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Draft Solar Siting Task Force Recommendations Outline v. Jan. 17, 2016

For discussion purposes only

Planning

Intro text

Findings

1. There is variability in the quality and degree of energy planning at the regional level.
2. Action is needed to improve the ability of regions and towns to contribute to the Board's decision making for solar projects.

Objectives

1. Strengthen the capacity of regional planning commissions and municipal planners to plan for increasing numbers of solar facilities and provide that information to the Board in a manner that will be meaningful in the 248 process.

Recommendations

1. *Strengthen Regional Energy Planning*

Regional Planning Commissions (RPCs) have tools and expertise to analyze both comprehensive energy needs as well as potential energy resources and constraints for each of the 11 regions in the state. RPC energy plans have historically varied in terms of depth and specificity, both of which are necessary to help regions to develop meaningful goals, strategies, and recommendations that carry weight in the permitting process. Resources and training are necessary to help RPCs to carry out deep energy planning that involves their member communities.

- DPS-RPC Energy Planning Pilot: The DPS has partnered with three regional planning commissions (RPCs) — Bennington, Two Rivers-Ottauquechee, and Northwest — to advance a total energy approach to regional energy plans, consistent with the goals and approach embodied in both the 2016 Comprehensive Energy Plan. This project is underway, and will be complete in 2016. Each RPC, working with the Vermont Energy Investment Corporation, has modeled pathways to 90% renewable energy within its region, and will identify particular regional goals and actions on heat, transportation, and electric power. The updated plans will also include a mapping component, identifying promising areas for different kinds of renewable energy supply technologies. The DPS hopes the development and adoption of these revised plans will enable a bottom-up approach to energy planning that will complement the state-led CEP structure. The DPS has budgeted for support for an additional four RPCs to begin this work in 2016, taking advantage of the groundwork laid by the three pilot regions.

- Ongoing Support for RPC Energy Planning: The DPS hopes to be able to support this initial work by all the RPCs, but a contractual and funding mechanism for ongoing regional energy planning does not exist. This could be modeled, with funding support, on existing RPC contracts with the Vermont Agency of Transportation for regional transportation planning (under ***19 V.S.A. § 101***) and with the Agency of Natural Resources for basin planning (as enacted in 2015 under ***10 V.S.A. § 1253***).

2. Clarify and Enhance the Energy Planning Responsibilities of RPCs

State planning and development goals under ***24 V.S.A. § 4302*** specific to energy efficiency and renewable energy development – to be considered in the development of municipal, regional, and state agency plans – predate, and therefore do not reference or incorporate more recently enacted state renewable energy goals or comprehensive energy planning requirements under Title 30.

- Expand Role of Energy in the State's Planning and Development Goals: Current statutory language related to energy planning would benefit from revision to more specifically recognize and reference the State Comprehensive Energy Plan and current state energy goals, in a similar manner to that in which they were amended last year with respect to basin planning. ***24 V.S.A. § 4302(7)*** could be amended as: To encourage the efficient use of energy and the siting and development of renewable energy resources consistent with goals and recommendations developed in the State Comprehensive Energy Plan prepared under 30 V.S.A. § 202.

  Additionally, powers and duties related to energy planning that are currently *optional* for RPCs under ***24 V.S.A. § 4345 Optional powers and duties of regional planning commissions*** could be made mandatory by moving them to ***24 V.S.A. § 4345a Duties of RPCs***:

  24 V.S.A. § 4345(1) currently reads: (1) Develop an inventory of the region's fire and safety facilities; hospitals, rest homes, or other facilities for aging or disabled persons; correctional facilities; and emergency shelters; and work with regulated utilities, the Department of Public Service, the Department of Public Safety, potential developers of distributed power facilities, adjoining regional planning commissions, interested adjoining regional entities from adjoining states, and citizens of the region to propose and evaluate alternative sites for distributed power facilities that might provide uninterrupted local or regional power at least for identified critical service providers in time of extended national, statewide, or regional power disruption or other emergency.

  24 V.S.A. § 4345(6) currently reads: Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, State capital investment plans, and wetland protection.

Additionally, the general planning purposes and goals in ***24 V.S.A. § 4302(c)(7)*** could be amended from: To encourage the efficient use of energy and the development of renewable energy resources; to something like: To provide for the conservation of energy, deployment of energy efficiency, and development of renewable energy resources, including identification of areas suitable for sufficient development of environmentally sound, cost-effective energy resources in alignment with state energy goals.

- Make RPCs Parties by Right in the § 248 Process: One of the required duties of RPCs in ***24 V.S.A. § 4345a(14)*** is to appear before the Public Service Board to aid them in making determinations. However, this duty does not come with a commensurate right to appear in those proceedings. This can be fixed by amending ***30 V.S.A. § 248(a)(4)(F)*** to read: The regional planning commission for the region in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection.

3. *Strengthen Municipal Energy Planning*

Town plan elements related to energy – including land use elements used in the § 248 process – have historically varied in terms of relevance and specificity, both of which are necessary to help towns to develop meaningful goals, strategies, and recommendations that carry weight in the permitting process. Resources and tools are necessary to help towns to carry out deep energy planning in coordination with and with assistance from their RPCs, which are carrying out this work on the regional level.

- Expand Town Energy Planning Responsibilities: Current statutory language related to energy elements in town plans would benefit from revision to acknowledge the comprehensive nature of energy planning that the state is now doing, and the need for sufficient detail to guide energy development decisions. ***24 V.S.A. § 4382 The plan for a municipality (9)*** could be amended as: An energy plan, including an analysis of comprehensive energy resources, needs, scarcities, costs and problems within the municipality, a statement of policy on the conservation of energy, including programs, such as thermal integrity standards for buildings, to implement that policy, a statement of policy on the development of distributed and utility-scale renewable energy resources, a statement of policy on patterns and densities of land use likely to result in conservation of energy, and land-use suitability maps identifying potential areas for the development of renewable energy resources.

- Support for the Creation of Tools for Town Energy Planning: Towns would benefit from information gleaned through the RPC energy planning work, such as individual town energy usage data and map layers of energy resources and constraints. Other useful tools could include development of standard energy use modeling and resource mapping protocols, for towns that wish to undertake their own modeling and mapping exercises from scratch. With funding, other tools to universally benefit towns – such as model town energy plans and solar siting best practices – could be developed through the input of experts and stakeholders.

- Support for the Concept of Exploring the Feasibility of Town Review of Small Solar Systems: At present, the vast majority of applications received by the Public Service Board are for solar

projects < 15 kW. These projects go through a "registration" process, where the Board, DPS, and utility have 10 days to review the application, and the CPG is deemed issued on the 11th day if no issue arise. Towns do not receive notice of these applications, though sometimes take an interest in them in terms of impacts on historic structures, flood hazard areas, rights-of-way, and other town-specific matters. The Task Force supports the idea of exploring the concept of assigning the responsibility of issuing registrations to towns, *as long as the process does not entail any additional burdens or delays for these smaller systems.*

Incentives

Intro text

Findings

1. Action is needed to improve the siting of ground-mounted solar projects, especially to counteract the tendency to site projects in the lowest-cost locations, which are often open fields in rural areas away from load, in close proximity to three-phase power lines.
2. Desirable siting of projects can be encouraged through both financial and regulatory incentives.
3. Financial incentives to achieve desirable siting outcomes require careful consideration with respect to their interplay with other societal objectives, such as cost to ratepayers.

Objectives

1. Incentivize projects to locate in preferred locations, including: in the built/already degraded environment, on site, close to load, and in areas designated for such use by towns, especially where multiple state objectives can be met at the same time.
2. Avoid the use of prescriptive siting requirements and allocations, especially in statute, particularly where context matters. Instead, provide objectives for siting that can be carried out programmatically.

Recommendations

1. *Create Regulatory and Financial Incentives For Siting in Preferred Areas*

- <u>Encourage Solar Projects to Locate in Town-Designated Areas:</u> At present, there is no formal mechanism for communities to direct solar development within their boundaries to preferred areas. If communities take the initiative to plan for solar, there should be regulatory and financial incentives put in place to encourage projects to locate in those areas.

- <u>Maximize Solar Development in Already Impacted Areas and Close to Load:</u> Vermont's renewable energy programs, such as Net Metering and Standard Offer, have not prioritized

siting of solar in preferred locations. Modifications to these programs that incentivize maximum deployment of solar on existing structures, parking lots, brownfields, landfills, gravel pits, and other disturbed areas, as well as close to load, should be prioritized. Regulatory processes for these types of projects should also be streamlined to the extent practicable.

2. *Incentivize Projects that Directly Benefit Neighbors*

- Create Incentives for Projects that Directly Benefit Local Communities: "Community solar" projects should directly benefit towns in which they are sited, and/or the loads to which they are adjacent. If project developers can demonstrate their projects benefit local communities (serving local participants or loads, or providing other meaningful community benefits), they should enjoy financial or regulatory incentives.

- Enable Portions of Large Projects to Benefit Neighbors and Host Towns: Current statutory language allowing portions of non-net metering projects to be net metered (30 V.S.A. § 8010) will expire at the end of 2016, and no equivalent provision exists in the draft proposed net metering rules to take effect in 2017. Enabling projects sponsors to allocate some portion of > 500 kW solar projects to neighbors and host towns, such that those entities enjoy a financial benefit, is one way to mitigate any negative project impacts. If existing rule language is retained, it should be modified to account for economies of scale enjoyed by > 500 kW projects.

Process, Transparency, and Public Participation

Intro text

Findings

1. It is difficult for even many regular participants in the § 248 process, let alone members of the public seeking to participate for the first time, to understand and effectively participate.
2. Intervention in a § 248 proceeding can be difficult and expensive, particularly for pro se interveners. A mechanism is needed to facilitate mediation of community and neighbor concerns with projects, outside of the formal contested case process.

Objectives

1. Enhance customer service and access to information at the Board for those seeking to participate in the § 248 process.

2. Enable multiple mediation pathways for resolution of concerns between project developers and host towns/neighbors, with the goal of shortening and not lengthening the overall process..

Recommendations

1. *Create Pathways for Mediation of Concerns with Projects*

- Encourage Pre-Application Consultations: While there is a 45-day notice to towns and neighbors for projects > 150 kW, there are no formal requirements for developers, towns, and neighbors to constructively engage prior to an application being filed with the Board. Additionally, there are no consultation requirements for projects < 150 kW. The Board's draft net metering rule does attempt to address this need, by requiring a pre-application information session and consultation prior to application filing for all projects > 15 kW and < 500 kW. Projects > 150 kW must additionally respond to comments received at the information session and in response to the 45-day notice. The Task Force is encouraged by these recommendations and would like to see projects > 500 kW similarly engage with neighbors and communities beyond the 45-day notice. It may be worthwhile to further encourage these early discussions by offering projects with a streamlined § 248 process (something akin to the current § 248(j) application process when the project is supported by the host municipality.

- Create an Early Off-Ramp for Mediation of Concerns: The Board should develop a process to assist in resolution of concerns between developers, towns, and neighbors in the early stages of the application process. This could involve exploring the ability of Board staff (or outside mediators hired by the Board) to play a mediator role up to the point a case becomes contested (perhaps when a party formally files for intervention and is granted party status). The goal would be to shorten the overall process while satisfactorily resolving the concerns of towns and neighbors and avoiding the expense of litigation.

- Create a Mediation Process for Contested Cases: The Board should also develop a process to assist in resolution of issues between developers, towns, and neighbors after a case becomes contested, perhaps through ordering third-party mediations. It could consider using process similar to 18 CFR 385.603 (the Federal Energy Regulatory Commission settlement process): after appointing a settlement officer, there would be a finite period of discussions between the developer and person requesting the settlement conference (perhaps scaled to the size or project or type of proceeding); the settlement officer would make a recommendation to the Board on whether to extend the settlement period, accept the settlement proposal, or go to hearing.

- Proposed statutory language for non-met metered projects: Add to ***30 VSA § 248(a)(4)(B):*** The Public Service Board shall hold technical hearings at locations which it selects. Mediation may be requested by agreement between all parties to the proceeding or ordered by the Public Service Board on its own motion or on motion of a party to the proceeding. The Public Service Board shall adopt and implement rules that establish the standards and procedures governing mediation.
  -add to 30 VSA § 8007(b)(1)((B): ... Provided however that the Board may not waive 30 VSA § 248(a)(4)(B) as it relates to mediation.

  Proposed statutory language for net-metered projects [if applicable]:
  -add to 30 VSA § 8010(c)(3)(B): ... Provided however that the Board may not waive 30 VSA § 248(a)(4)(B) as it relates to mediation.

2. *Provide § 248 Process Assistance to Developers and the Public*

- Creation of Customer Assistance Roles at the Board: The § 248 process, particularly for net metered projects, has evolved into a large permitting process that lacks the administrative support and communication with stakeholders that this scale of process requires. Ultimately, the Board is encouraged to undertake a comprehensive review of its customer service needs and the skill sets that are required. In the short term, addition of the appropriate number and type of staff commensurate with the scale of permitting happening is vital. Other state permitting programs, for instance, might employ three to five individuals to accommodate this scale of program. Appropriate staff might include one or more permit program managers with broad program oversight, and one or more administrative staff. It is important to provide answers to both common, administrative-type questions as well as more detailed technical- or process-related questions. The Board will need appropriate resources to accommodate these needs. The electronic filing system initiative underway at the Board will be an integral tool toward achieving appropriate levels of customer service.

- Development of Forms and Templates: Citizens, developers, and other participants in the § 248 process would benefit from forms for routine requests, such as intervention requests. These could be added to the Board's *Citizen's Guide to the Vermont Public Service Board Section 248 Process*.

3. *Participation of State Agencies in the § 248 Process*

Certain state agencies, particularly the Agency of Agriculture, Food & Markets (AAFM) and the Vermont Division for Historic Preservation (VDHP) are charged with advocating for the

protection particular state resources (agricultural soils and historic resources, respectively) but are limited in their ability to participate, either by resources or perceived procedural hurdles.

- Make AAFM a "party by right" in the § 248 process, and be given the right to intervene under Board Rule 2.209(A), *intervention as of right.*
    - 30 V.S.A. § 248(a)(4)(F) could be added to read:

      The Vermont Agency of Agriculture, Food & Markets shall have the right to appear as a party in any proceedings held under this subsection. For solar projects, participation of the Vermont Agency of Agriculture, Food & Markets shall be limited to ground-mounted solar projects that impact agricultural soils.

- Ensure that the Division for Historic Preservation is on the notice list for full 248 and net metering proceedings and that any agreement between developers and the DHP is included in the applicant's application or petition.

Environment and Aesthetics

Intro text

Findings

1. XX

Objectives

1. XX

Recommendations

1. Notice provisions to adjacent towns
    a. Concern: Projects located on town borders are not noticed to adjacent towns, and may affect the scenic resources of those towns.
    b. Solution: Require notification of projects to adjacent towns in the same manner they are currently required for host towns if the project is located within 500' of a town boundary.
    c. Recommendations:
        i. Net Metering: draft proposed net metering rule proposes pre-application and notice requirements for new proposed categories of systems, including Category II systems (i.e. ground-mounted systems > 15 kW to < 150 kW) and Category III (i.e. ground-mounted systems 150-500kW). Potential revisions to these include

1. Category II pre-application requirements:
   5.111(D) Applications for Category II Net Metering Systems.
   (1) Pre-Application Information Session and Consultation. Prior to filing an application under this subsection, the applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be provided to the legislative body and planning commission, to the legislative body of the adjacent municipality if the project will be located within 500 feet of that municipality's boundary, and to all adjoining landowners no less than fifteen days before the public information session. The notice shall also state that the applicant intends to file a Section 8010 application, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address. As part of the public information session, the applicant shall solicit recommendations regarding the siting of the net metering system.

2. Category II service requirements:
   5.111(D) Applications for Category II Net Metering Systems.
   (3) Service of Applications. The applicant shall provide by certified mail copies of the completed application form to the following persons and organizations:
   (a) all adjoining landowners; and
   (b) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located, and the municipal legislative body of any town located within 500 feet of the proposed project.
   The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail: (a) the Department of Public Service;
   (b) the Agency of Natural Resources;
   (c) the Division for Historic Preservation; and
   (d) the electric company.
   With permission of the intended recipient, the applicant may serve a copy of the completed application form via electronic mail. All certified mail shall be postmarked on the same day the application is deemed complete by the Board. The Board shall liberally grant extensions of time for the above-listed entities to file comments when the applicant fails to cause timely service of the application.

3. Category III pre-application requirements:
   5.111(E) Applications for Category III Net Metering Systems.
   (1) Notice Requirements. The applicant must provide written notice by certified mail, at least 45 days in advance of filing a Section 8010 application, to the following entities:
   (a) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located and the legislative body of the adjacent municipality if the project will be located within 500 feet of that municipality's boundary; and
   (b) all adjoining landowners.
   The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail: (a) the Department of Public Service;
   (b) the Agency of Natural Resources;
   (c) the Division for Historic Preservation; and
   (d) the electric company.
   With permission from the intended recipient, any applicant may serve a copy of the notice via electronic mail. The notice shall state that the applicant intends to file a Section 8010 application, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address. The notice shall provide contact information and state that the recipient may file inquiries or comments with the applicant about the project and that the recipient will also have an opportunity to file comments with the Board once the application is filed. If, within 180 days of the date of the advance notice, the applicant has not filed a complete application for the project that fully complies with the filing requirements of this rule, the notice shall be treated as withdrawn without further action required by the Board.
   (2) Pre-Application Information Session and Consultation. Prior to filing, the Applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be included in the applicant's 45-day advance notice under (1), above. As part of the public information session, the applicant shall solicit recommendations regarding the siting of the net metering system.

4. Category III service requirements:
   (3) Service of Applications.
   Upon filing an application with the Board, the applicant shall provide by

certified mail copies of the completed application to the municipal legislative bodies and the municipal and regional planning commissions where the net metering system will be located, and the municipal legislative body of any town located within 500 feet of the proposed project. In addition, the applicant shall provide notice by certified mail to all adjoining landowners that the application has been filed with the Board.

The applicant shall cause a copy of the completed application to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:
(a) the Agency of Natural Resources;
(b) the Department of Public Service;
(c) the Division for Historic Preservation; and
(d) the electric company.
All certified mail shall be postmarked on the same day the application is deemed complete by the Board. With permission from the intended recipient, any applicant may serve a copy of the completed application form via electronic mail, in which case the date the electronic mail is sent shall be the same date the application is filed with the Board. The Board shall liberally grant extensions of time for the above-listed entities to file comments where the applicant fails to cause timely service of the application.

i. Non-net metering: Notice provisions currently exist in rule, not statute. Rule 5.400, which governs non-net metering projects, already directs projects to provide notice to "affected municipal and regional planning commissions, and municipal legislative bodies." PA will need to clarify if adjoining towns routinely receive notice of projects on their borders, which would indicate whether a revision is warranted. An alternative is to make a change to 30 V.S.A. § 8007(b), which gives the Board broad latitude modify notice and hearing requirements as appropriate.
An option s to propose statutory language for 30 VSA § 248(a)(4) and § 2007(b)(1) to require Board to amend Rule 5.400 to clarify that "affected municipal and regional planning commissions, and municipal legislative bodies" includes "the municipal legislative body of any town located within 500 feet of the proposed project."

2. Clarification of Quechee Analysis

   a. Concern: It is not clear to project neighbors exactly what their role is in the 248 process, how their views are considered by the Board, and how the process differs from aesthetics review in Act 250. It is also not clear to towns how to write town plans that carry weight in the 248 process.

b. Solution: The Board should provide plain-language guidance on the Quechee analysis to 248 participants, and should strive to address their concerns to the extent practicable.

c. Recommendations:

i. Provide comparison of Quechee analysis in Act 250 vs. Section 248.

Act 250

In Act 250, a project must comply with Criterion 8, aesthetics (must not have an undue adverse effect on aesthetics). The Commission relies upon a two-part test to determine whether a project satisfies Criterion 8. First, it determines whether the project will have an adverse effect under Criterion 8.

> Part One: Adverse Impact? If yes, then,
> Part Two: Undue Adverse Impact? Found if any one of the following is true:
>
> a. Does the Project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
> b. Does the Project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
> c. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings?
>
> Note: [Natural Resources] Board precedent notes that application of Criterion 8 does not guarantee that views of the landscape will not change: *Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and criterion #8 will not be an impediment. Criterion #8 was intended to insure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the specific scenic resources of Vermont.*
>
> From: Act 250 Training Manual, http://www.nrb.state.vt.us/lup/publications/manual/8aestheticsfinal.pdf

Section 248

In Section 248, criterion (b)(5), part of which includes aesthetics, is weighed along with the other criteria in determining whether a project is in the public good. The Public Service Board similarly relies upon the two-part Quechee analysis, and the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the Quechee Lakes decision. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB, dated January 13, 1986.

Part One: Adverse Impact? If yes, then,
Part Two: Undue Adverse Impact? Found if any one of the following is true:
a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
b. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
c. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Note: *In addition to the Quechee analysis, the Board's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."*

From: *In Re: Northern Loop Project*, Docket 6792, Order of 7/17/03 at 28

Furthermore, the Legislature in Act 99 directed the Public Service Board to apply the Quechee Test as described in the *case In Re Halnon*, 174 Vt. 515 (2002) (mem.), Quechee Test for net metering systems. Accordingly, the Board has proposed the following in its proposed net metering rule:
In determining whether a net metering system satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Board applies the so-called "Quechee test" as described in the case In Re Halnon, *174 Vt. 515 (2002) (mem.), quoted below:*

Under this test a determination must first be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. If the answer is in the affirmative the inquiry then advances to the second prong to determine if the adverse impact would be "undue." Under the second prong an adverse impact is undue if any one of three questions is answered in the affirmative: 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? 2) Does the project offend the sensibilities of the average person? 3) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings? An affirmative answer to any one of the three inquiries under the second prong of the Quechee test means the project would have an undue adverse impact.

The proposed rule also includes an explicit definition of "adverse aesthetic impact":

(E) <u>Adverse Aesthetic Impact.</u> In order to determine that a project would have an adverse impact on aesthetics and the scenic and natural beauty under subsection (A), above, the Board must find that a project would be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors

and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

ii. Request that the Public Service Board develop plain-language guidance on the Quechee Test, specifically w/r/t: private views (particularly neighbors' views) and where and how they are considered in the Quechee Test; and community standards and examples of town plan language that is adequately clear and specific to be meaningful in the 248 process. [Need statutory language]

3. Post-construction aesthetics compliance reporting

   a. Concern: Some projects may not be fully compliant with the aesthetics mitigation requirements of their permits.

   b. Solution: Require some measure of post-construction compliance reporting as a condition of the Certificate of Public Good.

   c. Recommendations:

      i. Net Metering: draft proposed net metering rule includes language related to compliance proceedings that may be sufficient (at least to address projects up to 500 kW), as follows:

5.115 <u>Compliance Proceedings</u> In response to a public complaint or on its own motion, the Board may take any or all of the following steps to ensure that a net metering system is constructed and operated in compliance with the terms and conditions of the CPG issued for that net metering system and any related Board order:
(A) Direct the certificate holder to provide the Board with an affidavit under oath or affirmation attesting that the person, company, or corporation or any facility or plant thereof is in compliance with the terms and conditions of the CPG pursuant to 30 V.S.A. 30(g);
(B) Direct the certificate holder to provide additional information;
(C) After notice and opportunity for hearing, amend or revoke any CPG for a net metering system, impose a penalty under 30 V.S.A. § 30, or order remedial activities for any of the following causes:

(1) the CPG or order approving the CPG was issued based on material information that was false or misleading;
(2) the system was not installed, or is not being operated, in accordance with the National Electric Code or applicable interconnection standards;
(3) the net metering system was not installed or is not being operated in accordance with the plans and evidence submitted in support of the application or registration form;
(4) the holder of the CPG has failed to comply with one or more of the CPG conditions, the order approving a CPG for the net metering system, or this rule; or
(5) other good cause as determined by the Board in its discretion.

If the procedures above remain insufficient, modifications could also be made to the provisions in the proposed rule for standard conditions (text below abbreviated):

5.121 Standard Conditions of Approval Applicable to Net Metering Systems
(A) The following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.
(1) Consistency with Plans and Evidence. [....]
(2) Approvals and Permits. [....]
(3) Existing and Future Statutory Requirements. [....]
(4) Transfers. [....]
(5) Waste Disposal. [....]

(B) In addition to the conditions in (A), above, the following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any ground-mounted net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.
(1) Hours of Construction. [....]
(2) Oil Containment. [....]
(3) Indiana Bat Habitat. [....]
(4) Deer Wintering Areas. [....]
(5) Soil Erosion. [....]
(6) Streams. [....]
(7) Wetlands. [....]
(8) Screening. All screening shall be maintained for the life of the net metering system. All dead or dying vegetation shall be replaced. After construction and by August 31 of each year thereafter for a period of three years, the certificate holder shall submit sufficient documentation, including photographs, for the Board to determine that screening has been installed and maintained according to the approved plans. The initial filing after construction is complete shall be certified by a professional landscape architect.

ii. Non-net metering: Certificate of Public Good conditions are generally determined on a case-by-case basis.[Need statutory language to require post-construction aesthetics compliance certification as a standard condition for all ground-mounted solar projects.]

4. Identification of all equipment and infrastructure in application

a. Concern: Applications – especially for projects 15-150 kW – do not always include identification of all equipment and infrastructure that may have a bearing on aesthetics (e.g., plywood-mounted inverters).

b. Solution: Require detailed information on project equipment on the application form for systems.

c. Recommendations:

i. The Board should revise its current application form for systems greater than 15 kW and less than 150 kW as follows:

For all systems with capacities greater than 50 kW, provide a site plan or plans of the Project containing the following information:

(a) The scale in feet and a representative fraction. The plan must be drawn to scale and submitted on an 11" x 17" sheet.

(b) A compass orientation, legend, title, and date.

(c) An inset showing the location of the system within the Town.

(d) Proposed facility location(s), all construction features, and dimensions of all proposed improvements.

(e) State and municipal highways and setback distances from those highways to the system.

(f) Property boundaries and setback distances from those boundaries to the system.

(g) The locations of any proposed utility lines.

(h) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations or impacts to wetlands and other natural resources protected under 30 V.S.A.§ 248(b)(5), including the limits of earth disturbance and the total acreage disturbed.

(i) Locations and specific descriptions of proposed screening, landscaping, ground cover, fencing, exterior lighting, ~~and~~ signs, and any other visible infrastructure on the project site.

(j) The location of any proposed access driveway, roadway, or parking area.

5. Recovering wetlands through solar transition

a. Concern: There is currently little incentive for a farmer to stop the practice of cropping soils that were formerly wetlands but which were tile-drained and historically exempted from wetlands regulation.

b. Solution: Facilitate recovery of these former wetlands by allowing time-limited solar development to occur at the same time agriculture is permanently ceased.

c. Recommendation: The Agency of Natural Resources and the Agency of Agriculture, Food & Markets are strongly encouraged to develop a proposal for consideration by the Legislature.

6. Act 56 changes

a. Concern: Act 56 provided for statewide setbacks, town screening bylaws, and for towns to be parties by right. On one hand, these changes may sufficiently address the problems they were meant to solve, but we won't know for some time. On the other hand, these changes may need modification to ensure they achieve their intended outcomes.

b. Solution: No consensus on a solution.

c. Recommendation: The Task Force acknowledges that efforts were made to address siting concerns in Act 56 that have not yet had time to work; however, some have concerns about the direction of the changes and the complications they entail.