



## Act 250 Criterion 9(L) Fact Sheet

Vermont's distinctive sense of place, quality of life and brand is tied to its historic development pattern of compact centers surrounded by working lands. The new Act 250 Criterion 9(L) and related changes to Act 250 encourage sound development that bolsters Vermont's economy because:

- It keeps our downtowns and villages strong and vital by encouraging new development where it already exists;
- It saves tax payers money by getting more use out of existing infrastructure;
- It safeguards the millions invested in downtown and village revitalization;
- It helps get people out of their cars – walking, biking, and transit – which promotes public health and reduces transportation costs;
- It encourages quality housing;
- It protects the environment, reduces vehicular greenhouse gas emissions, and supports long-standing policies including the Comprehensive Energy Plan;
- It preserves the landscape that Vermonters and visitors demonstrably cherish.

**How it works:** Projects in an “existing settlement” are automatically deemed to comply with 9(L). An existing settlement includes state-designated centers and non-designated areas that function as traditional Vermont compact settlements. Projects outside of existing settlements need to show that they make efficient use of land, energy, roads, utilities and other infrastructure, and show that they will not contribute to a pattern of strip development. The new law encourages infill by allowing projects in an area of existing strip development, as long as they minimize the characteristics of strip development.

Projects in designated downtowns subject to Act 250 are allowed limited and expedited review and are exempt from fees. Also, Act 250 jurisdiction over priority housing projects in designated areas was significantly limited and fee exemptions broadened.

**Projects to date:** A Criterion 9(L) determination must be made in every Act 250 permit. Since 9(L) took effect on June 1, 2014, there have been approximately 163 Act 250 permit applications. Of these, 108 have been granted, none have been denied, two applications with 9(L) issues have been withdrawn prior to Commission review (described below), and the rest are pending, including a high profile Criterion 9(L) application in Rutland Town, (also described below). Application of the new law has resulted in improved projects in several cases. Specific applications are described below:

**Success stories:** Examples of how 9(L) has improved development outside of existing settlements include:

- E. Wilbur Rice, Routes 30 and 100 in Rawsonville/Jamaica. This permit authorizes the construction of a 3,000 square foot barn-style building for a country store, deli, and three-pump gas station and canopy. The project was designed to share road access and parking

with the adjacent store, reducing the size of the parking area, provide for pedestrian access through incorporation of a walkway to the adjacent businesses and residential project, and reduction of the overall footprint of the project on the site. The project has an appealing barn architectural design, including a gas canopy that fits the rural context. There are no internally lit signs for the gas pumps or the store so it looks very different than a typical convenience store and gas station.

A pre-application conference was held, and the NRB provided the applicant with assistance. The application was filed on July 22. The draft permit was issued on July 25. The final permit issued on September 11, promptly upon issuance of Department of Environmental Conservation permits. Construction is finished and the business opened on December 19, 2014.

- **Shelburne Green, Route 7:** This project adds several buildings to the existing Shelburne Industries site for use by food industry companies and incubators, including a brewery. This project was compactly designed with several connections, including transit, walkways, trails and streets to adjacent residential areas, Shelburne Village, nearby businesses, and recreation areas.
- **Derby Dunkin Donuts:** The Project as permitted shares parking and access with an existing furniture and warehouse, establishes a new access to the Price Chopper behind the stores, allows better pedestrian connectivity on the site and easements for future sidewalks. This also complies with the new Criterion 5(B) (requiring bike/ped/transit where appropriate). Project design is compact and efficient.

A partial list of more routine application of Criterion 9(L) is attached.

#### Projects that raised 9(L) issues:

- **Denecker Chevrolet:** On September 15, 2014, Denecker Chevrolet applied for an Act 250 permit to build a car dealership at the corner of Routes 7 and 22A in Ferrisburg. VNRC, ANR and the Addison Regional Planning Commission were parties, and all raised 9(L) and other concerns. Further, the site has some history -- a proposal for a Stewart's Variety Store had been denied on aesthetic and regional plan grounds a few years ago. The Addison RPC had opposed the Stewart's application. The Commission asked that 9(L) evidence be filed on November 21, 2014 for a hearing set for December 5, 2014. Denecker withdrew its application on November 19. According to press reports, Denecker purchased the then-empty Foster Chevrolet site in Middlebury and has been operating there since mid-December. Denecker may redevelop parts of the Foster site to meet current GM dealership specs.
- **Cota Trust, So. Hero:** This was a proposed project adjacent to the Keeler Bay designated Village Center with two 6-seat restaurants (Subway and Dunkin Donuts), an office building, propane storage and distribution facility, firewood processing facility, salt, sand, and bark



mulch bunker, and a wood pellet storage structure. District staff guidance regarding 9(L) led Cota to withdraw its application within a couple days of when it was filed. No pre-application design conference was held. NRB staff has since met a couple of times with the applicant's consultants and they are ready to file a new application. The project's several industrial uses are not likely to raise 9(L) issues. The applicant will provide a rec path, and sidewalk and bike path easements and facilities to better integrate the project's offices and restaurants to the Village. Other minor design changes could provide further compliance with 9(L) and other Criteria. An application for "partial findings" – to see if they comply with 9(L) -- will be filed shortly. No fee is required for partial findings.

- **Saxon Partners/BJ's Wholesale Club:** This application is limited to a Criterion 9(L) (petition for partial findings) for a wholesale club proposed for the northwest corner of the intersection of Routes 4 and 7 in Rutland Town. This project would be separated from existing strip development by some green space, a wetland, and land preserved as a bird habitat. It raises a number of issues under 9(L) including efficient use of land and infrastructure, whether it contributes to strip development, and whether it is infill confined within the existing Rte. 7 strip. The Commission has retained an independent expert to assist with Criterion 9(L) and the parties' conflicting expert testimony. ANR has offered evidence that is consistent with that of the independent Commission expert, namely that the project does not comply with 9(L). Interestingly, the Diamond Run Mall, located across Rt. 7 from the proposed project, has intervened in this matter and is opposing the project with the apparent aim of luring BJ's to fill the former Sears space.

An important fact is that several years ago a mini-mall was permitted on the proposed BJ's site. The mini-mall was never built, but its permit is still valid. On January 9, the District Commission decided to limit 9(L) review of the BJ's proposal to the material changes between the already permitted commercial project and the proposed BJ's. The hearing is set for January 15, 2015.

#### **CONTINUING TRAINING AND OUTREACH:**

- The NRB, VTrans, DHCD and ANR have been actively working with state agencies, Regional Planning Commissions, trade associations, municipal planners, consultants, environmental lawyers, and others regarding 9(L) and other recent changes to Act 250. A list of the many outreach meetings is being prepared.
- The NRB strongly encourages pre-application conferences, and coordinates conferences with other agencies.

