For each category below:

a) What are strengths & weaknesses?
b) How could things be improved?
c) If there were anything you would change, what would it be?
d) Based on experience, what are your key recommendations for Commission?

1) Siting Approval Practices

- Authorizing agency (Public Service Board)

The PSB has done a good job given the impossibility of the tasks. The Board is good at ensuring and following process and implementing statutory/regulatory criteria. The real issue is "Substantive criteria & Standards overview." (See below.) The Board has always been asked to address sizeable issues and done a good job. Today, we are seeing more merchant applicants driven by tax incentives and federal subsidies. The issues have changed dramatically under Section 248. Historically, utilities had to present a clear need for the project, a clear benefit for the state and the ratepayers and ensure reliability and stability. If there was a clear need everything else would or could be addressed because Vermont needed the power or the transmission connection and the benefits were quantifiable. Today, merchant utilities may come before the Board without a purchaser. They may be trying to sell to an out-of-state entity without a contract. The economic benefits to the state and ratepayers have been replaced with more difficult to address carbon emissions benefit. Intervenors see the impacts to their community and the environment but do not appreciate the more amorphous and vaguer benefits. We have become a marketplace for developers to use our state and its natural resources largely for out-of-state purposes. The Board has had to deal with a difficult issue while at the same time being directed to approve more "alternative energy" projects.

The Board is an experienced regulatory panel. It has been one of the best, if not the best, administrative panel in the state. It still is today. It has often been suggested that regulators of other industries follow the PSB quasi-judicial format. The Board is well-staffed and experienced in rate base regulation, utility accounting, economic forecasting, and engineering. Traditionally, it has generally handled environmental issues within the context of regulating utility monopolies serving captured ratepayers where benefits could be more easily identified. Need, economic benefits and reliability and stability issues have been central to its historic functions. As a utility regulator it has had to rely on the Agency of Natural Resources and other environmental experts to assess environmental impacts. With the advent of climate change environmental issues are now often the critical issues before the Board. The Department is supporting "alternatives" so the surrounding public often may not perceive the public advocate is on its side. If there is a weakness it is that the PSB is

not a siting commission; it may not inherently possess technical and scientific knowledge about our ecological systems and the Department must rely upon the Agency. All are trying to implement state policy to foster alternative energy.

So the issue is not just about a siting commission but whether we are providing the best process and best tools for the PSB to make its decisions.

- Staffing of siting process

  The Board relies on its staff, the DPS staff and ANR and other state agencies. ANR, however, issues its own permits. It then addresses the same or similar criteria under Section 248. The problem is that the issues are not always the same and at some point the ANR may feel it needs to conform to its own permits which may not be as comprehensive as PSB criteria. There is not a perfect match.

- Coordination of state-level permit issuance with other agencies

  Best to ask ANR or PSB. I think the timing is pretty good but because the ANR processes are not conducted like the PSB in an open setting it is difficult to appreciate the coordination and timing of those permits.

- Timeline for review/deadline or decision

  This Commission should be careful not impose deadlines on the PSB process. Often the applicants file after a couple years of collecting data and preparing their case. Others need substantial time to digest what they are proposing. These are complicated cases. Alternatively, given the tax credit deadlines imposed by the federal government and other external pressures, applicants sometimes file quickly without sufficient information and argue they have filed complete applications. They sometimes do not present the necessary information in their application to make a (good) decision. Imposing deadlines would require more motion practice, more dismissals and more acrimony. Be careful here.

- Substantive Criteria & Standards overview

  - *The historic standards under 248(b) were sufficient in a traditional regulated environment. The introduction of milestones for renewable generation projects, SPEED and standards for Regional Greenhouse Gas Initiative (RGGI) introduce more statutes that influence the Board and DPS.*

  - *From the 1950's Vermont has planned for its environment and succeeded in building transmission interconnections with our neighbors to import hydro electricity from N.Y., Ontario and Quebec. In large part this is the reason why Vermont has very low carbon emissions associated with its electricity industry.*

- *There is a good argument that stronger protection of our environment, greater protection of our sensitive ecological systems and our communities is required, not less to allow Vermont to be the development site for large scale industrial plants for export or even for use within the state.*

- Voluntary Siting Guidelines?

  - Setback, sound, etc

    I suspect this question is raised because setbacks and noise requirements are inherently part of zoning and have been adopted at property lines and residences by Act 250. The PSB, I believe, looks only to noise levels at residences.

    These issues should not be voluntary. In Section 248 cases if the project is not targeted to a utility the benefits are sometimes more amorphous. The DPS does not generally represent landowners or adjoiners. The DPS probably does not possess the expertise in these types of zoning issues and the public often doesn't have the funding to address them. See "Intervenor Funding" below – which I have added.)

- Appeals process/authority

  Appeals from the PSB to the Supreme Court are fine. Appeals of ANR permits (to the PSB) should be returned to the jurisdiction of the Environmental Division of the Superior Court. See 10 V.S.A. §8506(a) (added 2010, amended 2011). The PSB is not structured or experienced at being an appellate body on ANR permits. It was not wise to move the appellate review of ANR permits to the PSB. It creates no outside judicial presence and bundles the ANR permits into an administrative review. The purpose of creating the Environmental Division of the Superior Court (the old Environmental Court) was, in part, to allow a judge to hear disputes of ANR permits within the context of a judicial review. The Environmental Division has developed substantial precedent and experience on how these permits should work and we should not have had this appellate review removed from its jurisdiction. It creates confusion and unnecessarily creates a question in the public's mind why the ANR permits should receive a different review.

2) Public Participation/Representation mechanism

- How public opinion/evidence is part of the deliberative process?

  The PSB has been good at the public process. However, it is difficult to miss the fact that the public largely feels that its suggestions and positions have carried little or no weight in recent wind proceedings. I believe the PSB has addressed this as well as possible by identifying the issues raised in public hearings within

the technical hearings. My recollection is that the Board directs the questions to the applicant. The applicant's consultants, of course, generally respond by providing their position why the public is wrong. The public needs to have its position raised and addressed by an independent consultant. See "Intervenor Funding" below.

- How financial benefits are allotted to affected communities

  I suspect this is a problem for wind projects. To the extent there are more wind projects, I would propose that communities within the view shed receive some "impact fees." There needs to be a way to spread the wealth of these very sizeable projects. I suspect this will meet with resistance by the utilities or other applicants who like the idea of host towns voting on their project after they learn of the tax benefits they will receive over the life of the project. This is a big issue. Applicants – utilities and merchant companies alike – want to provide a pot of tax revenue to the host community. They are far less concerned with the neighboring communities since the Board needs to give only "due consideration" to their views and the views of residents from other towns may not be considered to be impacted. A fairer vote by both the host community and the adjoining communities would occur if all communities in the view shed shared in the tax benefits on some reasonable basis. Perhaps the DPS could propose such an approach.

  I am not sure if this concept can be easily applied in other types of generating projects, e.g. biomass plants or solar farms, but clearly some of these projects will impact surrounding towns.

- Role of Town or Regional Planning Commissions

  I have traditionally supported the "due consideration" language in Section 248(b)(1) because I understood projects were being built for Vermont and its ratepayers. Given the new regulatory approach where we are seeing fewer and fewer regulated monopolies apply for generation facilities, with more merchant facilities applying, and we know that Vermont and New England have an abundance of electricity, I favor giving towns and regional planning commissions more say in these "regional" projects. To the extent anyone supports a separate "Siting Commission" rather than the PSB, I would propose that the need for developing a separate siting commission may be unnecessary where towns have zoning and regional planning commissions and towns have addressed generation facilities in their plans. This would not eliminate the need for a PSB approval. (Much like land use development goes to both zoning and Act 250.) Times have changed.

- Should there be an alternative dispute mechanism? What kind? Who should finance?

There should always be an option to have meditation. The Board at the outset of any proceeding should identify mediation as a possibility. This is consistent with trial courts. I do not believe mandatory ADR would be helpful.

- ***Intervenor Funding*** *– Party status is meaningless unless the adjoiners and non-profit entities have tens of thousands and perhaps substantially more to invest in contesting a utility sized project. Lawyers and consultants are expensive. I have added this section because the Department does not and should not necessarily represent landowners or adjoiners. Moreover, in many cases today given the change in the process with merchant facilities and utilities selling the output out-of-state, the Department has two masters: the Legislature's establishment of renewable energy goals/development of SPEED resources/the DPS Renewable Energy Development Division – and the ratepayers/citizens of the state. Those interests may be in alignment, then again they may not be. No longer are applicants mostly monopoly utilities providing energy to captured ratepayers. In the past the DPS knew who its clients were. Today it seems to be more difficult. It would be difficult to miss the complaints by some who maintain that they were "outgunned" "outspent" and "out maneuvered" in the PSB process. Enter "intervenor funding." Form a group and or groups with similar interests and allow them to apply for funding. The Utility Reform Network (TURN) in California is one such mechanism to fund intervenors. I suspect there are other examples. The DPS perhaps could research this and propose a much needed mechanism.*

3) Adequate protection of lands, environmental & cultural resources

- Coordination/timing of all state level permits

  See below.

- Environmental permits. *Presently there is no public process for ANR permitting. The DEC Commissioner should be requested to address this issue. I understand the ANR is sensitive to this issue. The lack of a public process creates both a lack of public involvement and allows the applicant to meet with the ANR on a continual basis to obtain agency permits that then will be used to convince the PSB that it meets the PSB criteria. The public is often unaware of this until late in the process. The public feels it is disadvantaged and becomes upset with the state/PSB. The public then learns that appeals of any ANR permits are to the PSB and it is sometimes understandable why it feels angry with the process. See 10 V.S.A. §8506(a).*

- Do permits adequately address all environmental concerns? (pros & cons)

  No, not always. But if the process works they address most of the critical ones. I do not believe air permitting is necessarily the answer in renewable energy cases since it implements the Clean Air Act and (I believe) is not intended to address GHG or otherwise intended to resolve air quality issues. The PSB or the DEC Commissioner

should be asked to address this issue. The Board, I believe, does not equate an air permit with approval under the air criteria of Section 248. A separate, independent tribunal should be available for permit appeals.

4) Monitoring Compliance

- system for monitoring compliance with permit conditions?

  Today's projects cannot always be easily monitored. Historically, if a utility misrepresented a fact, overlooked an issue or failed to conform its project with the record evidence the regulators would usually find the error or mistake in a subsequent filing, a site inspection or in another application process. But today we are not seeing utilities file as many Section 248 applications as we see merchant facilities. A merchant applicant may never operate the plant. It is true that a purchaser of that facility may inherit any problem (assuming the error were found) so there should be a remedy but the perpetrator of that mistake or error would not necessarily be held responsible.

  Utility regulation is pervasive. Utilities are extremely reluctant to make mistakes or overstate their position because it will inevitably be discovered at some point or in some other venue. That may not necessarily be true today with merchant applicants. It's just different.

  - Including impacts of approved and built facilities

    Yes.

  - During construction as well as post construction?

    Yes.

  - For what time period?

    Life of the project. See above (since applicant may be long gone by the time a mistake is uncovered.)

  - Staffing or budget?

    Yes. The applicant should provide an on-going budget for the ANR or PSB. Perhaps a new position(s) is necessary.

  - What are suggested practices for measuring cumulative impact

    Best to ask PSB and DPS. The incremental approach is still a good model. If you have a specific example it may be easier to address.