

Guidelines and Standards for Reviewing Act 250 and Section 248 Applications

*Adopted by the Chittenden County Regional Planning Commission January 26, 2004
Amended by the Chittenden County Regional Planning Commission: September 26, 2005,
September 19, 2012, October 16, 2013 and July 18, 2018*

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, Vermont enacted 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 eleven 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 Rule 14(A)(3)"]. In addition, pursuant to 24 V.S.A. § 4345a(13) all RPCs "shall appear before district environmental commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086."

CCRPC REVIEW PROCESS

In General

The CCRPC's Executive Committee ("EC") and designated CCRPC staff are responsible for the review of *Act 250* applications.

CCRPC staff shall initially review each application before the District 4 Environmental Commission (with specific attention given to those applications going to a hearing) for the purpose of identifying for the EC:

1. whether the proposed project is or is not in conformance with the provisions of the current *Chittenden County ECOS Plan* (hereafter referred to as the Regional Plan), with specific attention given to the Planning Areas section of the Regional Plan; and
2. whether the proposed project fails to comply with one or more of the 10 Act 250 criteria, 10 V.S.A. §§ 6086 (a) (1) through (10), with specific attention paid to the criteria dealing with transportation and/or traffic and the other criteria within CCRPC's expertise based on approved technical reports and/or on in-house technical expertise or expert opinion of individuals consulted by in-house staff; and
3. whether the proposed project avoids known development constraints or minimizes impacts to possible development constraints identified in the *Regional Plan*. The constraints are identified in the current *Regional Plan* and are based on statewide or local policies that are currently adopted or in effect. Because these constraints are protected at the state and local level already, CCRPC will defer to the relevant municipality or state agency with jurisdiction over the constraint. More detailed descriptions of each constraint are available in Appendix A: Local Constraint Language. This appendix will guide CCRPC in providing comments and participating in hearings before the District Environmental Commission.

CCRPC Actions

The EC may take action on an application only if there is an affirmative vote by the majority of those present. In the absence of such an affirmative vote, the EC and Executive Director will jointly bring the matter forward to the full CCRPC Board for action. To the best of our ability we will take action within a posted meeting – however, if participation is required before a meeting of either the EC or the full CCRPC Board can be held Staff will send the letter to Act 250 only if no objections have been heard from the Executive Committee. Formal review and action will be taken on the letter at the first available meeting following submittal of the letter.

CCRPC staff shall review all applications as required by 24 V.S.A. § 4345a(13) (with specific attention given to those applications going to a hearing) and will recommend one or more of the following actions to the EC:

Letters: The EC may submit one or more letters to the District Environmental Commission or Environmental Division of Vermont Superior Court to represent the position of CCRPC that accomplish one or more of the following purposes:

- Request clarification of specific matters in the application,
- Indicate if the proposed development is in conformance with the current Regional Plan, or

The Full CCRPC Board may submit one or more letters to the District Environmental Commission or Environmental Division of Vermont Superior Court to represent the position of CCRPC that accomplish one or more of the following purposes:

- Indicate if the proposed development 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, or
- Request a hearing.

Hearings: If the EC determines it is beneficial for CCRPC to actively participate in a District Environmental Commission hearing, the EC will designate the Executive Director, CCRPC staff, or an EC member to attend and represent CCRPC at the District Environmental Commission hearing.

Pre-Submission and Post-Submission Discussions

In order to improve the likelihood that a project will be consistent with the Regional Plan, CCRPC staff will inquire about upcoming projects during discussions with member municipalities, primarily through discussion with planning and zoning staff at Planning Advisory Committee (PAC) meetings. Staff will inquire if any new projects currently under municipal planning and zoning review appear likely to have an Act 250 hearing. When CCRPC staff learns of such a project, CCRPC staff will communicate, as needed, 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.

Appeals

The Environmental Division of Vermont Superior Court is responsible for reviewing appeals of District Environmental Commission rulings. Before CCRPC may be a party in an appeal of a District Environmental Commission decision to the Environmental Division of Vermont Superior 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 Executive Committee. Before CCRPC may be a party in an appeal of an Environmental Division of Vermont Superior Court decision to the Vermont Supreme Court (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 Executive Committee.

CCRPC Participation in the Section 248 Process

INTRODUCTION

The Vermont Public Utilities Commission (“PUC”) 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 PUC pursuant to 30 V.S.A. § 248. The PUC 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. § 4345a(14) requires regional planning commissions to “appear before the public service board to aid the board in making determinations under 30 V.S.A. § 248.”

The Regional Plan is written to meet the requirements for the Department of Public Service to grant a Determination of Energy Compliance. A Determination of Energy Compliance means that the PUC should give the plan “substantial deference” during PUC proceedings under 30 V.S.A. §248. “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. The known and possible development constraints and suitability policies identified in the Regional Plan will receive substantial deference in PUC proceedings.

More detailed descriptions of each development constraint are available in Appendix A: Local Development Constraint Language. This appendix will guide CCRPC in providing comments and participating in hearings before the PUC.

CCRPC REVIEW PROCESS

CCRPC shall review all advance notices and petitions for Certificates of Public Good, with specific attention given to energy generation and transmission facilities and projects going to a hearing.

Criteria for CCRPC Review

In reviewing advance notices and petitions for Certificates of Public Good, CCRPC will focus its review on:

1. Compliance or non-compliance of the petition or plan for the proposed facility with the provisions of the current Regional Plan, with specific attention given to the Planning Areas section of the Regional Plan; and
2. Whether the proposed facility will or will not unduly interfere with the orderly development of the region. While the statute does not provide specific criteria for review (such as the 10 Act 250 criteria), CCRPC will review the petition with specific attention paid to transportation and/or traffic, the suitability policies identified in the Regional Plan, and the other criteria within CCRPC’s expertise based on approved technical reports and/or on in-house technical expertise or expert opinion of individuals consulted by in-house staff; and
3. Whether the proposed facilities avoid known development constraints or minimize impacts to possible development constraints identified in the Regional Plan. The constraints are

identified in the current Regional Plan and are based on statewide or local policies that are currently adopted or in effect. When constraints are already protected at the state level or in a municipality with a plan that has received a Determination of Energy Compliance, CCRPC will defer to the relevant municipal or state agency review of the constraint. When a constraint is protected at the municipal level in a municipality with a plan that has not received a Determination of Energy Compliance, in consultation with the municipality CCRPC will review whether known constraints are being avoided and whether impacts to possible constraints are being minimized.

During review, CCRPC may also ask for clarification of specific matters in the petition or plan for the proposed facility.

CCRPC RECOMMENDATIONS TO THE PUC DURING THE 45-DAY NOTICE PERIOD

At least 45 days before filing a Section 248 petition with the Commission, an applicant must provide advance notice of the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located.

A regional planning commission must make any recommendation to the PUC and to the petitioner within 40 days of the submittal of the advance notice. CCRPC will make such recommendations after staff review and Executive Committee approval. Staff will communicate with municipal staff in developing the draft recommendation. Although § 248 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 provides the PUC and the petitioner with information about CCRPC's preliminary determination on the review criteria identified above, along with requests for any additional information needed to make that determination. *Following the comment letter, CCRPC may correspond further with the applicant and host municipality during the advance notice period to address concerns before the petition for a Certificate of Public Good is filed.*

CCRPC PARTICIPATION AFTER A PETITION FOR A CERTIFICATE OF PUBLIC GOOD IS FILED

When a Petition for a CPG is filed, CCRPC staff will review the Petition in light of any comments submitted during the advance notice period and recommend action by the Executive Committee. CCRPC may:

1. Hold a CCRPC hearing
2. Submit comments during a PUC hearing
3. Intervene in a PUC hearing and becoming a party to the case
4. Request a hearing.

During any step, CCRPC may request that the Department of Public Service exercise its authority to retain experts and other personnel to review the proposed facility.

CCRPC Hearing

Although 30 V.S.A. § 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 §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 requesting more information or presenting of evidence regarding the review criteria identified above. CCRPC shall attempt to hold its public hearing at locations and times that are convenient to members of the public who are most likely to be interested in the outcome of the petition.

Submitting Comments during a PUC Hearing

When notified of a hearing before the PUC, CCRPC staff will make a recommendation to the Executive Committee (EC) regarding the petition, with a particular emphasis on any issues raised during the advance notice period. If all issues have been adequately addressed, CCRPC will submit comments stating that and will not participate further.

Intervening in PUC Hearings

When notified of a hearing before the PUC, CCRPC's Executive Committee (EC) and staff will review the petition, with a particular emphasis on any issues raised during the advance notice period. If issues raised in the advance notice period have not been addressed, CCRPC's EC and staff will work with the affected municipality to determine whether further participation is needed.

CCRPC may intervene in a PUC hearing. The EC may decide that it is beneficial for CCRPC to intervene in a PUC hearing, or the EC may decide to bring the decision to the full CCRPC Board. If the CCRPC decides to intervene, it shall designate a representative to attend and represent CCRPC at the Public Utilities Commission hearing. Action will be required by the CCRPC Board if the Notice of Intervention, discovery questions or testimony indicate that the proposed project unduly interferes with orderly development of the region or does not adhere to the land conservation measures and specific policies stated in the *Regional Plan*.

To participate in a PUC hearing beyond providing comments on the petition (as noted above), CCRPC must be granted "intervenor status" by the PUC. Although 30 V.S.A. § 248 does not automatically recognize that regional planning commissions are parties in PUC hearings, the current practice of the PUC 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 Intervenor Status. If this request is denied and CCRPC continues to deem it necessary to participate, CCRPC may submit a Motion to Intervene.

CCRPC's participation in a PUC hearing will be limited to the review criteria identified above.

Requesting a PUC Hearing

When notified that a petition has been submitted to the PUC, CCRPC will review the petition in consultation with the affected municipality, with a particular emphasis on any issues raised during the advance notice period. If the issues raised have not been addressed and a hearing has not been scheduled, CCRPC is able to request a hearing. The EC has the authority to decide that it is

beneficial for CCRPC to request a PUC hearing, or the EC may decide to bring the decision to the full CCRPC Board. If the CCRPC decides to request a hearing, it shall designate a representative to attend and represent CCRPC at the Public Utilities Commission hearing. Action will be required by the CCRPC Board if the hearing request, discovery questions or testimony indicate that the proposed project unduly interferes with orderly development of the region or does not adhere to the land conservation measures and specific policies stated in the *Regional Plan*.

DETERMINING PREFERRED SITES FOR SOLAR GENERATION FACILITIES

Vermont's net metering rules (5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems) allows Regional Planning Commissions and municipalities to identify preferred sites for net metering projects by identifying a preferred site in a joint letter of support from the municipal legislative body and the municipal and regional planning commission. Upon request, CCRPC's Executive Committee and staff will review the site's consistency with the review criteria identified above. CCRPC will participate in a joint letter if the criteria are met.

NOTE: this process may change based on legislative changes in the 2018 session.

CCRPC Policies Related to Both Act 250 and Section 248 Participation

ACT 250/SECTION 248 MONTHLY REPORTS

The EC shall use its monthly draft minutes to the full Commission to provide information pertaining to Act 250 and Section 248 applications in which a letter and/or testimony was submitted. In addition, the letters will be presented to the full Commission in the monthly meeting packets. For each application the EC minutes shall identify:

- 1) the project name, location, and a brief description,
- 2) note any hearing dates on the project, and
- 3) any actions the EC decided to exercise.

CONFLICT OF INTEREST

Real or apparent conflicts of interest will be guided by *CCRPC Bylaws, Article XII Resolving Conflicting Interests*.