

# Introduction to the Act 174 Regional and Municipal Energy Planning Standards

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## What is Act 174?

Vermont has a long history of both land use and energy planning. As Vermont has experienced the growth in renewable energy generation as one of the state's largest new land uses, the need for integration of energy planning with land use planning has grown. Both the Governor's [Energy Generation Siting Policy Commission](#) (2013) and the [Solar Siting Task Force](#) (2015) recommended establishing a paradigm of enhanced energy planning integrated with land use planning. Informed by those recommendations, [Act 174 of 2016](#) establishes a new set of municipal and regional energy planning standards, which if met allow those plans to carry greater weight in the siting process for energy generation.

## Integrated Land Use & Energy Planning

Towns and regions have experience with, and see the direct local impacts of, land use planning. This includes planning for shared and beneficial infrastructure of many kinds, such as roads and industrial and commercial developments. Energy infrastructure, including generators, similarly serves a public purpose, while also creating both costs and benefits that are not distributed evenly.

Energy planning is not just about electricity generation, however. Over half of Vermont's energy use is for heat and transportation, and local and regional decisions regarding buildings, roads, and other built infrastructure also have significant energy implications. For example, building a home or commercial building in a particular location will have implications for the energy required to travel to and from that building for decades. Given the pressing economic and environmental challenges associated with the use of fossil fuels, all aspects of planning must be undertaken with energy implications in mind.

Municipal and regional planning that addresses all of these factors will improve Vermonters' quality of life. Act 174 provides an opportunity for regions and municipalities – from the planning commissions and selectboards to energy committees and citizens – to shape and inform their own energy future, as well as the energy future of the entire state.

## Voluntary Process

Act 174 expands the basic requirements for regional energy planning, but its primary thrust is voluntary: municipalities and regions which plan to the enhanced standard envisioned by the Act will receive substantial deference before the Public Service Board with respect to both land conservation measures and specific policies included in their plans, when the Board looks at the orderly development criterion. Municipalities and regions that do not have enhanced plans continue to receive due consideration for those plans.

In order to demonstrate that enhanced energy plans meet the bar for receiving substantial deference, the plans must be judged against a set of published standards. These standards are designed to allow municipalities and regions to show that their plans have taken a close look at energy in their community, have considered energy used for buildings and transportation, analyzed their current and future energy

use, and planned carefully in alignment with state energy policy for the land use needs of energy generation.

As is the case for all elements of regional plans, municipalities may adopt all or a portion of their regional plan as part of their municipal plan. However, because the roles of municipal and regional plans are different, there are distinct standards for regional and municipal plans that must still be met if this approach is adopted. It is anticipated that even if this approach is not taken, regions and municipalities will work hand-in-hand to develop complementary plans, and that regions will provide technical assistance (including analyses and maps that meet the standards) to their municipalities.

### Substantial Deference

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.

### Plan Review

The Department of Public Service is required to evaluate regional plans submitted for a determination of energy compliance against the standards published here. In regions in which the regional plan has received an affirmative determination, the regional planning commission is then expected to evaluate municipal plans. Municipal plans must have been approved by their regional planning commission in order to be eligible for an affirmative determination. Until July 1, 2018, municipalities located in regions that have not received an affirmative determination may submit their plans directly to the Department of Public Service for a determination. In the event of an appeal of the Department’s decision to deny a determination to a region (or, until July 1, 2018, a municipality), the Natural Resources Board will hear the appeal.

### What are “Determination Standards for Energy Compliance?”

The attached regional and municipal determination standards are constructed as a checklist-based application form. It is the Department’s hope that by structuring the standards in this way, municipalities and regions will be able to clearly make the case for a determination on the same structure that the Department and regions will use to evaluate them. The standards measure whether the submitted plan meets the statutory requirements for enhanced energy planning and demonstrates local commitment toward meeting the state’s energy goals.

When submitting a plan for determination, a municipality or region will address each item on the checklist in turn, marking it as Yes, No, or (when available) Not Applicable. If Not Applicable is not available as an option, the standard must be marked “Yes” in order for the plan to receive an affirmative determination of energy compliance (unless the instructions under the standard itself indicate

otherwise). If Not Applicable is checked (when available), the region or municipality should provide a reasonable justification in the Notes column. The checklist provides an opportunity to identify the specific location(s) within the plan that the Department or region should refer to when verifying that the plan meets the standards. There is also an opportunity for the submitting town or region to provide additional explanatory notes.

### Energy Element in the Context of the Whole Plan

Given the pervasive nature and impact of energy on other land uses and resources, and their impact on energy, the determination standards are generally considered to apply to the entirety of the submitted plan, not only to the energy element. For example, land use planning that guides future development has an impact on transportation energy use, so the determination standards need to review those land use elements. In practice, regional plans and municipal plans that have been approved by their RPC are likely to have many of the components outside of the energy element already in place, and most (if not all) amendments to meet the standards are likely to be made in the energy element. The review in the standards context will focus on consistency (demonstrated through cross-referencing) between the enhanced energy element and the remainder of the plan, which should also be of importance to planners in the context of how the plan will be used in the Section 248 process (which references “land conservation measures and specific policies”).

### Standards Structure

The standards are divided into three parts: Analysis & Targets, Pathways, and Mapping. Analysis & Targets standards are meant to demonstrate the town’s or region’s understanding of the magnitude of the changes in the energy sector that will be required to meet the state’s energy and climate goals, and to create waypoints between the present and the planned-for future. Pathways, or Implementation Actions, provide an opportunity for the identification of specific strategies and actions to meet targets that are appropriate for regions or towns and consistent with the actions required to meet statewide goals. Mapping turns the attention to the overlap of energy infrastructure planning with land use planning in the context of the targets, including the generation potential for electricity and other useful energy from various sources. Plans are required to identify potential areas for the development and siting of renewable energy resources and are also expected to identify any unsuitable areas. This geographic analysis will enable the comparison of the energy that can be generated on potential and preferred sites with the energy required to meet energy goals over time. Given that siting decisions depend on the independent actions of developers and landowners, plans are expected to show that potential sites significantly exceed the required area to meet state goals.

### Regional Energy Planning Underway

Each of the expected planning evaluation components is reflected in planning work already underway by the regions under contract to the Department. This work provides a foundation and a head start both for the finalization of regional plans and for municipalities as they begin their enhanced planning activity. The Department hopes that municipalities will work closely with their regions in order to increase consistency and compatibility and to reduce total planning effort.

As discussed below, the Department expects to publish guidance to accompany these standards shortly after final publication. In the meantime, text in *italics* in the standards provides context that will eventually move into the separate guidance document.

### Importance of Plans in Net Metering

There is the possibility of a useful nexus between the municipal planning required for a determination of energy compliance and the [Public Service Board's proposed net metering rule](#) (PSB Rule 5.100), which will become effective at the start of 2017. That rule establishes a financial incentive for 15-500 kW generators to be located on preferred sites, and one of the ways a site may be identified as preferred is if it is identified in the town plan. Town-designated preferred sites may be one of the few pathways to develop projects larger than 150 kW. The combination of the updated Rule 5.100 and the mapping that towns will do as part of enhanced energy planning could give towns a significant ability to shape where net metering development happens. On a more general level, towns and regions that identify preferred, potential, and unsuitable sites will provide a green/yellow/red signal to developers regarding the challenges of developing on particular sites.

### Recommendations

Along with the determination standards, the Department is also publishing a set of recommendations from the [2016 Comprehensive Energy Plan](#) (CEP), tailored to local and regional action. In order to receive a determination of energy compliance, a municipal or regional plan must be consistent with the "recommendations for regional and municipal energy planning pertaining to the efficient use of energy and the siting and development of renewable energy resources contained in the State energy plans adopted pursuant to 30 V.S.A. 14 §§ 202 and 202b." The "State energy plans" are contained in the 2016 CEP, but at the time of its drafting the CEP was not crafted with this use in mind. As a result, certain general recommendations that apply to all levels of government, and to the public as a whole, were not specifically identified as pertaining to regional or municipal energy planning. In order to address this mismatch, these standards are accompanied by this modified set of CEP recommendations, which are expected to be expanded upon in the guidance discussed below.

Future CEPs will have these recommendations integrated directly and identified specifically, at which point they will become more integrated with the standards. The state updates its Comprehensive Energy Plan every six years, while municipal and regional plans are updated every eight years. Town and regional planning conducted before the next CEP is developed (in 2021-2) will inform both the determination standards accompanying that plan and the recommendations of the plan itself.

### Training & Technical Assistance; Guidance

Following the publication of the final standards and recommendations by November 1, 2016, the Department will produce guidance materials for municipalities and regions. This guidance will flesh out components of the standards, provide example strategies and actions, and include example plan text.

Act 174 provides funding for RPCs to provide technical assistance to municipalities which choose to pursue enhanced energy planning. This will include at least two training opportunities in each region. Regions will also be providing additional resources:

- Regions will provide town-specific analyses and maps that will enable municipalities to easily meet the Analysis & Targets and Mapping standards if used;
- Regions will be offering in-depth technical assistance to at least three towns apiece

- Regions will be compiling best practice language from those efforts, which will aid municipalities in meeting the Pathways standards.