

**STATE OF VERMONT
PUBLIC SERVICE DEPARTMENT**

24 V.S.A. § 4352 Determination No. 3

**DETERMINATION OF ENERGY PLANNING COMPLIANCE PURSUANT TO
24 V.S.A. § 4352 FOR NORTHWEST REGIONAL PLANNING COMMISSION'S
REGIONAL PLAN AND ENERGY PLAN**

I. INTRODUCTION

Today, in my capacity as the Commissioner of the Vermont Public Service Department (the "Department"), I have issued the attached certificate memorializing my affirmative determination pursuant to 24 V.S.A. § 4352(a) that the Northwest Regional Energy Plan ("NREP") and the Northwest Regional Plan ("NRP") comply with the requirements of 24 V.S.A. § 4352 for enhanced energy planning.¹ This determination is made solely as to whether the NREP and NRP comply with the statutory planning requirements of 24 V.S.A. § 4352. This determination does not mean that the Department endorses the substantive policy judgments contemplated or promoted in these plans. Additionally, I hereby record the procedural history leading to the compliance determination, as well as a report of the public comments the Department received. Finally, some observations are offered that may prove helpful to other regional planning commissions and municipalities that choose to seek an enhanced energy planning compliance determination under 24 V.S.A. § 4352.

¹ The NRP was duly adopted on July 29, 2015, and amended on June 28, 2017; the NREP was duly adopted on June 28, 2017.

II. PROCEDURAL HISTORY

On July 20, 2017, the Northwest Regional Planning Commission (“NRPC”) submitted the NREP and NRP (collectively the “Plans”) for a determination of compliance with the enhanced energy planning standards set forth in 24 V.S.A. § 4352.

On August 4, 2017, notice of a public hearing scheduled for August 31, 2017 was posted on the Department’s website.

On August 7, 2017, notice of a public hearing scheduled for August 31, 2017 was mailed directly to the NRPC.

On August 16 and 24, 2017, notice of the August 31st public hearing was also published in the St. Albans Messenger.

On July 27, 2017, the Department solicited recommendations from the Secretaries of Agriculture, Food, and Markets; Commerce and Community Development; Natural Resources; and Transportation as to whether NRPC's Plans should be certified as compliant with the requirements of 24 V.S.A. § 4352. The Department received responses from the Agencies of Agriculture, Food, and Markets (“AAFM”), Natural Resources (“ANR”), and Transportation (“AOT”).

On August 31, 2017, the Department convened a public hearing in the St. Albans City Hall Auditorium in St. Albans, Vermont.

III. AGENCY COMMENTS

Agency of Transportation

AOT stated that it did not have any recommendations for changes to the plan.

Agency of Natural Resources

ANR stated that it did not object to certification of the plan, and provided several comments regarding mapping, woody biomass, and the wind target. ANR discussed several mapping constraint layers that were elevated from possible constraints to known constraints, but concluded that the action was reasonable. ANR notes that while the NREP and NRP identify preferred locations in general terms and leave specific designation and mapping of preferred locations to municipalities, there is some mapping data available for landfills, brownfields and quarries through its Natural Resource Atlas. ANR stated appreciation for the attention paid to woody biomass in the Plans. Finally, ANR recognized the challenge NRPC may have in meeting its wind target, but deferred to the Department on this issue.

Agency of Agriculture, Food, and Markets

AAFM requested that future plans address measures to mitigate invasive species when planning for woody biomass and the potential for methane digesters that produce electricity or renewable natural gas. As AAFM provided these recommendations for consideration in a future regional plan they did not form part of the compliance determination that was made today. That said, NRPC is encouraged to coordinate with AAFM regarding these issues in future planning activities.

IV. PUBLIC COMMENTS

I thank the members of the public who took the time to provide me with feedback on the Plans and this review process, whether in writing or by speaking at the August 31st public hearing. It has been both my duty and privilege to listen to and consider these public comments. This determination decision I am statutorily charged with making affects the lives of the citizens

of the Northwest Regional Planning Commission's service area and I have not undertaken it lightly. What follows is a summary description of the comments the Department received:

Several people have expressed support for the Plans and several people have expressed concern regarding the land-use impacts of generation facilities pointing to the possible alternative of anticipated technological advances. While most of these comments were not strictly related to the determination I must make today, they highlight the importance of this issue to the residents of the area served by the Northwest Regional Planning Commission. I would therefore encourage these citizens to remain engaged in both regional and local energy planning.

V. DEPARTMENT OBSERVATIONS

Act 174 created a new energy planning process in Vermont for regional planning commissions and municipal planning bodies. Pursuant to this process, a regional planning commission such as the NRPC has the option of submitting its duly-adopted regional plan to the Commissioner of the Public Service Department for an affirmative determination of compliance with the statutory standards of 24 V.S.A. § 4352. When a regional plan has received an affirmative compliance determination under Section 4352, the Vermont Public Utility Commission is required to afford substantial deference in Section 248 proceedings to the land conservation measures and specific policies contained in such a duly-adopted regional plan when reviewing any proposed electric generation facility in the region covered by that plan.

While a regional plan that has received an affirmative determination of energy planning compliance must be given substantial deference by the Public Utility Commission when reviewing the siting impact of a project, such as under the "orderly development" criterion of Section 248(b)(1), that does not mean that the regional plan automatically or ultimately decides

whether a project will receive a Section 248 permit. Rather, a regional plan that has been determined to comply with 24 V.S.A. § 4352 will only serve, as warranted, to inform the several statutory criteria the Commission must apply when considering whether a proposed project should receive a Section 248 permit.

Pursuant to 24 V.S.A. § 4348b(a), regional plans must be amended or updated and adopted or readopted every eight years. In turn, every six years, the Department is required to adopt a Vermont Comprehensive Energy Plan (CEP),² which must include recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance.³ During these intervals of time, new statutes, rules, technologies, and policies may be adopted that could substantially affect the standards and the goals in the CEP. The analysis, targets and goals presented by the NRPC to meet the planning standards developed by the Department pursuant to Section 9 of Act 174 represent one potential path for achieving energy goals; this potential path is not a directive or a prescription for what must be done or where specific resources must be located. The specific targets and measures should be viewed as aspirational and should not be interpreted as mandatory requirements. For example, when a specific area is marked on a regional planning map as “prime solar” it does not mean that the entire area will be filled in with solar panels; rather it simply indicates an absence of specific restrictions for such a project such as vernal pools or agricultural soils. Any proposed solar project will still need to be reviewed by the Public Utility Commission and affected neighbors and communities will still have the opportunity to provide comments on any proposal and to explain why they do or do not support the proposed construction or siting of that project.

² 30 V.S.A. § 202b(c)

³ 24 V.S.A. § 4352(d)(1)

The NRPC has developed regional and municipal targets for renewable energy generation; these are included in Appendices G and H of the NREP. These regional and municipal targets are not mandatory for the NRPC's member municipalities. In other words, to the extent that individual municipalities wish to develop enhanced energy plans of their own, these targets developed by the NRPC may serve as tools or guides, but they in no way restrict how individual municipalities develop their own targets for energy planning purposes.

It is very important that the public be afforded ample opportunity to participate in the planning process to ensure the plan reflects their input. The NRPC conducted a robust process that provided public notice of the planning activities that produced the Plans. What follows is a brief overview of the process used by NRPC:

- The NRPC's Energy Committee held eleven meetings to discuss the NREP (from July 2015 to April 2017).
- The NRPC's Regional Plan Committee held two meetings to discuss the NREP and its integration with the NRP (August 2016 and May 2017).
- The NRPC held six public hearings specifically dedicated to gathering input on the NREP (from November 2015 to May 2017).
- The NRPC held two public hearings as required under Chapter 117 of Title 24 when amendments to a Regional Plan are under consideration (May 2017 and June 2017).
- The NRPC held two public meetings related to the implementation of Act 174 generally (December 2016 and May 2017).

Discussion of Standard 12.A.⁴

⁴ See 24 V.S.A. §4352(c)(4); Act 174 Section 9. The Determination Standards can be reviewed by visiting the Department's website and clicking on the following link: <http://publicservice.vermont.gov/content/act'174' recommendations-and-determination-standards>. Section 9 of Act 174 directed the Department to develop standards

In seeking a determination of compliance with the enhanced energy planning requirements set forth in 24 V.S.A. §4352(c), the law requires the NRPC to demonstrate that the NREP and NRP "meet" the planning standards prepared and published by the Department on November 1, 2016 (the "Determination Standards"). Standard 12.A asks, "Are areas identified as unsuitable for particular categories or sizes of generators consistent with resource availability and/or land use policies in the regional or municipal plan applicable to other types of land development?"⁵ The Northwest Regional Planning Commission has concluded that the region generally "does not have suitable locations for the construction of 'industrial' or 'commercial' wind facilities within the region and therefore [NRPC] finds this scale of development does not conform to this plan. For the purposes of this plan, NRPC will consider any wind facility with a tower height (excluding blades) in excess of 100 feet tall to be considered an 'industrial' or 'commercial' wind facility." NRPC has taken this policy position because its evaluation of the region's resource availability and land use policies indicates that no such suitable sites exist. According to the NRPC, a "commercial" or "industrial" scale wind facility would likely need to be in an area that has known constraints such as municipally identified conservation or forest land use districts, steep slopes, or a lack of proximity to electric and transportation infrastructure.

for enhanced energy planning, and further directed that these standards "address" several planning elements "in a manner consistent the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202(b). For the convenience of the applicant, the Department has published these planning standards (i.e., the Determination Standards) in the form of a checklist to be completed when seeking a Section 4352 enhanced energy planning determination.

⁵ Section 9 of Act 174 directed the Department to develop planning standards that address, among other things, "the identification of areas, if any, that are unsuitable for siting those resources or particular categories or sizes of those resources," and "the identification of potential areas for the development and siting of renewable energy resources and the potential electric generation from such resources in the identified areas, taking into account factors including resource availability, environmental constraints, and the location and capacity of electric grid infrastructure." Additionally, Standard 12.A. is consistent with PUC precedent established in Docket 8188. The order issued in Docket 8188 found the Rutland Town Solar Facility Siting Standard's prohibition of ground mounted solar arrays on lands with primary agricultural soils to be unpersuasive because the Rutland Town Plan inconsistently allowed other types of development with greater impacts to primary agricultural soils.

Additionally, the NRP contains several policy statements aimed at protecting these lands from development in general. These include, but are not limited to:

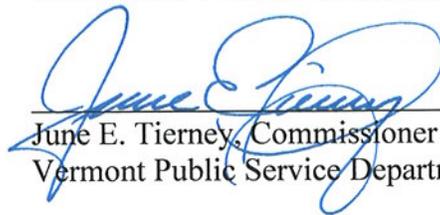
- Forest and Conservation Planning Areas include a variety of land types that are generally not suitable for development.
- These lands should be protected from fragmentation and conversion.
- Lands in this category usually should not be developed.
- Development may be limited due to natural resource constraints, such as wetlands and floodplains, wildlife and scenic values in the case of uplands, or an overall low suitability for development based on soils, distance from roads, and other factors.
- Ensure that development in rural, forestry, and conservation areas will not diminish the viability of agricultural or woodland operations, or fragment large contiguous tracts of woodland or wildlife habitat/corridors.
- Ensure that development in designated conservation areas on the proposed land use map will be small scale and will not diminish the environmental value of the lands. Only allow development farther than 1,000' from road centerlines in conservation areas if it advances conservation goals.
- Locate industrial development first in existing industrial areas. Ensure that industrial growth outside of existing industrial areas is located near or within growth areas designated in the municipal and regional plan, on property with sufficient infrastructure.

In determining that no suitable sites exist for “commercial” and “industrial” scale wind facilities within the region, the NRPC analyzed both its resource availability as well as applicable land-use policies in the NRP. Thus, when viewed in the context of the NRP, which is larger in scope than

the NREP, it is fair to conclude that the NRPC seeks to protect the lands identified as suitable for a wind project with hub heights in excess of 100 feet from *all* types of development, and not only from “commercial” and “industrial” scale wind facilities. On balance, I find the NREP complies with Standard 12.A. because NRPC’s designation of its service area as unsuitable for this particular size and category of generator (“commercial” and “industrial” scale wind facilities as defined in the NREP) is consistent with both the resource availability and the land-use policies applicable to other types of land development.

Dated at Montpelier, Vermont this 19th day of September 2017.

VERMONT PUBLIC SERVICE DEPARTMENT



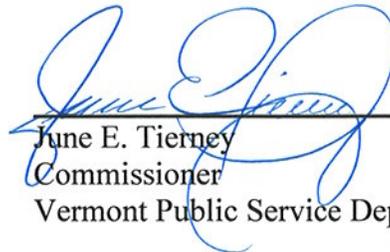
June E. Tierney, Commissioner
Vermont Public Service Department

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CERTIFICATE OF ENERGY COMPLIANCE

On this 19th day of September 2017, I affirmatively determined that the Northwest Regional Plan duly adopted on July 29, 2015 and as amended on June 28, 2017, and the Northwest Regional Energy Plan duly adopted on June 28, 2017, comply with the energy planning requirements set forth in 24 V.S.A. § 4352.


June E. Tierney
Commissioner
Vermont Public Service Department

Pursuant to 24 V.S.A. § 4352, a regional planning commission aggrieved by an act or decision of the Commissioner of Public Service may appeal to the Natural Resources Board established under 10 V.S.A. chapter 151 within 30 days of the act or decision.