

Guidelines and Standards for Reviewing Act 250 and Section 248 Applications

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CCRPC Participation in the Act 250 Process

INTRODUCTION

History of Act 250

Vermont experienced new growth in the 1960's, which brought many important planning issues to the forefront. This period of new growth was characterized by the following:

- Completion of Interstate Highway 89 and the southern Vermont section of Interstate Highway 91;
- IBM locating a primary facility in Essex Junction; and
- A growing tourist industry.

Vermonters are sensitive to the link between the natural and human environments. Many people were concerned that this link was threatened and, in the absence of a mechanism to protect or strengthen this relationship, development was proceeding apace. The steadfastness of concerned Vermont natives began to gain recognition with the State government in the late 1960's.

Prior to *Act 250*, there were no State-level environmental regulations or land use controls in Vermont. In 1970, the Vermont legislature passed the *Land Use and Development Law* (commonly known as *Act 250*). That law created nine District Commissions and an Environmental Board tasked to review development applications based on 10 criteria specified in *Act 250*.

Why Does CCRPC Review Act 250 Applications?

CCRPC reviews *Act 250* development applications as part of an effective regional planning process for the betterment of Chittenden County. Each of Vermont's 11 Regional Planning Commissions is a party by right which may appear and participate in the *Act 250* proceeding of a proposed development whose site is located either in or on the boundaries with a municipality that is a member of that Regional Planning Commission ["Act 250 Environmental Board Rules Section 14 (A)(3)"]. In addition, 24 V.S.A. 4345(a)(13) requires all RPCs to "appear before district environmental commissions to aid them in making a determination as to conformance of developments and subdivisions with the criteria of 10 V.S.A. 6086."

CCRPC REVIEW PROCESS

In General

The CCRPC's Regulatory Review Committee (RRC) and designated CCRPC staff are responsible for the review of *Act 250* applications.

CCRPC staff shall initially review each application for the purpose of identifying for the RRC whether the proposed project

1. will have one or more substantial regional impacts (SRIs), as defined by the current *Regional Plan*;
2. is or is not in conformance with the provisions of the current *Regional Plan*; and
3. fails to comply with one or more of the 10 Act 250 criteria [10 V.S.A. 6086 (a) (1) through (10)].

According to 24 V.S.A. 4348 (2), if the project will have one or more SRIs, then the District Environmental Commission or Environmental Board must give effect to provisions of the *Regional Plan* that are relevant to the determination of any issue in the *Act 250* review of the application for that proposed development, even if the *Regional Plan* conflicts with a municipal plan. If there is no SRI, then a provision of a local plan that conflicts with the *Regional Plan* is given effect.

Regardless of whether the proposed development will have one or more SRIs, the RRC review shall focus primarily on whether the project is or is not in conformance with the provisions of the *Regional Plan* and secondarily on the 10 criteria of *Act 250*. In addition, the RRC may request staff from the Chittenden County Metropolitan Planning Organization (CCMPO) to review an application for transportation issues [this review shall be governed by the *Metropolitan Transportation Plan (MTP)*, which has been adopted by reference into the *Regional Plan*].

CCRPC Actions

The RRC may take action on an application only if there is an affirmative vote by the majority of those present at a warned meeting, with the majority consisting of no less than three RRC members. In the absence of such an affirmative vote, the CCRPC Chair, RRC Chair, and Executive Director will jointly determine what action CCRPC will take with respect to the application.

The RRC shall inform the CCRPC Chair and the RRC Chair of any recommended action regarding a development application. If either of these two individuals does not support the recommended action, the Executive Committee will determine the final action.

The RRC shall review all applications submitted to the CCRPC, and may take one or more of the following actions when it deems necessary:

Letters: The RRC may prepare and submit one or more letters to the District Environmental Commission or Environmental Board to represent the position of CCRPC that accomplish one or more of the following purposes:

- Request clarification of specific matters in the application,
- Request that a Minor Application be subject to a complete *Act 250* review,
- Indicate if the proposed development is or is not in conformance with the current *Regional Plan*, or
- Indicate if the proposed development does not comply with one or more of the ten *Act 250* criteria.

Hearings: CCRPC may actively participate in District Environmental Commission hearings pursuant to *Act 250 §6025* and *Act 250 Environmental Board Rules Rule 14 (A)(3)* only in the case of an application that is deemed to have one or more SRIs.

If the RRC determines it is beneficial for CCRPC to exercise CCRPC's party status at a District Environmental Commission hearing, the RRC will designate the Executive

Director, CCRPC staff, an RCC member, or [when CCRPC exercises its party status in pursuit of transportation matters] a CCMPO staff member to attend and represent CCRPC at the District Environmental Commission hearing.

Remain Silent: CCRPC may elect not to send a letter nor participate in District Environmental Commission hearings. However, because 24 V.S.A. 4345(a)(13) requires CCRPC to appear at District Environmental Commission hearings to aid them, CCRPC should expect to attend such hearings whenever requested by the District Environmental Commission.

RRC Monthly Reports

The RRC shall use its monthly reports to the full Commission to provide information pertaining to *Act 250* applications. For each application the RRC report shall identify

- 1) the project name and location,
- 2) provide a brief description,
- 3) indicate whether or not the project meets any of the threshold levels for substantial regional impact and if so, which ones,
- 4) note any hearing dates on the project and
- 5) any actions the RRC decided to exercise.

Transportation, relationship with CCMPO

CCRPC relies on the Chittenden County Metropolitan Planning Organization (CCMPO) for their transportation expertise to address transportation issues when reviewing *Act 250* applications. The working relationship between the two organizations is described in Section 5 of the November 15, 2000 *Memorandum of Understanding (MOU)* between the two organizations, which states:

- A. *The CCMPO shall provide review and comment pertaining to transportation-related matters in Act 250 proceedings in Chittenden County and, as appropriate, act as the CCRPC's transportation expert for such proceedings. Such comments are intended to (1) evaluate the technical adequacy of the transportation impact and plan elements of the Act 250 permit application and (2) evaluate the consistency of the application with the adopted Metropolitan Transportation Plan.*
- B. *The CCRPC shall provide the case numbers of those Act 250 applications that need an evaluation of transportation impacts to the CCMPO in a timely manner. The CCMPO, in turn, shall review and comment on the transportation-related elements of the application and return those comments in a timely manner to the CCRPC. In cases where the CCMPO decides not to comment or that comment is not necessary, it will so notify the CCRPC in a timely manner.*
- C. *The nature and level of CCMPO involvement in the proceedings shall be determined through consultation and agreement between the Chairs or designated representatives of the CCMPO and the CCRPC.*

It is the intent of both the CCRPC and the CCMPO that the CCMPO's analysis identified in Section 5 of the 2000 MOU focus on the potential regional transportation impacts of the proposed project and the consistency of the project with the adopted *Metropolitan Transportation Plan*.

Pre-Submission and Post-Submission Discussions

In order to improve the likelihood that a project with one or more substantial regional impacts will be consistent with the *Regional Plan*, CCRPC staff shall contact the Planning and/or Zoning staff of

its member municipalities on at least a quarterly basis to inquire if any projects currently under municipal planning and zoning review are likely to have one or more substantial regional impacts as defined in the *Regional Plan*. When CCRPC staff learn of such a project, CCRPC staff shall request a meeting with municipal staff and the project applicant, so that any regional issues, concerns or potential impacts may be identified and addressed at the earliest stages. These discussions are intended to provide information and not formulate CCRPC's position on specific applications. All applications are subject to review by the Regulatory Review Committee.

After an application has been submitted to the District Environmental Commission, CCRPC staff or Commissioners may meet and discuss issues regarding the 10 criteria of Act 250 and conformance with the *Regional Plan* with any party to that proceeding, provided that the meeting complies with District Environmental Commission rules.

Conflict of Interest

Conflict of interest is a breach of commitment by either Commissioners or staff that has the effect of advancing one or both of their interests in a way that is harmful to the Chittenden County Regional Planning Commission. A real conflict of interest exists when a private interest exists that could lead to a personal benefit or gain. An apparent conflict of interest exists when there is a perception that a conflict of interest exists that could lead to a personal benefit or gain.

When a real or apparent conflict of interest arises, the concerned person shall discuss the matter with the RRC. If the concerned person does not declare a real or apparent conflict of interest, a Commissioner or staff member should raise the issue if they believe such issue exists.

All real conflicts of interest require compliance with *CCRPC Bylaws (dated May 27, 1997), Article III Resolving Conflict of Interest*. When the RRC determines that a real conflict of interest exists, the RRC shall decide on a case-by-case basis whether the concerned individual may participate in discussions, but in no case shall the concerned individual vote on any RRC decision involving that application.

When the RRC determines that an apparent conflict of interest exists, the RRC will make its determination a part of the record of decision, decide whether the concerned individual may participate in discussions and may vote, and inform the Executive Committee of its decision.. .

Appeals

The Vermont Environmental Court is responsible for reviewing appeals of District Environmental Commission rulings. Before CCRPC may be a party in an appeal of a District Environmental decision to the Vermont Environmental Court (either to contest a District Environmental Commission decision or to support a District Environmental Commission decision that is contested by others), the Commission must approve such action, following recommendations made by the RRC and the Executive Committee. Before CCRPC may be a party in an appeal of an Environmental Court decision to the Vermont courts (either to contest an Environmental Court decision or to support an Environmental Court decision that is contested by others), the Commission must approve such action, following recommendations made by the RRC and the Executive Committee.

CCRPC Participation in the Section 248 Process

INTRODUCTION

The Vermont Public Service Board (PSB) is a State quasi-judicial board with jurisdiction over public utilities, cable television, water utilities, electric utilities, water carriers, gas utilities, telephone utilities, and resellers of telephone services, as described in 30 V.S.A. 203. An entity that proposes to construct certain types of new/renovated gas or electric facilities must obtain a certificate of public good from the PSB pursuant to Title 30, Section 248 of the *Vermont Statutes*. The PSB may not issue a certificate of public good unless it finds (among other conditions) 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." [30 V.S.A. 248 (b) (1)] In addition, 24 V.S.A. 4345(a)(13) requires regional planning commissions to "appear before the public service board to aid the board in making determinations under 30 V.S.A. 248."

An applicant is required to provide plans to the regional planning commission not less than 45 days prior to filing their petition for the certificate of public good with the PSB. However, a regional planning commission may waive the 45-day requirement.

CCRPC REVIEW PROCESS

When CCRPC receives a plan governed by 30 V.S.A. 248 it may:

- Hold a public hearing pursuant to 30 V.S.A. 248(f),
- Make recommendations to the PSB,
- Participate in the PSB's hearing, or
- Remain silent.

CCRPC Hearing

Although Section 248 (f) specifically authorizes regional planning commissions to hold a public hearing on the plan for the proposed facility that is the subject of a Section 248 petition, it does not specify any additional details on the nature or requirements of such a hearing. It is CCRPC's policy to limit the hearing to the presentation of evidence of one or more of the following:

- The need for clarification of specific matters in the petition or plan for the proposed facility,
- Compliance or non-compliance of the petition or plan for the proposed facility with the *Regional Plan*, or
- Whether the proposed facility will or will not unduly interfere with the orderly development of the region.

CCRPC shall attempt to hold its public hearing at a location and time that are convenient to members of the public who are most likely to be interested in the outcome of the petition.

CCRPC Recommendations to the PSB

A regional planning commission must make any recommendation to the PSB and to the petitioner at least seven days prior to the filing of the petition with the PSB. Although the Statute is silent with

respect to the nature of a regional planning commission's recommendations, CCRPC's policy is that any recommendations made by CCRPC will be expressed in a letter that may only be for one or more of the following purposes:

- Request clarification of specific matters in the petition or plan for the proposed facility,
- Indicate compliance or non-compliance of the petition or plan for the proposed facility with the *Regional Plan*, or
- Indicate the proposed facility will or will not unduly interfere with the orderly development of the region.

The Committee shall provide the Transportation, Utilities and Stormwater Committee ample opportunity to review and comment on all projects requiring approval under 30 V.S.A. 248.

PSB Hearing

To participate in a PSB hearing beyond providing comments on the application (as noted above), CCRPC must be granted "party status" by the PSB. Although 30 V.S.A. § 248 does not automatically recognize that regional planning commissions are parties in PSB hearings, the current practice of the PSB is to allow entities that receive copies of the application according to 30 V.S.A. 248(4)(C) an opportunity to submit a request to be named as a party when they file a Notice of Appearance. If CCRPC deems that it is necessary to participate in hearings governed by 30 V.S.A. 248, it shall accompany its Notice of Appearance submission with a letter requesting Party Status. If this request is denied and CCRPC continues to deem it necessary to participate, CCRPC may submit a Motion to Intervene.

If the RRC determines it is beneficial for CCRPC to participate in a PSB hearing, the RRC shall designate the Executive Director, CCRPC staff, or a RRC member to attend and represent CCRPC at the public service board hearing.

Remain Silent

CCRPC is not required to take a position on every Section 248 petition. If the RRC deems that CCRPC action or participation is not warranted, it shall report this to the Commission in the RRC's monthly report.

RRC Monthly Report

The RRC shall use its monthly reports to the full Commission to provide information pertaining to the RRC's recommended actions relating to Section 248 applications. This information will include

- 1) the name and location of the proposed project,
- 2) a brief description and
- 3) the RRC's recommended CCRPC action.