

Senate Committee on Economic Development,
Housing and General Affairs

Proposed Revision to Act 250's Criterion 9(L) and pertinent definitions

Rationale: *The Vermont Chamber expressed serious reservations last year regarding a re-write of Act 250's Criterion 9(L) which purports to encourage smart growth but with many unintended consequences; and, the inclusion of a new definition for "strip development" which is sufficiently broad to include the configuration of some industrial and commercial parks planned and implemented by Vermont municipalities. Thus, there is a potential for certain industrial and commercial projects to be denied under the new Criterion 9(L) even though those projects may fully comply with duly adopted local and regional plans. This will lead to increased litigation, strained relationships between local and state officials and a negative impact on local and regional economies. The VCC recommends constructive changes to Criterion 9(L) below which will make it clearer and easier to implement.*

(L) Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure ~~through compact site development in order to avoid conflicts with agriculture, forestry, and other natural resource based land uses and promote the protection of headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forest lands, and primary agricultural soils;~~

(ii)(F) will not contribute to (~~exacerbate~~) a pattern of strip development along public highways, if such pattern is found to exist by the District Commission, by designing the development or subdivision to incorporate infill as defined in 24 V.S.A. § 2791 and reasonably minimize or avoid the characteristics of strip development as identified under subdivision 6001(36) of this title; or

(H) if the development or subdivision will be confined to an area that already constitutes strip development, incorporates infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

(iii) In making these determinations, the District Commission shall consider all elements of criteria 9(F)¹, 9(H)², 9(K)³ and 10⁴ in making its findings under

¹ (F) Energy conservation. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction

subdivision 9(L) in order to provide consistency under those pertaining land use considerations as they relate to strip development.

Act 250 Definitions

(16) (A) “Existing settlement” means an area that constitutes one of the following:

(i) a designated center; or

(ii) an existing **or an emerging** center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

(B) Strip development, outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 21 V.S.A. § 266 or 268.

² *9(H) Costs of scattered development. The district commission will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned employment centers.*

³ *9(K) Development affecting public investments. A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.*

⁴ *(10) Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24. In making this finding, if the district commission finds applicable provisions of the town plan to be ambiguous, the district commission, for interpretive purposes, shall consider bylaws, but only to the extent that they implement and are consistent with those provisions, and need not consider any other evidence.*

(36) "Strip development" means linear commercial⁵ development along a public highway that includes three or more of the following characteristics: broad road frontage **combined with limited reliance on shared highway access**, predominance of single-story buildings, lack of connection to any existing **or emerging** settlements **as well as surrounding land uses** except by highway, ~~lack of connection to surrounding land uses except by highway~~, lack **of functional** coordination with surrounding land uses, and limited accessibility for pedestrians. In determining **whether an area** in which a proposed development or subdivision **will be located** constitutes strip development, the District Commission shall consider ~~the~~ **man-made or natural** topographic⁶ constraints in the area in which the development or subdivision is to be located, **as well as applicable local and regional plans. Industrial and commercial parks located outside of existing settlements shall not be considered to be strip development notwithstanding the existence of three or more characteristics described herein.**

⁵ "Commercial" is defined as: "**business, businesslike, economic**, engaged in commerce, **financial, in the market, industrial, jobbing, manufactured for sale, mercantile, merchandising, monetary, pecuniary**, pertaining to business, **pertaining to merchants, pertaining to trade, prepared for sale, skilled in commerce**, supplying, **trade, trading**." Free Law Dictionary <http://legal-dictionary.thefreedictionary.com/commercial> (emphasis added)

⁶ Topography: The three-dimensional arrangement of physical attributes (such as shape, height, and depth) of a land surface in a place or region. Physical features that make up the topography of an area include mountains, valleys, plains, and bodies of water. **Human-made features such as roads, railroads, and landfills** are also often considered part of a region's topography. (emphasis added) <http://www.thefreedictionary.com/topography>