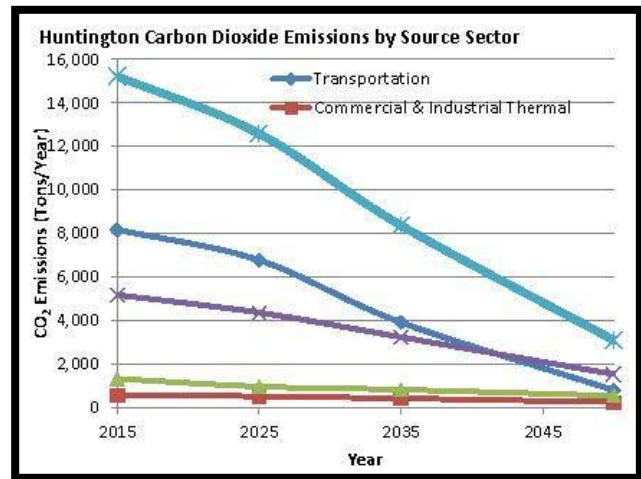
Appendix B: Graphics Examples

The following are examples of graphics or information highlights that have been developed by municipalities in Vermont to make energy use data and targets, and energy planning concepts, clearer and more accessible.

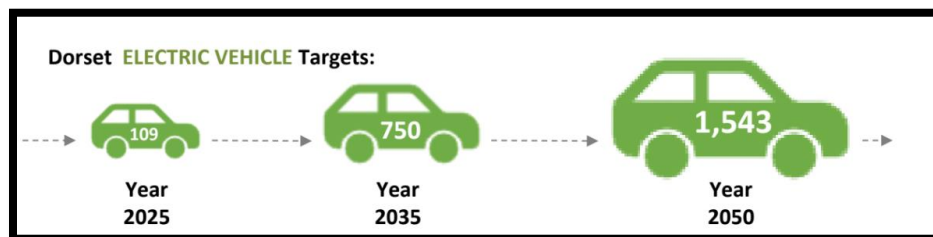
Visualizing Energy Use Analysis and Future Targets



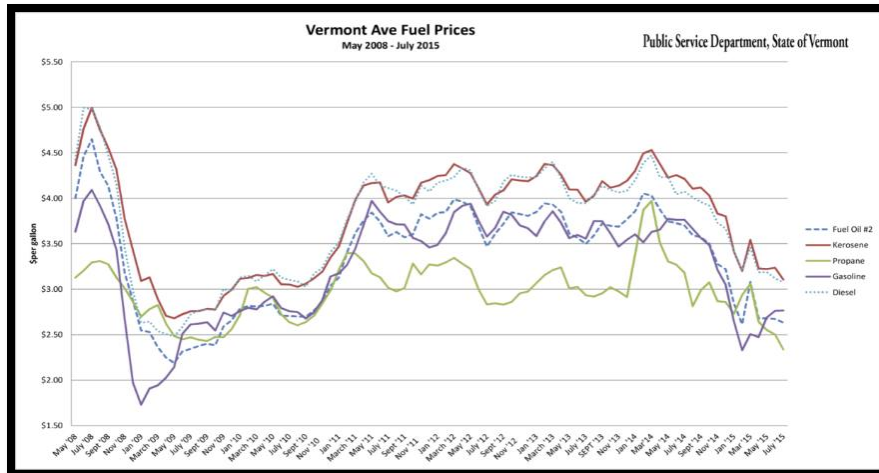
Highgate Municipal Plan: Solar Resource in Acres



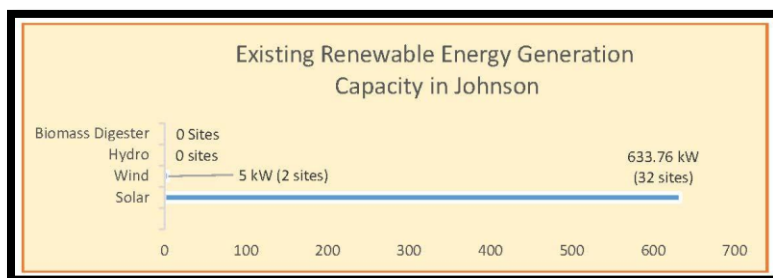
Huntington DRAFT Municipal Plan: CO₂ emissions targets



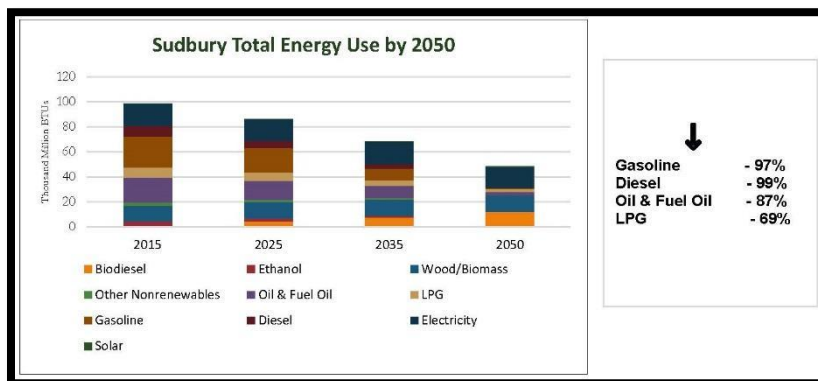
Dorset DRAFT Municipal Plan: Electric Vehicle Future Targets



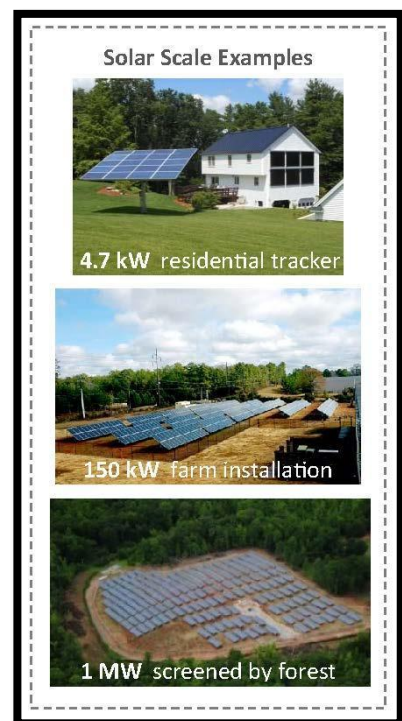
Salisbury DRAFT Municipal Plan: VT Average Fuel Prices, 2008 - 2015



Johnson DRAFT Municipal Plan: Existing Renewables



Sudbury Municipal Plan: Total Energy Use Targets and Fuel Reduction



Dorset DRAFT Municipal Plan: Solar Scale Examples

Highlighting and/or Explaining Important Ideas with Callouts

Due Consideration: To give such weight or significance to a particular factor as under the circumstances it seems to merit, and this involves discretion. [Black's Law Dictionary, 6th ed. 1990]

Substantial Deference: Means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. [30 V.S.A. §248]

Chester DRAFT Municipal Plan



Reduce total energy consumption per capita by

15% by 2025

More than one third by 2050

Chester DRAFT Municipal Plan

What is a BTU?

Fuels come in a variety of measurements – by cord, by gallon, by kilowatt – so this plan converts units of measurement into **British Thermal Units (BTUs)** in order to compare their energy output consistently.

According to the US Energy Information Administration a BTU is the measurement of the quantity of heat required to raise the temperature of one pound of liquid water by 1° F at the temperature that water has its greatest density (approximately 39 °F.)

One BTU is a miniscule amount, so BTUs are often measured in the millions (MM BTUs).

Morgan DRAFT Municipal Plan

Appendix C: Pathway Examples

The following are examples of pathways developed so far by municipalities in Vermont. The examples are organized generally by the corresponding DPS municipal determination standards. The most effective municipal pathways are those that your municipality can develop itself to meet the individualized needs of your community. A full list of links to municipal plans is referenced in Appendix A.

Municipal Determination Standard #6: Does your plan's energy element contain a statement of policy on the conservation and efficient use of energy?

- Pursue development of a 'town energy fund' with a 1 cent tax increase over a 1- to 2-year period to support energy efficiency projects in Weybridge homes. - Weybridge
- Use local grant program to distribute weatherization materials at local food shelf. - Charlotte
- Work with the Northeast Kingdom food leadership coalition and others to leverage resources for food producers (such as Rural Energy for America Grants.)- Craftsbury
- The Planning Board should work with the Waterville Elementary School to explore opportunities for incorporating awareness on renewable energy, energy efficiency and weatherization into the school curriculum. -Waterville
- The town should routinely provide information on the state mandated Residential Building Energy Standards to all building permit applicants and take steps to require and verify that all new residential building meets those standards. - Bennington
- Partner with existing organizations to provide education and assistance on the development of "stretch codes" for residential and commercial building standards. – Waterbury
- Incorporate weatherization/energy efficiency projects into the municipal Capital Budget and Program. - Ludlow
- Consider participation in the Property Assessed Clean Energy (PACE) program to support the development of renewable energy. – Stowe
- Coordinate with Efficiency Vermont and state low-income weatherization programs to encourage residents to participate in weatherization programs available to residents. - Fairfax
- Inform residents about Efficiency Excellence Network (EEN) contractors by providing links to EEN information through the municipal website. – Ludlow
- Pursue energy audits at municipal buildings focusing on weatherization work at older buildings such as the town office building. - Bennington
- The Town of Holland intends to investigate the creation of a Community-owned methane digester that could provide renewable electrical generation to VEC, while making use of on-farm resources... The Town could pursue a 50% or more shareholder stake in such a project, and the development of a facility could be dependent on the support of 65% or more of the Town's voting population in a binding referendum. – Holland
- Facilitate increased use of heat pumps and wood/wood pellet furnaces in Holland residences through educational events for residents, to which manufacturers of renewable energy heating systems will be invited. – Holland
- Review, update, and implement street lighting plan town-wide using efficient light fixtures and renewable energy, as feasible. - Londonderry
- Promote weatherization of homes through CVOEO and access to low-interest loans. - Ripton

Municipal Determination Standard #7: Does your plan’s energy element contain a statement of policy on reducing transportation energy demand and single-occupancy vehicle use, and encouraging use of renewable or lower-emission energy sources for transportation?

- Focus placement of EV charging stations at recreational areas and in downtown to support local businesses and tourism. - Thetford
- Actively support expansion of intercity bus travel, including the new direct bus connection to the Amtrak rail station in Rensselaer. Work with the Bennington Area Chamber of Commerce and local businesses to ensure that the services are well publicized and that stop and transfer locations are convenient, comfortable, and attractive. – Bennington
- Work with transit providers to identify possible future park & ride locations that will support areas with current or future development density. – Waterbury
- Extend sidewalks and other types of bicycle and pedestrian facilities to underserved areas and areas of new development within and adjacent to the Village of Waterbury. – Waterbury
- Continue to pursue sidewalk, recreation path, bicycle lanes, public parking and transit projects in part to reduce local transportation energy use. – Stowe
- Maintain roads in order to better accommodate travel by bicycles. For example, this includes paving/overlays to maintain a smooth roadway surface as well as sweeping to remove sand, dirt and trash multiple times a year. – Ludlow
- Provide incentives for employees who commute using methods alternative to single occupancy vehicles, e.g. walking, biking, public-transit, and carpooling. - Ludlow
- Continue to install electric vehicle charging stations when development or redevelopment of municipally owned property occurs. – Waterbury
- Create and promote a Community Carpool forum through the town website to connect people with compatible routes such as: Elmore to Copley Hospital, Elmore to Stowe and Elmore to Montpelier. – Elmore
- Review municipal road standards to ensure they reflect “complete streets” principles. - Fairfax
- Host a “show and tell” day featuring different EVs and giving people interested in purchasing them an opportunity to talk with fellow community members who own them. – Sudbury

Municipal Determination Standard #8: Does your plan’s energy element contain a statement of policy on patterns and densities of land use likely to result in conservation of energy?

- Enhance wastewater management to support denser development while protecting the environment. Explore possibilities for serving the village centers with innovative wastewater treatment facilities (see example of Arlington school’s packaged wastewater treatment plant)- Dorset
- Consider providing incentives (e.g. density bonuses) to developments located in an area identified as appropriate for growth that exceed the state’s energy code. – Ludlow
- Plan and advocate for access to public transit, especially during the permit review process for all larger developments. – Ludlow
- Elmore should consider applying for Village Center designation for its village district. – Elmore

- Update local bylaws to require that new development include pedestrian and bike-friendly infrastructure and connect to the existing and planned pedestrian and bike networks. – Sudbury
- Promote a working landscape outside of designated growth and residential areas, e.g., by working with land trusts and landowners of farm and forest tracts to conserve key parcels of land. – Sudbury
- The Town should consider requiring a reimbursable fee (as part of a zoning permit) to ensure that developers properly file their Residential Building Energy Standard Certificate. – Braintree

Municipal Determination Standard #9: Does your plan's energy element contain a statement of policy on the development and siting of renewable energy resources?

- Promote municipal solar, school solar, and community solar or other renewable energy projects on town, village, or state land and take steps to help viable projects move forward. – Waterbury
- Obtaining feedstock for heating systems from local sources supports regional economic development and renewable energy goals. The town should work with the regional development corporation, the Bennington County Sustainable Forestry Consortium, and other organizations to support existing forest products businesses and new businesses involved in managing forest lands, transporting and processing woody biomass for home, business, or institutional applications, and should assist with locating sites for manufacturing facilities (especially production of wood pellets). – Bennington
- Identify potential locations throughout the community that could benefit from district heating projects based on building density, proximity to resources such as biomass, or status as a use by right where applicable. – Waterbury
- The town should continue to look for opportunities to develop small hydro projects to support efficient municipal operations. Additional commercial-scale hydroelectric generation is limited due to the fact that the only existing dam sites are located on Paran Creek in North Bennington Village, between Lake Paran and the Walloomsac River (Figure 5). The town supports efforts by North Bennington, Bennington College, and involved property owners to develop the hydro potential at that series of small dams on Paran Creek. – Bennington
- Explore opportunities for an online wood marketplace for community members to access locally-source and renewable wood products. – Londonderry
- Continue to maintain a community-based wood bank in the REAP woodshed. – Ripton
- Investigate possible locations for a Ripton community-based grid-tied solar array capable of up to 150 kW for residents to purchase shares of solar-based electricity. - Ripton
- Explore opportunities to install small hydro facilities concurrent with repair from flood events affecting Route 125 in the Ripton village area. - Ripton

Other Pathways

- Create an Elmore Energy Committee to pursue conservation projects. – Elmore
- Review and maintain the Building Inspection, Code Enforcement, and Fire Safety Ordinance to incorporate any changes to national rooftop solar installation methods and standards. - Fairfax
- Continue to provide firefighters with training in fighting fires on structures that have solar installed on the roof. – Fairfax

- The town should support K-12 schools to bring energy ideas and solutions into the classroom by working with organizations such as Vermont Energy Education Program (<http://veep.org>) – Braintree

Appendix D: Renewables Siting Policy Language for PUC Interpretation - Examples

An enhanced energy plan with an affirmative determination of energy compliance allows a municipal plan to have a greater legal standing in Section 248 proceedings of the Public Utility Commission. Policy language on the siting of renewable energy facilities in the plan should be well-crafted to be easily interpreted and administered in PUC decisions. This appendix provides some notes on clear policy language and examples that have been developed by Vermont municipalities with ease of interpretation in mind.

Please note that the examples provided below have come from municipalities that have NOT yet sought a determination of energy compliance from the Vermont Public Service Board or a regional planning commission.

Policy language - Phrasing matters (taken from Act 171 Guidance document, 2017):

POLICIES are statements of the town's intent, or position, with regard to specific issues or topics. In certain settings, such as Act 250 and Section 248 proceedings, policy statements will serve as the basis for determining a project's conformance with the Town Plan.

❖ **SHALL, MUST, MAXIMIZE, MINIMIZE:** Use these terms to write strong policies. "Must" is preferred over "shall" according to the New Federal Rules of Appellate Procedure.¹³

❖ **SHOULD, MAY:** These terms indicate that a policy is advisory.

❖ **WHERE FEASIBLE, WHERE REASONABLE:** The inclusion of the terms "where feasible" and "where reasonable" weaken policies. If there are specific reasons that a policy might not apply, such as topography or cost effectiveness, mentioning those reasons specifically can increase the strength and enforceability of the policy.

❖ **SHALL BE ENCOURAGED:** While the phrase "shall be encouraged" does include "shall," requiring the encouragement of something is not a strong policy and weakens the statement.

Town of Windham

- Encourage any potential commercial generation facilities to be within the areas deemed most suitable as described in Section 3 area, "Windham's Preferred Locations"*, and within the Energy Generation Potential maps, and maximize potential for those facilities in these preferred areas. - Windham

*Town promotes energy generation development in locations that are previously disturbed and do not offer significant opportunities for future development.

Preferred areas include:	Rooftops	Quarries	Brownfields sites
	Mines	Historic impervious surfaces with no adverse ecological impact from development	Gravel pits
	Municipally designated “preferred sites”		
Criteria for Municipally-Designated Preferred Sites:	Town owned land especially if it is cleared and has good solar orientation	Proximity to 3 phase power lines to reduce utility infrastructure expansion	Location new the end of utility distribution lines for grid support
	Lack of viewshed impact for those objections to the appearance of the development	Existing road structure suitable for installation and for installation and maintenance	Minimal impact upon agricultural use of high quality soils
	No disruption of wildlife travel corridors or living habitat	South facing slopes having low quality agricultural soils which allow higher density solar arrays	Location on agricultural soils only with facility design compatible with continued agricultural use
	No interference with riparian buffers	Existing areas of open land such that significant deforestation would not be required	

Town of Manchester

- The town supports larger scale solar development (greater than 150 kW capacity) on preferred sites as defined in state statute or as delineated on the solar energy resource map (Figure 2.8). Such projects also may be located on sites with good access to solar energy, where minimal or no environmental constraints are present (Figure 2.8), subject to the following specific siting criteria: New solar facilities shall be restricted to areas that do not adversely impact the community's traditional and planned patterns of growth, of compact (downtown/village) centers surrounded by a rural countryside, including working farms and forest land. Solar facilities shall, therefore, not be sited in locations that adversely impact scenic views and scenic roads, nor shall solar facilities be sited in locations that adversely impact any of the following scenic attributes: views from public roadways across open fields, especially when those fields form an important foreground; prominent ridgelines or hillsides that can be seen from many public vantage points and thus form a natural backdrop for many landscapes; historic buildings and districts and gateways to historic districts; and, scenes that include important contrasting elements such as water. The impact on prime and statewide agricultural soils currently in production shall be minimized during project design. The use of perimeter fencing around solar installations should be limited to the extent possible to avoid adversely impacting both

aesthetics and wildlife. Alternative perimeter treatments, including natural vegetative screening, should be considered and used whenever possible.

Town of Richmond

- Renewable energy generation development should be located to avoid state and local known constraints that have been field-verified and minimize impacts to state/local possible constraints that have been field verified.
 - Preferred sites for solar generation (including but not limited to net metering) are on previously impacted areas (such as, parking lots, previously developed sites, brownfields, and gravel pits/quarries, or on or near existing structures).
 - Prioritize homes and businesses in Downtown Richmond Village and locate ground-mounted solar larger than 15 kW. AC and wind turbines with a hub height larger than 30 meters (98 ft.) outside of Downtown Richmond Village.
 - Locate wind generation in areas with high wind potential, such as the prime and base wind potential areas shown on the Potential Wind Energy Resource Map.

Town of Norwich

- The applicant [for a CPG/renewable energy project] shall select one or more specific vantage points along public roads from where the proposed development may be seen. These vantage points shall be shown on a plan. The plan shall also depict areas where existing trees will be maintained or new trees will be planted to provide screening.

Town of Dorset

- Dorset has determined that only small-scale and mid-scale wind power generation is appropriate in the town... Small-scale systems are appropriate at homes, businesses, schools, and other institutions. Mid-scale wind turbines are only appropriate for placement at institutions such as schools and businesses for the purpose of supplementing onsite energy consumption.

This policy shall not preclude development of small- or mid-scale wind projects that serve and are supported by the local community. For example, community-serving wind development that offsets the electrical demand for businesses, offices, or a neighborhood may be appropriate. All wind development must comply with the State's noise and environmental standards.
- The Town of Dorset establishes the following policies to guide solar energy development in the town. For policy purposes of this plan, solar energy facilities are grouped into three categories: **Small-Scale Solar**, here defined as solar electricity and transmission facilities up to and including 15 kW (AC) capacity; **Mid-Scale Solar**, here defined as solar electricity generation and transmission facilities greater than 15 kW (AC) capacity and less than or equal to 150 kW (AC) capacity or up to two acres of developed area including fencing, whichever is greater; and **Large-Scale Solar** (also known as 'utility-scale'), here defined as a solar electricity generation

and transmission facility 150 kW (AC) or greater in capacity or more than 2 acres of developed site area, whichever is greater.

...Solar energy policies should consider the evolving nature of energy technologies. As capacity and diversity of solar energy systems increase over time, policies shall be reviewed to reflect relevant updates in the technology.