



Thank you for the opportunity to comment on H. 50 and Section 248a. My name is Chris Company, and I am the Executive Director of the Windham Regional Commission (WRC). The WRC's mission is to assist towns in Southeastern Vermont to provide effective local government and work cooperatively with them to address regional issues. Our region includes 27 towns in Windham, Windsor, and Bennington Counties over an area of approximately 920 square miles.

The WRC finds value in Section 248a, though in our experience we have not found the Public Service Board to be particularly receptive of or responsive to our concerns or recommendations. We have had more success directly conversing with the petitioners, or through engagement in the Act 250 process when applications have gone that route. The 60 day prefile notification requirement of 248a is effective in connecting petitioners with our Commission for a proposed project.

The WRC has reviewed 13 248a petitions in the last 3 years. The following is an overview of our requests related to specific applications. All of these recommendations reflect the policies of our regional plan as well as consultation with the affected town.

- Shorter towers to preserve viewsheds which wouldn't significantly reduce propagation of signal (Rockingham meeting house, parker hill historic district)
- Fragmentation, access road stream crossings and steep terrain– request alternative location or co-location (Marlboro)
- Reduce height and use recessive (brown) color (Brattleboro)
- Concern about ridgeline development, alpine wetlands, proximity to another tower (135') (Londonderry) (Note: we do recognize that federal law preempts us from requiring co-location, but we do suggest it where appropriate.)
- Close proximity to road – fall hazard concern (30-50 feet from edge of road) (Guilford, Wardsboro, Vernon)

We cannot recall an instance in which the Public Service Board has concurred with or supported our recommendations.

In 2014 the Public Service Board was directed by the legislature to define “good cause” and “substantial deference” as those terms apply to Section 248a. I have provided you with

correspondence related to that effort. As you will see the Board was reluctant to solicit input from regional planning commissions even though we are statutory parties to 248a petition review, but we were eventually given time to comment with the support of the Department of Public Service.

The WRC suggested the following:

**“Good cause”** is a legal term denoting adequate or substantial grounds or reason to take a certain action, or to fail to take an action prescribed by law. We feel the burden is upon the Public Service Board to provide, on a case by case basis, specific reasons why a project is advancing a statewide policy in a manner that would cause the Board not to give municipal and regional plans, and the recommendations of municipal legislative bodies and the municipal and regional planning commissions, substantial deference.

In its Section 248a proceedings, we believe that the Board would only have “good cause” to disregard the goals, recommendations, and objectives of a regional or municipal plan, and the recommendations of municipal legislative bodies and the municipal and regional planning commissions, when evidence clearly demonstrates the plan of a region or municipality was:

- a) not duly adopted;
- b) not substantially followed by the region or the municipality in forming its recommendation(s);
- c) silent, or vaguely written;
- d) or the policies, goals, objectives and standards contained within the plan, and their intent, do not present a clear nexus between the conservation measures to be achieved and the inability of the proposed project to comport with those measures.

**“Substantial deference”** should be interpreted to mean that the policies, goals, objectives, and measures contained within a regional or municipal plan adopted per Title 24, Chapter 117, and the recommendations of a municipal legislative body, municipal planning commission, or regional planning commission based upon that plan, shall be applied by the Board unless there is a clear and convincing demonstration that those policies, goals, objectives, and measures are contrary to statute, or that the Board can demonstrate good cause that the public good of the State of Vermont substantially outweighs the application of the duly adopted regional or municipal plan and the recommendations of a municipal legislative body, municipal planning commission, or regional commission.

In a subsequent order, the Board determined the following:

"Good cause" means a showing that deferring to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the

municipal and regional plans, respectively, would be detrimental to the public good or the State's interests articulated in 30 V.S.A. § 202c.

"Substantial deference" means to give significant and meaningful weight to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

We are not aware that the definition of the terms has had any impact on Board decisions, though we are but one party and certainly cannot speak to the experience of all regional planning commissions or municipalities. I will also note that this has raised questions in my mind about how "substantial deference" will be applied in Act 174, recognizing that the definition contained within the Act is more specific. As is noted in the Department of Public Service "Introduction to the Act 174 Regional and Municipal Energy Planning Standards:"

Substantial deference as defined by Act 174, and used in the Section 248 process, provides towns and regions a strong voice in determining where energy projects should, and should not, be sited. The Act defines substantial deference as: "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." Note that this definition is more specific than that used in Section 248a proceedings regarding communication facilities (such as cellular telephone towers), which allows plans' land conservation measures to be overcome by "good cause to find otherwise." Substantial deference in the Section 248 process does not, however, mean that the municipal or regional plan carries the weight of zoning or permitting; zoning bylaws may not regulate projects regulated under Section 248.\*

We won't know how the Board will apply substantial deference under Act 174 until it has done so, but it is our hope that it will be more responsive to regional and municipal plans than has been our experience under Section 248a.

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\* [http://publicservice.vermont.gov/sites/dps/files/documents/Pubs\\_Plans\\_Reports/Act\\_174/Standards%20Overview.pdf](http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Standards%20Overview.pdf)