

**Energy Generation Siting Policy Commission:**  
**Draft Possibilities and Options**  
**(02/03/13)**

The seven charges of the Commission are to compare the following aspects of Vermont's approval of siting for electric generation with other states, particularly those within New England's regional electric market, as follows:

1. **Procedures** for state-level approval (procedural mechanisms, timelines, substantive criteria and standards)
2. Role of and/or opportunity for **public participation**, public advocacy, and municipal, town or regional planning body participation in the approval process
3. **Alternative dispute resolution** processes
4. **Coordination** and timing of state-level permit issuance

In addition, the Commission is to:

5. Analyze whether Vermont's criteria for electric generation project siting approval **adequately protects** Vermont's lands, environmental resources, and cultural resources, both with respect to individual projects and with respect to **cumulative impacts** of multiple projects
6. Analyze best practices for **monitoring environmental impacts** of approved and built facilities going forward, to allow for an iterative process over time based on lessons learned
7. Consider whether the state should develop **generic siting guidelines** for developers of electric generation projects by technology, to aid permit process uniformity and provide guidance on environmental impacts, location, aesthetics and other common issues.

What follows is a draft set of options and possibilities that have begun to emerge from the various presentations to the Commission in response to these charges. They are in very preliminary form, and some have received far greater attention than others during the Commission meetings. Note that many of the options can be adopted together, and are actually strengthened by simultaneous adoption, whereas others are in direct contradiction to other options. Many refer to other states (and there is an accompanying draft document that summarizes the information learned from six different states that have presented their Siting Policies and Procedures to the Commission - Maine, New York, New Hampshire, Connecticut, Massachusetts, and Rhode Island).

To the extent possible, each of the following subsections is prefaced by a summary of the current situation and/or issues raised over the course of the Commission meetings. Most are accompanied by the 'Pros and Cons' related to their adoption. Some of the sections are also followed by questions that came up in the course of our discussions. The final charge related to 'generic siting guidelines' is currently relatively underdeveloped, in part because other sections have touched on points related to this, and in part because ANR is currently working on pulling together a needs assessment on this topic.

## 1. PROCEDURES FOR STATE-LEVEL APPROVAL

**1.a. PROCEDURAL MECHANISMS – Current Situation/Issue:** Many of the issues brought before the Commission on energy siting relate to larger projects. Concerns for these larger projects relate to a perceived need for higher levels of local authority/public participation in the process, the need for longer time frames in the pre-application period to allow for this participation, the need for intervenor funding, etc. However, there is also concern that if changes are made in the 248 process to address these issues, it will adversely affect smaller/simpler projects that may not need to be subjected to the same level of requirements, timing, and costs, and in fact could benefit from a more expedited process (reducing time and cost of projects). Currently all projects that do not fall within the Standard Offer limits are subject to the same rules under the PSB.

A related issue is that applications are currently assumed complete unless the Board says they are not. This leaves uncertainty for many applicants who feel they have completed their files, but there is no checklist, and no official ‘approved complete’ step that the Board undertakes. Greater predictability in the process has been called for by all sides.

**Option 1:** Consider a modified ‘**tiered approach**’ to PSB applications, with three different timelines/processes for approval. The simplest projects could fall under a **minimum threshold for the first tier** (for example, 2.0 MW, like Massachusetts) and could go through the process established for net-metering (no contested case process).

A **second tier** could allow slightly more complex/larger projects that have met pre-established criteria (or those who demonstrate a good faith effort to achieve a ‘community based’ siting decision, or those that come to the Board with a joint town/developer project, or have otherwise sought methods of compensation/mitigation to negatively affected parties) a speedier limited contested process along the lines of 248J (with improvements), which is designated for projects of ‘limited size and scope’ (where technically it is a contested case process but in practicality, projects have no technical hearing and are passed with an administrative process, with some hoops).

For the largest and most complex projects, there would be a **third tier** requiring a more robust pre-application public engagement process under the current 248 process. (see also related options under Public Participation 2.a. and 2.b). *This would likely need to be accompanied by requirement that projects in the first tier would still have to provide notice, and that an option to ‘opt-in’ to the second tier be incorporated, but focused on the specific issues rather than the whole case. To ensure the greatest transparency and quality of applications for the first tier, this may need to be accompanied by templates for the application, including those for natural resource and engineering plans.*

**PROS:** Could expedite process for those projects that present fewer issues by virtue of size or type of energy, while providing greater pre-application public input – and time for PSB attention - for more complex projects. Could be a carrot for greater public involvement up front for more complex projects if linked to a more robust public engagement process. Could be a potential role for Case Managers to decide early in the process which projects would go the standard 248 route or the

expedited 248J route (see Staffing 1.e. Option 3). Would reduce caseload on current Hearing Officers.

**CONS:** How to define the thresholds (e.g. by MW, by acreage, by cost of project), which could potentially change as technology changes. Who makes the determination (Hearing Officer? Case Manager? see Staffing recommendations) and at what stage of the process? There are currently many complaints about inconsistencies in permitting criteria among regional DEC coordinators in Act 250 proceedings. It might be difficult to avoid these same discrepancies in individual judgment with a Case Manager in a similar role. How does the process ensure that if there are problems with smaller projects, there is a way to ensure a way for third parties to intervene? The current statutory provisions (248J) in place already have not appeared to streamline the process for review of smaller projects (30 VSA s 8006), and for many ends up costing more time for many developers because of the time it takes to establish whether the application is 'of limited size and scope'.

**Option 2:** Establish a **minimum threshold** (2.2 MW or 5 MW) for PSB issuance of Certificate of Public Good. Anything under the threshold would go through the Act 250 process. Any participant in the local process could petition to **'opt-in'** to the PSB process.

**PROS:** allows for greater local control over decision-making regarding energy generation siting; DCs are familiar with land use issues

**CONS:** Act 250 is not necessarily a less complicated process. It could add cost, time, and lack of predictability for smaller less controversial projects, whereas it is the bigger projects that have greater resistance, issues and impact. Will require local authorities to have greater capacity for assessment (cost), and may still require PSB process to ensure these projects will not have an adverse impact on the grid. You would also have the issue of a separate appeals process (to NRB and then Supreme Court), which can tie the process up even further. Many concerns have been raised that submitting generation projects to the Act 250 review, without allowance for establishing the 'public good' would effectively kill any project not 100% endorsed by Town Plans and parties to the proceeding.

**Option 3:** Create **checklists** for all applications to complete prior to filing, and a process by which the Board **'deems an application complete'**

**PROS:** Provides greater predictability and transparency for all parties

**CONS:** may reduce Board flexibility to address an issue that they did not originally anticipate.

**1.b. TIMING - Current situation/Issue:** For both project applicants and other intervenors, the time frame for current project applications (especially larger projects) is both long and costly, and at times unpredictable. Some towns have concerns that there is insufficient time to respond to an initial project proposal, (current limit for project notification prior to filing an application is 45-days, although in practice, many developers give notice much further in advance). Other parties feel that lack of deadlines for ANR responses mean there is no way to predict how long the process might take if all the documents are complete (e.g., 18 month wait for a stormwater permit), and end up increasing the total cost of the project.

**Option 1:** Establish an **earlier time** (e.g., 60-90 days prior to filing an application) at which **public/towns need to be notified** of a potential ANR or CPG application to give towns the necessary time to respond (see also proposal under 2.a. Public Participation – Option 1&2)<sup>1</sup>

**PROS:** gives towns more time to respond; could potentially resolve issues earlier in the process prior to filing the application.

**CONS:** projects can evolve significantly over a longer time period and may not be the same as when they are initially proposed.

**Option 2:** Ensure sequence for obtaining permits and approvals is clear, predictable and meets requirements to allow development of suitable projects. The sequence of events leading to approval or rejection of an application should entail a logical progression through the planning and design stages, prior to siting and zoning approval that allows construction to begin. **Establish statutory timelines for each key stage** of the permitting process for CPG (e.g., PSB shall hold a pre-hearing conference in 14 days, PSB shall schedule a site visit within X days of application, intervention within X days). Make clear what decisions are being made and what input is being requested at each point in the process.

**PROS:** Ensures greater clarity, predictability and transparency for all parties

**CONS:** Potentially requires more staff at PSB to ensure compliance with deadlines. There needs to be some flexibility if changes are made to the project. For example, if a project is expanded and a new landowner is impacted, PSB would typically give that person the ability to intervene. Note, too, that utilities use the same lawyers who are very familiar with the process, but with merchant plants, they are using different attorneys, some of which are inexperienced and who may not be able to keep up with the timelines. Over time, this issue may diminish as a larger pool of experienced private attorneys develops.

**Option 3:** Establish **timelines for PSB and ANR to respond to applicants** and to complete their permitting

**PROS:** Provides much greater predictability and transparency for all parties, reducing time and cost of process. Nearly every other state in New England has statutory timelines for granting permits on siting which apply to both PSB and ANR type agencies, especially where there are ‘one-stop shops’. (see NH committee decision must be within 9 months of when application is ‘deemed complete’ or 7 months for Renewables; see MA where there is a 12 month timeline in the statute; see CT, where decision must be made within 6 months of filing an application, may be extended up to one year with applicant consent; see NY where decision must be made 12 months from application, can be extended with applicant consent, they also have an expedited process where their public involvement plan can be curtailed)

**CONS:** could reduce flexibility of PSB to address changes in projects mid-stream or to address issues that had not been identified earlier in the process; may simply force staff to do an inadequate job more quickly.

**Option 4:** Make **Hearing Officer decisions final** unless appealed to the PSB (like FERC) or with a motion to review, as long as no standards of review are changed. This would need to be coordinated with a ‘tiered’ approach (see 1.a. Option 1).

**PROS:** Would reduce the number of cases going before the Board, would expedite the process for applications that have fewer concerns.

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<sup>1</sup> Note that the 2004 Wind Report recommended 60 days, but this was never implemented.

**CONS:** May not have much impact on the need for new permanent staff.

**1.c. SUBSTANTIVE CRITERIA AND STANDARDS – Current Situation/Issue:** Currently, there are few, if no, substantive criteria and standards for siting energy generation to assist towns, regions, developers to either plan or develop the most effective projects. This raises concerns that some sites are selected because they are the ‘easiest’, but not necessarily the ‘best’ locations. Some regions feel that they are overrepresented in new energy generation siting, while others are underrepresented. The detail contained in local and regional plans as it relates to energy generation varies widely, does not always benefit from professional input, and often happens only after sites have been developed or too late in the process. Standard siting criteria are minimal, not always uniform, and often not publicly understood or made available. Some have raised the issue that the lack of statewide energy siting maps affects several of the charges of the Commission, with some suggesting that if the Comprehensive Energy Plan were treated as any other large public works project and presented to the public as such, uniform Zoning and Siting Guidelines would naturally follow.

**Option 1:** Establish *uniform energy generation siting and zoning standards* shared with all towns, so no town or RPC needs to reinvent the wheel when they address energy generation in their town or regional plans. They should be made available on a public website.

**PROS:** Provides towns/RPCs with uniform technical guidance to prepare them for intervenor role. Creates more transparency and predictability for all parties.

**CONS:** Given the pace and diversity of new RE technology developments, these standards may need to be changed often. If these standards are used in conjunction with a transfer to local siting authority, then there is the danger of having no way to ensure consistency of application of these standards, and related processes, from different boards across the state.

**Option 2:** Appropriately *resource Regional Planning Commissions* to plan for and participate in energy siting planning and processes for anything in their region, similar to what is currently done for Affordable Housing, or what was done for highways (see also Public Participation 2.a. Option 1). Consider allowing those RPCs who carry out this process to have access to intervenor funding for any future project in their region. Note that no region would be allowed to say that no energy siting is allowed in their region. Note also that this would not require selecting specific sites, but rather what areas of each region would be more suited for solar, wind, biomass, geothermal, etc, and where the links to existing transmission (and sub-transmission) systems are robust, or represent the grid’s capability of drawing renewable energy from a specific area. *Would need to define what weight the regional energy siting plans would then be given in the application process. Would also need to require utilities to report deficiencies at sub-transmission level to RPCs. Could potentially be incentivized through an RFP.*

**PROS:** would integrate RPCs and municipalities directly into statewide planning needs for energy generation and ensure that the public is involved early in the siting process, and that the ‘best’ rather than the ‘easiest’ sites are selected. Would also guarantee a role for RPCs in each application, and provide an incentive to regions (with intervenor funding) to be actively involved in the process to determine which type of energy generation is best suited to their region. Would inform, and be informed by, a statewide examination of the relative geographical strengths and limitations of each region by energy technology. Siting generation near load can

reduce transmission needs. Distributing generation around the state could increase reliability and also share the burden of hosting facilities more equitably. With a more locally driven process, you could also incent or provide opportunities for local/community/municipal ownership of generation projects.

**CONS:** finding adequate resources to help regions develop effective plans; ensuring that they have adequate information/expertise to make informed judgments based on technical feasibility. Potential of focusing energy opponents on influencing the process long before any projects come to fruition, given that in a local planning process it is often easier to say no than to say yes to energy siting.

**Option 3:** Establish *statewide plan/map* for locations of generation facilities. The map/plan could take the form of labeled 'high potential' or 'no go' areas for different types of generation (see also Adequate Environmental Protection Option 1). It may be easiest to start with areas such as brownfields, rooftops or parking lots as high potential, and work from there.

**PROS:** Pre-vetting areas could result in better proposed project locations, and could potentially reduce the number of issues (and denials) related to siting.

**CONS:** It risks that the process to establish the map might overly limit the areas acceptable for each technology, particularly as technologies evolve (though the map *should* evolve with technologies, and be regularly updated). Could potentially lead to price speculation on land in 'high potential' areas, and reduce both flexibility and financial viability of projects. Could potentially mobilize those who wish to block all renewables of a certain type early on in the process, making it even more difficult to fine mutually agreeable solutions.

**Option 4:** Establish an *"Open Season-Portfolio Review"* process that would bring multiple projects before the Board at a specified time, allowing the Board to see competing proposals together to find the best alternative under the circumstances. To do this, the statutory frameworks would need to be changed to establish criteria for evaluating trade-offs between projects; and to develop a process for screening proposed sources against the criteria.

**PROS:** Under the current system, the PSB reviews projects separately and sequentially. It is unable to review projects against each other to assess which might be the 'best' project to meet Vermont's needs/goals. Such an 'open-season' approach would enable the Board to compare projects against each other, and could be combined with an RFP approach for regions under Option 1 above. It could help the Board organize its work around very specific dates, and potentially improve the timelines for applications.

**CONS:** It could increase the amount of time that applicants need to wait for filing applications if there were only one or two specific dates for review each year.

**Option 5:** Integrate *climate change costs and benefits* into needs assessment or criteria for approval (Note that Section 248 already includes a GHG emissions criterion in (b)(5). This only applies to in-state facilities, not to all 248 proceedings). Although electricity consumption only accounts for 4% of current Vt GHGs, it is clear that this percentage will increase dramatically as transportation turns more to the grid, as well as home and business heating.

**PROS:** establishes a more direct link to Comprehensive Energy Plan goals regarding climate change (in addition to a need for energy or reliability) and would elevate that concern in siting decisions. This type of criteria would be easiest to implement under an RFP process as in Option 1 or an 'open season' process where competing proposals are compared against each other (or against the counterfactual 'if we don't increase renewables, then where will our energy come from?')

**CONS:** Without a policy on REC ownership/retirement, climate benefit attribution can be difficult.

**Option 6:** *Designate 'Energy Generation Parks' along the lines of 'Industrial Parks' for larger and more concentrated energy generation (and concomitant environmental impact)<sup>2</sup>*

**PROS:** Concentrates the energy generation in places where transmission, environmental, and other impacts are the least and reduces need for larger scale generation across the state. If these parks were sited in areas that require additional generation, it could resolve a reliability issue.

**CONS:** Depending on the location, it may require significant investments in the transmission system.

**Option 7:** *Incorporate criteria for assessing the EROI (energy return on investment), or costs vs returns for each option.*

**PRO:** Provides opportunity to weigh projects on value delivered relative to costs (strive for 'best' projects). Would probably be most useful under an 'Open Season'<sup>3</sup> or RFP approach, where several applications are considered simultaneously, as it brings in the notion of relative returns on investments. For individual merchant plants, this may be part of their usual market assessment. This type of criteria would be easiest to implement under an RFP process as in Option 1 or an 'open season' process where competing proposals are compared against each other

**CON:** The quality of the criteria depends on the quality of the information obtained to feed into the calculation. Requires substantial expertise (that can be debated) across a range of technologies. There is a potential for complex and constantly changing criteria. How would non-monetized environmental costs be weighed against internalized monetary costs or energy invested?

**Option 8:** *Incorporate **transmission systems planning** into criteria for project approval; include preferred development zones in transmission plans and begin modeling and planning for new energy generation interconnections in preferred zones (see mapping recommendation under Adequate Environmental Protection).*

**PROS:** Generation is more likely to be sited more easily and cost-effectively in areas where it will provide corollary benefits.

**CONS:** Particular areas may have outsized generation burden, simply because of where they sit in the topology of transmission lines. Transmission planning and generation approval/construction timelines are not always well aligned.

**1.d. BOARD MEMBERSHIP - Current Situation/Issue (1 FT Chair, 2 PT Board Members):** **The PSB has carried out its function professionally – and insulated from political pressure - for many years in determining which applicants receive CPGs. The types of dockets coming before the Board, however, have changed dramatically in nature such that a Board originally conceived to look at ratepayer and reliability issues has become one that is faced with considerable land-use issues related to new electric generation siting. Moreover, the PSB has seen a tripling in the number of dockets it reviews over the past decade, with no concomitant increase in staff.**

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<sup>2</sup> Michael Dworkin

<sup>3</sup> Michael Dworkin

**Scheduling can be difficult. As regards electric generation applications, the number has risen from an average of one every few years in 2000, to an average of 15 over the past three years across a wide range of energy sources, with an equally wide range of siting and environmental issues. In this context, some concerns have been raised that there may need to be a stronger role for local and environmental expertise in Board decisions, and that there may need to be better coordination of permitting deadlines and substantive environmental criteria with ANR, and that some permits spend more time than deemed necessary at ANR.**

**Option 1:** *Increase PSB to 5 members (including two members with deep experience in environment/land use and local/regional issues) and rotate cases among the five depending on nature of docket.*

**PROS:** could spread out the workload, possibly greater flexibility, would have independent experts on local/regional and environmental/land use issues who are not embedded in the process by virtue of an affiliation with an agency; would enable the Board to match the experience of Board members to specific cases

**CONS:** new members could potentially be seen as biased toward certain outcomes because of specialization; resources to pay for additional members; it's not the expertise of the members that makes the difference in local/environmental issues, but rather the standards.

**Option 2:** *Strengthen Municipal/RPC role on PSB by having a representative from the affected area on the PSB for all siting decisions.*

**PROS:** Strengthens the role and voice of affected town/region (see example from NY)

**CONS:** May not work because it is a contested case structure (quasi judicial body), and this representative would need to be walled off from decision-making. Also, since this person would change with each case, and would often be a lay person to the issues, there would need to be a significant amount of effort devoted to training them for each new application in the Section 248 process. There is a danger of being perceived as protecting turf. Does not necessarily decrease case load (hence back-log issues); more members means more staff time to prepare. Resources to pay for additional support.

**Option 3:** *Name a representative of the District Environmental Commission to the PSB for siting decisions.*

**PROS:** Could represent district/local interests, has experience in the Act 250 process, hence knowledge of the sector/issues, and would not have to be trained

**CONS:** decision-making authority in a quasi-judicial body may require walling them off (**however this may not be necessary as DCs do not currently have a direct role in the 248 process**). The DC representative would change with each individual case, requiring training on the 248 process more generally for each individual. Does not necessarily decrease case load (hence back-log issues); more members means more staff time to prepare. Resources to pay for additional support.

**Option 4:** *Strengthen ANR role and coordination among agencies by having a representative on the PSB for siting decisions:*

**PROS:** Coordination of permitting/environmental concerns would be strengthened. Could encourage timely responses from ANR where deemed necessary. Could help shorten the process by getting environmental issues resolved earlier in the process.

ANR would be involved in some things that they don't currently have a process for (e.g., wildlife, habitat – no permits on these already). Gives more credibility to the process for a Board that has evolved from focusing primarily on ratepayer issues to one that now has 50% of its work devoted to siting issues. (see examples from NY, MA, ME, CT). Could ensure that ANR staff are held to deadlines (see 1.c. Timing – Option 3).

**CONS:** Could be seen as a more politically embedded (given that they represent the Governor) in nature rather than the completely independent current structure; many parties (intervenors and developers) prefer to have someone who is independent of the process to review their work. ANR would need to wall off that person from staff putting the case together. In a quasi-judicial model, there must be separation. If ANR has a representative, it may be necessary to have a PSD representative as well. Does not necessarily decrease case load (hence back-log issues); more members means more staff time to prepare. Resources to pay for additional support.

**Option 5:** *Divide work of PSB in two with current structure used to address ratepayer & reliability issues, and a new **parallel siting board** (possibly Chair, ANR, DC) to address siting issues. (this is similar to MA model)*

**PROS:** Would more accurately reflect the reality of case-load in front of the PSB (50% siting cases), and allow for ANR/DC members to focus on siting issues (including transmission siting), where they have more relevant contributions

**CONS:** Towns and RPCs still have no direct role, unless they are included as Ad-Hoc members (see example of NY)

**Option 6:** *Keep the PSB at **three members**, and as they retire, consider seeking replacements with skills in environmental/land use, or regional planning expertise. Focus the case-load issue on staffing recommendations (see below)*

**PROS:** Would address the increasing emphasis on land use/local issues before the Board without needing to increase the resources needed to add new members, or the legislative action

**CONS:**

**1.e. STAFFING – Current Situation/Issue:** the PSB currently has 3 FT staff equivalents (lawyers/policy analysts) working on energy siting cases as Hearing Officers. PSB has had roughly same the staff level for last 10 years with a caseload that has increased from approximately 100 dockets open at any given time to approximately 300. As regards electric generation applications, the number has risen from an average of one every few years in 1999-2003, to an average of 15 over the past three years across a wide range of energy sources, with an equally wide range of siting and environmental issues. Two positions are funded by ARRA, and will expire in 2013 (and are currently requested to be made permanent). At the same time ANR only has two FT attorneys to look at all the permit applications that come through ANR. Concerns have been raised that this significant increase in workload contributes to timelines that are lengthier than necessary both at the PSB and at ANR (which has 2 FT attorneys who must look at every case).

The vast majority of cases are heard by Hearing Officers, who preside over a docket once a petition is filed on behalf of a Board Member (they are the 'judge' for smaller

cases). Bound by rules prohibiting *ex parte* communication, they have no authority to communicate with individual parties, except through formal written communications; they can only communicate with all parties simultaneously. This prevents them from providing advice, technical assistance, information or recommendations to individual parties on the actual process on substantive issues of the case. Parties feel there is no way to ask simple questions and get simple answers on procedural questions. For public there is no avenue at all, except through clerk. This creates a system where both formal parties and public feel that the PSB process can be a 'black box'. There is very little information on the website regarding guidelines or specific cases, and only those who have LEXUS or WESLAW accounts can access what information exists.

**Option 1:** *Make permanent the 2 ARRA-funded positions currently under the PSB*

**PROS:** Would help address case overload

**CONS:** How to pay for this

**Option 2:** *Increase the number of FT staff equivalents working for the PSB beyond current staff (which includes ARRA-funded positions), and one FT staff equivalent attorney for ANR. For Board staff, consider adding someone with specific environmental/land use expertise and a case manager (see below).*

**PROS:** Would help address case overload, potentially decreasing the time for dockets to be approved, therefore costs for all parties involved.

**CONS:** How to pay for this

**Option 3:** *Create new position of case manager with the PSB (in addition to the Hearing Officers) to have more flexibility to deal with the entire range of issues from the beginning (this could be the beginning of the 'scoping phase' for larger projects)<sup>4</sup> through permitting and post construction monitoring. The case manager would oversee the public outreach component and work with ANR to ensure appropriate natural resource assessments occur prior to the filing of any petition. They would not be bound by the rules prohibiting *ex parte* communications, so as to enable them to answer the procedural questions of all parties, provide technical assistance especially to communities and interveners, and facilitate resolution of issues amongst parties outside the formal proceeding. Moreover, case managers would be able to identify issues early in the process and move cases towards settlement on most issues, leaving only the most difficult to go to the Board. Case Managers should be a statutory position so that they are dedicated and independent. RPCs could be involved either by providing the Case Managers themselves or by providing material support to the PSB case manager coordinating public outreach and advising in other capacities.*

**PROS:** Would enable greater transparency and clarity in siting procedures to all parties (see also *Public Participation*). Increases ability to respond quickly to procedural questions. Would allow PSB/DPS ability to broker agreements & resolve issues, outside formal procedures (see *Alternative Dispute Mechanisms*), thereby reducing the time and cost of getting a permit through the formal process. Would have someone available to manage the scoping (pre-application phase) of process (see *Public participation, Option 1&2*). Would allow the Board to focus on a smaller set of key issues.

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<sup>4</sup> ANR recommendation, see also *Public Participation Option 2*

**CONS:** would need a firewall between this position and public advocates. Would require additional budget for more staff. Could potentially use the existing bill back authority for the Board under 30 VSA 21 (check with the Environmental Court to see what aspects of this model are the most successful and which might need improvements).

**Option 4:** Consider establishing a **filing fee** for bigger cases (under a tiered approach) based on the size of the project (eg. on acreage or MW). Note that it is important to distinguish between utility projects (which pay a gross receipts tax that is used to fund the PSD and PSB) and merchant projects (which do not pay anything toward these entities). Given this, it may not make sense to distinguish between large and small merchant plants, aside from the amount of the fee. Each require staff time at the PSB and PSD. Note that this would need to be accompanied by an assurance of a speedier review process. Consider a fee waiver where town/developer partnerships develop on their own. This would give towns an incentive to form those partnerships.

**PROS:** Would help pay for increase in staffing to deal with the administrative and communications aspects of a project, in particular for the Case Manager position (see 1.b. Option 3)

**CONS:** Need to be sure this does not replace the bill-back authority for funding studies/expertise later in the process, could dissuade developers if they feel there are too many fees being added to the process (filing fee, bill back, intervenor fund, etc)

**Option 5:** Together with improvements to the **website** to get more information on guidelines and specific cases available to the public through free access (currently underway), **dedicated resources** need to be made available to help the Hearing Officers get the necessary case information online. One possibility is to have the Case Manager(s) be responsible for this as part of public outreach (see Option 3).

**PROS:** Would increase overall consistency and availability of information to all parties in a case; would reduce some of the workload of Hearing Officers to get information online,

**CONS:** Resources

## 2. PUBLIC PARTICIPATION

**2.a. GENERAL - Current Situation/Issues:** Currently applicants are required to send notice to adjoining property owners, select board, planning commission 45 days prior to filing. The Public feels that it is notified too late in game and with too much information to digest and respond to. Consequently issues are raised after the application has been completed and this slows down the whole process and imposes additional costs for everyone involved. Developers need to know that if they follow the rules, they will not be unnecessarily delayed. Public outreach and environmental due diligence already does occur for many large generation projects in Vermont, but the process is not required by the Board and there is no formal structure that sets forth what is expected of the Petitioner. Developers of large wind generation projects typically begin natural resource assessment work several years in advance of any filing. While the Agency is often consulted during this environmental pre-development phase, there is no formal role for the public. Moreover, ANR staff invest

**significant time and resources vetting large projects during the pre-development phase, but the results of that vetting hold limited weight with the applicant, who is still free to bring forward petitions that the Agency has determined to be challenging from an environmental impact perspective.**

**Option 1:** *Appropriately resource Regional Planning Commissions to plan for and participate in energy siting planning and processes for anything in their region, similar to what is currently done for Affordable Housing (see also Siting Criteria 1.c. Option 3)*

**PROS:** would integrate RPCs directly into statewide planning needs for energy generation and ensure that the public is involved early in the siting process. Would also guarantee a role for RPCs in each application.

**CONS:** finding adequate resources

**Option 2:** *Establish a robust pre-application community involvement process for developers that is clearly outlined and time-bound for the more complex projects (see also reference to the third tier in Procedural Mechanisms 1.a. Option 1). A potential model for this is New York's legislated Public Involvement Plan (>25 MW in NY)<sup>5</sup>, although it is clear that this process applies to much bigger projects and departments that have much more staff:*

**NY Model:** Provide generic guidelines for all applicants on best practice scenario(s) for developing a Public Involvement Plan (PIP). Require developers of projects over 25MW to file a PIP to the PSB 3 months in advance of application (or scoping phase). Give 2 weeks for PSB and public comment (notifications to towns, adjacent communities, Selectboard(s)). PSB would approve or reject. PIPs could be more or less exhaustive depending on size of project. If rejected, PSB proposes improvements and requires applicant to implement the PIP with modifications. For larger projects (e.g., >15MW in VT?), there may be a need for PIP and an additional scoping requirement to develop consensus on studies (see NY example, see 1.d. Procedural mechanisms Option 1, see also Case Study Annex NY PIP)

**PROS:** Could provide all parties greater transparency and opportunity for involvement; provides developers with a predictable set of public requirements and communities with earlier and clearer set of expectations. More time spent up front could end up being less expensive in the long run. Allows for a pre-application form of ADR where parties can modify plans based on informed concerns before they carry out the studies. Allows for greater certainty regarding proposed project so that significant changes are less likely to be proposed partway through the review process, with attendant costs for all concerned. Allows for different levels of engagement depending on size or type of project.

**CONS:** Adds significant time (and money/risk) to the pre-application period, and could potentially lengthen the overall time for applicant without guaranteeing that the public won't appeal later on. Could give entrenched opposition time to completely block an idea before it has time to develop. Would only work if there were a carrot on the other end for developers with a more predictably expedited process for granting a CPG.

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<sup>5</sup> ANR and New York PIP

**Option 3:** establish formal ‘scoping period’ (similar to NY) scaled to project sizes and complexity. This would incorporate a set of minimum guidelines for public engagement and natural resource assessment activities that would need to occur prior to the filing of a petition. For small to medium size generation facilities, the guidelines would at a minimum ensure that petitioners had completed all necessary environmental due diligence and public notice prior to application. For larger projects – (e.g., 25MW or larger – the guidelines would call for a robust public engagement process with affected communities (like Option 2). In NY, the interested public works with the petitioner to reach consensus on what pre-file studies are required for the project and on which consultants are hired to conduct that work. Providing all parties the opportunity to influence and ultimately approve how these studies are conducted will reduce the likelihood that the results of the studies are contested during the formal proceedings. The scoping phase also provides parties the opportunity to give feedback and potentially influence the siting and design of projects at an early stage of development.

This formalized scoping process would be intended to resolve most issues during the scoping phase, so that the application could benefit from a streamlined administrative review and decision process before the Board. Projects with more major issues during the scoping phase would follow the more contested, adjudicated path. (see also NY Scoping Phase Case Study)<sup>6</sup>

Proof of a good faith effort on the part of all parties to make a community based siting decision could be required before an application is ‘deemed complete’.

**PROS:** Would provide more predictability for applicants, a more meaningful public and community engagement, and would increase the public’s understanding of the ANR’s role in the pre-petition review of generation projects, improving the overall transparency of the process. (Note that NY has no projects that have passed through their new scoping phase). If this were combined with a more streamlined process once the application was submitted, this could provide an incentive to applicants to invest in this phase. By frontloading decisions, the PSB may avoid petitions that are fatally flawed, but that would still require significant investment of time, energy and money from all parties to work through the process.

**CONS:** Adds significant time (and money/risk) to the pre-application period, and could potentially lengthen the overall time for applicant without guaranteeing that the public won’t appeal later on. Could give entrenched opposition time to completely block an idea before it has time to develop.

#### QUESTIONS:

- Would we have an appeal option here?
- WOULD NEED TIERS - what would be the trigger for the tiers?
- Need to define timelines
- Note: the way NY does it is potentially flawed because it just adds time w/o resolving issues in advance of going to the Board. Some kind of situation where the issues are resolved through negotiation, information sharing, etc. in advance is

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<sup>6</sup> ANR Proposals

needed. 30-days before you consummate land control, you announce. Option to lease would qualify? What is the trigger? Would it be the beginning of a study??

- In NY, the PIP is done 90 days before public scoping. They reach consensus on the scope of the studies to be done AND the scientists to do study – the first tranche of intervenor funding comes here. This means those studies can't be contested in court? (perhaps they could still be contested, but it would be less likely if the parties agreed to the protocols and, possibly, who conducts the studies)

**Option 4:** Engage both *developers and affected public in establishing timelines for pre-development process.*

**PROS:** Increases predictability and buy-in of all parties early in the process

**CONS:** If they can't come to an agreement on mutually beneficial timelines, it could significantly slow the process even further.

**Option 5:** PSB could establish **benchmarks for the pre-application** period that would need to be satisfied before the project can move ahead with a full application. (e.g., US Fish & Wildlife Service has developed voluntary land-based wind energy guidelines that use a tiered, iterative approach to assess potential effects on fish and wildlife. Each tier has a resource-based benchmark the project must reach before moving to the next tier. If the project cannot attain the benchmark, the guidelines suggest that it go back to the applicant for more study or redesign, or ultimately be abandoned. These guidelines were developed in conjunction with the wind industry and state natural resource agencies.:

**PROS:**

**CONS:**

**Option 6:** Define a **trigger in the upstream process** (e.g., 30 days before site control) that would set in motion notification of the public, select board, etc. on an intention. Need consensus on scope of studies. Maybe scoping is only triggered by 20 MW + BUT PIP is required for all (even small) plants? The scoping includes ANR and the Public.

**PROS:** provides a transparent process from the very beginning, as soon as developer shows interest

**CONS:** could provide fodder for distortionary practices like price speculation on land, could discourage applicants from simply weighing options. (perhaps there could be something to prevent price speculation like a threshold for condemnation proceedings if a project is large enough and located in one of the preferred areas identified in a regional energy plan or a state energy map – something identifying 'higher and better use')

**Option 7:** Consider an **RFP for towns** interested in coming up with their own proposals for RE Generation together with a developer. These projects would receive an expedited process or other incentive.

**PROS:** provides incentive for towns and developers to work in concert, thereby eliminating contested issues before the PSB. Ensures that projects are placed in the best areas rather than the easiest ones. Provides meaningful public engagement and 'ownership'.

**CONS:**

**Option 8:** Create a **website** where ALL notices, files and interim decisions are made public through electronic means (Like NY, currently under development in VT – Puredocs?). Incorporate FAQs for all stages of the siting process (like NY or CT websites).

**PROS:** Improves transparency, public access, and monitoring

**CONS:** Need to have dedicated resources to keep it regularly updated

**2.b. FUNDING/TECHNICAL RESOURCES FOR PARTICIPANTS/INTERVENERS:**

**Currently, there is no mechanism in place to fund local participants to hire their own experts in either the pre-application or the intervenor phase of the 248 process. Towns, municipalities, and interested non-profits feel that they have inadequate technical and/or financial resources to educate and prepare their communities in the pre-application phase, or to prepare testimony in the intervenor phase.**

**Option 1:** Establish a formula for funding towns/RPCs to facilitate participation in the **pre-application process** for larger projects (Note that it is important to distinguish between utility projects that pay gross receipts tax used to fund PSD/PSB, and merchant utilities which currently pay nothing toward these entities). (See Case Study for New York, uses \$350 for each MW of generating capacity, no more than \$200,000, assessed upon submission of Scoping Statement)

**PROS:** enables all parties to participate on more equal and professional footing. If combined with a more robust PIP and/or Scoping Phase, it could enable a number of issues to be resolved prior to the application being filed, and therefore benefitting from a streamlined decision process (or even a non-contested process?). Could potentially reduce the overall timeline required to attain a CPG and related ANR permits.

**CONS:** New York only applies this to projects larger than 25MW, which are larger than most projects in Vermont, and they therefore have larger pools to draw from. Very difficult to manage competing demands for limited funding, can become a free-for-all without careful criteria and oversight. Likely to have many organizations seeking funding. Unclear whether proponents could also be eligible – with even greater uncertainty for towns that support projects. Need to consider whether there is a list of vetted experts to choose from or any available expert. Could have a chilling effect on developers early in the process. Would need clear justification criteria for selecting experts.

**Option 2:** Prepare and make available for local siting and zoning officials **guidelines/checklists** for participation and becoming an intervenor. Support local government decision makers by providing the best available in-house technical resources (or create an ‘office of the people’s council’ to represent the towns)

**PROS:**

**CONS:**

**Option 3:** Make available a **pool of experts** available to assist towns/RPCs and other local parties in preparing their analyses and testimony. This expertise could be in-house (agency) or contracted (vetted court appointed experts), or could be modeled after a ‘public defender’ role. This could be funded on a formula basis by applicants.

**PROS:** potentially less expensive and contentious than a fund.

**CONS:** towns/RPCs/others may wish to have their own experts rather than those available in an expert ‘pool’. Who would decide which experts could be included in

this pool? (perhaps the pool could be selected by PSB staff and then vetted and voted on by RPCs. RPCs could have a voting strength equivalent to their representation in Montpelier?)

**Option 4:** Create a **fund for intervenor status** assistance to towns/RPCs and local parties paid by applicant (Note: NY does this on a per MW basis \$1000/MW, no more than \$400,000; ME does it on a footprint basis for wind; CT has a flat fee of \$25,000, as a percentage of total cost of project, or on a matching fund basis from parties; Dworkin has suggested a matching fund from towns/RPCs). Parties would need to follow clear guidelines to say how the funds would be used, how they would contribute to improving the outcome of the case, and who would be hired. Hearing Officers would decide how the funds are distributed.

**PROS:** enables all parties to participate on more equal and professional footing, requiring matching funds of some kind from intervening parties would help weed out redundancy and promote consolidation of interests.

**CONS:** Very difficult to manage competing demands for limited funding, can become a free-for-all without careful criteria and oversight. Likely to have many organizations seeking funding. Unclear whether proponents could also be eligible – with even greater uncertainty for towns that support projects. Would require justification for the experts, timelines, etc.

**Option 5:** Expand the current **bill-back** provision in the statutes to include assistance to RPCs/Municipalities as intervenors

**PROS:** The systems/statutes already exist. There would be no need for further rulemaking or legislative changes.

**CONS:**

**Option 6:** Find **alternative to contested case process** for certain types of projects. Currently this is the case for small projects (<150KW), which present no problems, or projects that are consistent with town plans (see also Procedural Mechanisms 1.a. Option 1).

**PROS:** Could eliminate the need for intervenor funding for legal representation, it is an incentive to get all aspects of the application in order prior to submission.

**CONS:** This would be an extremely significant change (even net-metered applications are considered to be a contested case process, although with a very different process). If there is an impact on a neighbor that was not originally anticipated, it is not possible to change the project mid-course.

### 3. APPEALS/ALTERNATIVE DISPUTE MECHANISMS

3.a. **APPEALS - Current Situation/Issue:** Appeals from the PSB CPGs go to the Supreme Court. Appeals for ANR permits go to the PSB. Concerns have been raised that if Board issues a CPG, and then there is a subsequent appeal of an environmental permit related to the project that is denied, it provides potentially conflicting signals to both current and future applicants, and can drag the process out unnecessarily, increasing time and costs.

**Option 1:** **Limit appeals to one** (going to the Supreme Court) under a one-stop shop scenario.

**PROS:** Would save time and money for all parties during the appeal process, and avoid conflicting appeals.

**CONS:** Would prevent later concerns from being appealed; need to address what would happen if project is significantly modified due to conditions arising in the 248 process.

**Option 2: Return appeals to *Environmental Court***

**PROS:**

**CONS:** This can be a lengthy process and does not address the issue of conflicting decisions.

**3.b. ALTERNATIVE DISPUTE MECHANISM – Current Situation/Issue: Currently, Vermont has no means of resolving disputes in a non-contested manner. This can increase the contentious nature – as well as the time and cost - of issues that could potentially have been resolved more simply through an alternative dispute mechanism.**

**Option 1:** *Once a docket is filed, the PSB could have a **settlement judge** (and staff) assigned to a case. If the case resolves, a formal settlement proposal would be submitted to the PSB for approval. If settlement is not reached either because the parties cannot resolve an issue (at the discretion of the settlement judge) or the PSB rejected the settlement proposal, the case or a discrete issue would go through a formal PSB contested case process with a different judge (and staff). Note in NY, they have an Office of Administrative Hearings and ADR which assigns settlement judges.*

**PROS:** Could potentially create win/win solutions for all parties without the additional cost and time of contested process (PSB still has the authority to deny a settlement that does not meet with their approval). The ADR process is less formal and therefore may be an easier means for parties to discuss bottom line issues because the discussions are confidential (and hence no transcript). Also, the process is easier for parties that are not represented by counsel both because they are not bound to understand a formal process and because the settlement judge is tasked with attempting to resolve their issue.

**CONS:** Timing may be an issue, especially in cases where ADR drags on without resolution. Could add to the overall time if no resolution is found under ADR; be careful about managing concurrent settlement and litigation, parties may need to conserve intervenor funding for potential later litigation.

**Option 2:** *Require every case to go through a **mediation session** after being filed at the PSB, but before the intervention deadline (either housed at the DPS or PSB or with outside mediators –but would likely need a list of approved mediators because the issues tend to be technical or specialized.)*

**PROS:** Resolves some disputes prior to intervention being necessary in a quick manner (somewhere between a day and a week).

**CONS:** There will be a modest staffing increase. Need to determine who serves as mediator.

#### 4. COORDINATION:

**Current Situation/Issue:** ANR does not always have complete technical information before they have to testify before the Board; there are occasions when a CPG has been granted, but an ANR permit is still outstanding, placing time pressure on issues that might have been resolved earlier. Environmental standards are different between ANR and PSB. Note that some permits from ANR require a 1-2 year time frame to complete, especially seasonally oriented issues. The overall permitting time is long for all parties, making the process more lengthy and expensive than necessary.

**Option1:** Create *'one-stop shop'* whereby all permits are granted under the Siting Commission, or have just one permit encompassing all compliance issues (Maine DEC, and many other states)

**PROS:** Enables ANR to testify with full technical information available (i.e. a completed application). Allows for increased clarity on what constitutes a 'completed' or 'approved' CPG. Simplifies the application process for both developers and intervenors. The primary advantage is in timing, but could we impose similar statutory time=limits on ANR.

**CONS:** Need to ensure whose recommendations trump which in the final granting of CPG/other permits. Could potentially place granting of environmental permits in the hands of a non-environmental entity (unless ANR and District Environmental Commission representative are on the Board; or unless it is simply an administrative means of rubber stamping what ANR recommends).

**Option 2:** Require *concurrent timing of ANR permit filing and CPG*. For example, one requirement of a **complete** CPG application would be verification that they have **filed** the ANR permit applications. This would need to be accompanied by a robust pre-development and/or scoping period where petitioners conduct requisite public outreach and natural resource assessments period that provide an opportunity for the affected community and statutory parties to engage with the developer early in the process - ideally leading to refinements in the final proposal that make the project more palatable to all parties and a less contested proceeding (see example of NY, see also Public Participation 2.a.).

**PROS:** Ensures greater public involvement – and potential ownership of the project - up front. Requires developers to “lock-in” the project earlier so less money is spent by intervenors, the Board, etc. Could potentially reduce overall timeline because of concurrent review.

**CONS:** could potentially lengthen the time and increase the financial outlay and risk up front by developers to get approval for a completed CPG application. Note that projects are often still evolving in the 'pre-development' phase and it may be difficult to fully define the projects from a technical standpoint prior to an application. May also decrease willingness of developer to modify project in response to intervenors (although if there is a more stringent public participation process, this should not be an issue).

#### QUESTIONS:

- If we were to do this, would we have to have ANR representation on the siting board?
- What would the appeals process be? One appeal to the VT Supreme Court for all issues?
- In this scenario, what would be the “bar” for intervenors (eg., now towns can intervene in the PSB, but generally not on environmental issues where an ANR permit is being considered). Would this open “Pandora’s box” for intervenors on all relevant issues?
- What would the role of the ERB be? Right now, appeals of environmental permits related to renewable projects goes to PSB. Depending on which option is chosen, this may need to change.
- Would the longest time-line rule (eg., seasonal issues with ANR review)?
- Would the PSB decision trump the recommendation of the agency? (Geoff Hand may need to look into this as well as other points)

**Option 3:** Use *‘rebuttable presumption’* whereby if an applicant obtains a permit from ANR prior to completing the CPG process, the Board will provide a rebuttable presumption that shows compliance with that issue under the CPG and does not need to be reopened or questioned again if the project does not change.

**PROS:** helps clarify which things become litigated, and which do not; means that opponents have to put up an effort to call issues into litigation

**CONS:** this can be reopened again relatively easily and it may end up with litigation anyway.

**Option 4:** Provide *basic information* for applicants at the very beginning of the process in a single meeting, identifying and explaining the basics of all necessary permits and approvals

**PROS:** clarifies expectations for all parties early in the process in a fully transparent manner, increasing predictability and potentially shortening time frames. Could be a useful component of an improved public participation process

**CONS:** who does this? Requires staff time; band-aid that doesn’t really address developer concerns.

**Option 5:** Create a *‘case manager’* or *‘ombudsman’* position early in the process that guides each applicant through all the permits and processes (like Maine) (see Staffing 1.e. Option 3)

**PROS:** Clarifies expectations, increases predictability and potentially shortens time frames

**CONS:** suggests that the state is promoting specific projects before the process really gets going (unless the developer pays for the position). Note that in the Act 240 process, developers generally engage local engineering firms to shepherd a project through. Why can’t developers do the same here? At the same time, this could end up being like regional DEC coordinators, who according to many, create a lot of uncertainty in the Act 250 permitting process.

#### QUESTIONS:

- Would the Case Manager serve both citizens and developers?
- What would be the role of the hearing officer, and how to differentiate?
- Would case manager make the decisions about intervenor funding?
- Would case manager make decisions about triggering higher-tier reviews?

## 5. ADEQUATE ENVIRONMENTAL PROTECTION and CUMULATIVE IMPACT

5.a. **ADEQUATE ENVIRONMENTAL PROTECTION – Current Situation/Issue:** while there are certain guidelines for specific environmental issues (e.g. decibel levels at property lines and in residential areas), others are less developed, leaving room for both potential negative environmental impact (e.g. from blasting) and lack of clarity for applicants regarding whether they are meeting standards (i.e. changing goalposts)

**Option 1:** Create *GIS mapping exercise* between ANR, DPS, RPCs, VELCO/ISO NE to designate sites that are ‘no go’ (e.g., migratory pathways, key historic sites, certain ridgelines, or difficult because of transmission issues, etc), potential, and high potential (e.g., brownfields, landfills, rooftops, parking lots, near existing transmission lines, etc) from both an environmental and energy perspective. (like Michigan, EISPC EX mapping, Great Lakes Wind Atlas, expanded Vermont Renewable Energy Atlas). Make these maps available and accessible to the public.

**PROS:** Ensures that sites are selected not because they are the easiest, but rather the best sites from an environmental and energy perspective. Gives clear indication of where developers should NOT invest, as well as where there is greater potential. Allows for a thoughtful forward-looking approach to statewide energy planning that considers environmental, aesthetic and historic sites.

**CONS:** Could potentially give rise to property price speculation as well as galvanizing opponents to the areas of higher potential; difficult to differentiate exclusion/preferred areas among energy sources with different issues. Creation of ‘ideal site’ category could lead to expectation that projects in ‘acceptable sites’ would face more difficult review (though this might be considered a ‘pro’), thereby lengthening time frames and increasing costs.

**Option 2:** Establish and publish *clear criteria* for projects as they related to environmental, cultural and health issues, differentiated by type of energy generation (e.g., setbacks and sound limitations for wind, like NH)).

**PROS:** Provides greater certainty and clarity for applicants and affected landowners and citizens regarding standards that projects will be held to meet. Could streamline the siting process since evidence would not need to be presented on these issues.

**CONS:** If the criteria are mandatory, they do not allow for flexibility (if appropriate) related to site-specific circumstances; they could restrict or remove discretion and project-specific adjustments, potentially increasing costs and environmental impact. **(Consider a mechanism similar to acquiring zoning variances at the local level. There are specific limited criteria one can use to apply for and be granted a variance. There could be waiver provisions when an aspect of a project is outside the state criteria, but there are no objections).** There may be a lag in updating the criteria in response to better science, information, etc.

**Option 3:** Designate *'Energy Generation Parks'* along the lines of *'Industrial Parks'* for larger and more concentrated energy generation and concomitant environmental impact (see also 1.e. Siting Criteria – Option 3)<sup>7</sup>

**PROS:** Concentrates environmental impact in a reduced area, and if done in conjunction with a mapping exercise, sites energy generation in places where transmission, environmental, and other impacts are the least and reduces need for larger scale generation across the state. If these parks were sited in areas that currently require additional generation, it could resolve a reliability issue.

**CONS:** Depending on the location, it may require significant investments in the transmission system.

**Option 4:** Require *PSB to defer to existing ANR standards and guidelines for impacts to natural resources when making siting decisions*<sup>8</sup>.

**PROS:** Use of existing guidelines provides applicants with a clear standard around which to design and plan a project.

**CONS:** Limits PSB's discretion to make case by case siting decisions

**Option 5:** Require *PSB to establish clear requirements for natural resource studies and assessments that must occur during the pre-filing (or scoping) phase*.<sup>9</sup>

**PROS:** Applicants are adequately informed about the site and can plan and design to avoid impacts to natural resources, enabling the case to proceed more quickly and more efficiently once it reaches the PSB if all environmental studies are completed pre-file

**CONS:** May require finalization of project design earlier in the pre-development process that could limit flexibility of project location, design, etc. to mitigate environmental impact. Some studies may take an extended period of time to complete, thereby slowing the entire process.

#### **5.b. CUMULATIVE IMPACT – Current Situation/Issues:**

**Option 1:** Incorporate *cumulative impact requirements on all 248 applications (above a certain size) – (research other states, or ANR surrogate standards that could be applied to CPG, NY has cumulative indicators for air and visual impact)*

**PROS:** Allows consideration outside of impacts of particular project, especially including consideration of impacts of one project on others (past and future)

**CONS:** Potential for early projects to limit the ability for later, better projects to be sited. (Perhaps this could be mitigated by some EROI formula that would allow new technologies as they develop to replace older, less efficient ones)

**Option 2:** Set *limits on the number of RE projects per region/county (e.g. by share of overall population, or meeting RE goals, or as share of current use) (relates to Siting Criteria Option 1)*

**PROS:**

**CONS:**

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<sup>7</sup> Michael Dworkin

<sup>8</sup> ANR proposal

<sup>9</sup> ANR proposal

## 6. MONITORING IMPACT

6.a. **MONITORING IMPACT – Current Situation/Issues:** monitoring of impact is strong for certain aspects of projects (e.g. bird and bat impact), but weak or non-existent for others (e.g., blasting). While some projects have come to joint agreement between developers and communities on outside monitors, others have not. Concerns have been raised that a monitor selected and paid for by a developer might have a biased opinion. There is little or no oversight of these findings by the agencies, nor clearly delineated consequences if impact is greater than what had been agreed.

**Option 1:** Create *funding source* to ensure that monitoring of impact is carried out under oversight from ANR/DPS for the life of the project, (e.g., funded by “Special Fee” by licensee in Maine, or through licensee contractor). If monitoring is not done by Agencies, then consider an option where an outside monitor can be agreed upon by all parties, or a ‘State Energy Generation Inspector’ who monitors projects similar to OSHA and MSHA staff.

**PROS:** Ensures regular monitoring of impact for life of project

**CON:** adds to costs for applicants

**Option 2:** Assign *responsibility* for issues that are currently falling through the oversight cracks (e.g. monitoring blasting) to a specific agency.

**PROS:**

**CONS:**

**Option 3:** Designate *compliance staff* for each project, with regularly scheduled visits (local enforcement can be delegated by Siting Board). This is another possible role for RPCs.

**PROS:** Increase post-CPG compliance. Reduce burden on existing staff, and increases clarity of roles.

**CONS:** Requires funding

**Option 4:** Establish *1-800 number* for noise monitoring on wind (like Maine). Alternatively, *automatic sound sampling* at random times of day can be accomplished cheaply and remotely.

**PROS:** The automatic sound sampling would defy efforts to game the results one way or another and provide a steady baseline to weigh against anecdotal complaints.

**CONS:**

**Option 5:** Create an *ombudsman position for responding to local concerns*

**PROS:** Establishes a single point of contact/resource for concerns.

**CONS:** Position could evolve to be biased, collecting only concerns and negative comments.

**Option 6:** Create *online map of all energy generation projects* (operational, approved, under consideration, denied) by energy source and with generation in KW/MW to be made available to the public, and updated every 6 months (Note: the exact location of critical energy infrastructure is subject to CEII rules on homeland security issues)

**PROS:** would provide public and potential applicants with factual information on where energy generation is concentrated, what projects have been denied. This would provide a counter to the many sites that provide inaccurate information.  
**CONS:** Requires funding/staff to build and maintain and would need to take into account the CEII security rules on official siting of energy generation. What would be the lower size limit for inclusion on the map? (Note: with the future of the grid heading toward the Smart Grid model with many smaller generation sites – to few of them critical to the function of the grid – the dangers of publishing such a map will diminish with time)

**Option 7: Ensure reliable *funding source for eventual decommissioning*** (Note: under PSB rule, all merchant projects over 1 MW are required to submit a decommissioning plan. It does not mean that the PSB will require one, but it has become the expectation. The 1 MW threshold was arbitrary and considering the acreage impacts of solar projects, could be decreased or changed to footprint depending on type of project). Decommissioning and land reclamation funds could be established by a small per Mwh surcharge held by the state in escrow. A cost estimate can be established at the outset and the surcharge dropped once the fund reaches that number.

**PROS:** The cost of returning the land to its original condition is ensured, and the public would be assured that a developer cannot just 'walk away' from a site at the end of its usefulness. Simultaneously, a developer knows that there is a limit to the fund in advance.

**CONS:** This would require greater upfront capital for projects that already require significant capital. Conversely, the dollar amount is typically a very small amount compared to the capital costs of the project.

## 7. GENERIC SITING GUIDELINES

**Current situation/Issue:** While ANR has clear guidelines/standards for certain environmental siting issues, there are concerns that others are more opaque and lack transparency for applicants who need to know how to meet them (e.g., fragmentation, invasive species, cumulative effects, ranking for plant communities, erosion, and others) with a sense that goalposts are not always defined and sometimes move, thereby increasing the costs of projects, as well as a lack of predictability of when an application and/or approval is complete.

**Option 1: Establish generic siting guidelines for developers of electric generation projects by technology, to aid permit process uniformity and provide guidance on environmental impacts, location, aesthetics and other common issues.**

**PROS:** Could provide greater clarity, transparency, and predictability for applicants, and an early understanding of environmental issues for all parties involved. If combined with a more robust pre-development process, could resolve issues prior to filing, thereby speeding the actual PSB decision process.

**CONS:** No way to enforce that these guidelines are met. Difficult to develop and they change rapidly as technologies change, thereby changing the goalposts. If Board does not require or accept them as part of the final decisions, they could be costly and discourage applicants.

**Option 2:** *For those who meet the guidelines early in the process, they could benefit from an expedited process before the PSB, or a rebuttable presumption that the issues have been addressed, and will not be raised again in the process if the project is not modified or changed substantially.*

**PROS:**

**CONS:**

DRAFT