

Comments on the 9(L) October 2015 Draft Guidance Document and

How Comments Were Addressed in November 2015 Draft

Below is a compiled summary of comments received by the stakeholders group during and after the October 8th meeting. Comments are grouped under the major headings of the October 2015 draft guidance document. General comments were compiled at the end. For each section, how comments were addresses, or not are outlined for each section.

Overview Section

Based on the comments provided, this ‘overview’ section confused some and antagonized others. It was intended to provide ‘background’ on the work, historical context and benefits that compact, mixed use development has had in Vermont over many decades, but instead some stakeholders focused and commented on only this section instead of the actual guidance material. In response, the November 2015 draft was restructured to include only a brief ‘background’ section with an outline of planning milestones in Vermont at the end of the document. Following this is a new “Guidance Overview” that outlines how the document is organized and the approach taken in breaking down the statute and providing information on how to analyze it.

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Don't start with reference to lodging and services.	✓ Removed.	
Should consider mentioning ‘a strong and diverse economy and expanding economic opportunities in areas with high unemployment and low per capital incomes.		✗ Did not understand this comment.
Emphasize the benefits of downtowns and village centers in creating diverse economic opportunities	✓ In new ‘Background’ Section.	
Add more information on 40 years of planning and anchor 9(L) the reason and background for this criterion (list of background documents included).	✓ In new ‘Background’ Section.	
Add more information on why the planning concepts matter.	✓ In new ‘Background’ Section.	
Note difference between ‘settlement patterns’ and site design. – add in document <i>“The configuration of buildings, roads, parking, undeveloped spaces, and other uses on the land creates a ‘settlement pattern.’ Settlement patterns matter because of competing priorities for available land like housing, businesses, civic uses, agriculture, forestry, recreation, storage of flood waters, and more. As detailed above, it is long-standing state policy to reinforce compact settlements surrounded by working lands and to avoid sprawl for all the reasons listed above. Criterion 9L was written to help reinforce these goals for projects subject to Act 250 review.</i>	✓ In new ‘Background’ Section at the end of the document and seeded throughout draft where appropriate to make that distinction.	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Disagreement on every point of the information provided in the Overview section.		✘ In order to keep the focus on the guidance, any historical information was moved to a new 'Background' section and the overview now provides only an orientation of the draft.

Existing Settlement Determination

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Document needs to include examples of villages that are not served by water but still could be considered 'existing settlement'. Should include examples of towns that meet definition, but don't have water or sewer.	✓ Information added and new examples provided.	
Broaden to ensure that small villages and hamlets in rural areas of Vermont are recognized as "existing settlements." Recommended Language: <i>Centers may include new and existing settlements and may range in size from small settlements such as Garfield in Hyde Park to the region's largest urban area of Morrisville. Centers can be as small as a country store, a post office, school or church, and a cluster of homes.</i>	✓ Information added.	
When discussing speed limits, a Vermont context is important as in areas where a state highway goes through a center, VTrans set the limit at 35 mph. Important to note that the 'typical' provides flexibility in draft when suggesting 30mph per planning/safety studies.	✓ Clarification re: 35 mph added.	
Idea of including a continuum or transect with respect to "compact form and size" rather than black and white.		✘ Cautions were raised about this as it would not necessarily fit with statutory definition of existing settlement; not included.

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Highlight, define human/ pedestrian scale in this context (“within walking distance of each other”) as a key component of an existing settlement—in relation to form, height, spacing, density of development, and available infrastructure	✓ Included.	
Still unclear what ‘substantial means’ – looking for a number of residences.	✓ Provided analysis and 50% recommendation of ‘substantial’.	✗ A number would not work as Vermont communities have different size and scale – hamlet, village, downtown, suburban, etc.
With regard to density, would also note that the statutory definition is an element in some of the state designation programs.	✓ Added information.	
With regards to density calculation, not sure about using E-911 coverage, v. building footprints and units, especially where there is a mix or a number of units. However, it may be best we have for desktop analyses. Could also determine with orthos using measuring tools. Would include more info on “how to” use VANR Resource Atlas in this section.	✓ Noted other methods, and outlined why E-911 provides a simple method. Added visuals.	
Provide some guidance on areas adjacent to state designated areas (especially designated downtowns and villages) and provide some acknowledgement that there is a distinction between these types of areas.	✓ Added information.	
Need to show how to define boundary/edge in vicinity of proposed development to determine if project is ‘in or out’ and perhaps could discuss in relation to walking distance to define “edge” in addition to mix, density of development within a ¼ to ½ mile radius of proposed project.	✓ Added visual to expand information on boundary/edge.	
Would note with regard to scale that, while Burlington is large, it is also functionally divided into more distinct, generally walkable commercial hubs/centers and residential neighborhoods. Burlington – show new north end or industrial ave and neighborhoods, etc.	✓ Added clarifying language stating that municipalities may have multiple centers / existing settlements.	
Isn’t it possible that all of the developed area of Burlington/Chittenden county an existing settlement?		✗ Too large and diverse an area with too many existing strip developments and open land for this to be a valid approach to meeting statutory definition of ‘existing settlement’.

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Explicitly state that existing settlement are not limited by political boundaries.	✓ Added.	
Figure 3 is confusing; Figure 5 – apples to orange comparison.	✓ Removed and provided new visuals.	
Add streetscape view to help reader understand how 'compactness' is viewed on ground.	✓ Added streetscape photos.	
Add after infrastructure – “typically served...” This is because it’s the combination of these features that creates compactness and connection – features that make a place cohesive and functional instead of just a collection of buildings.	✓ Added.	
Too narrowly focused – compact centers can have a mix of building types, road types and layouts with gaps caused by green space and undeveloped parcels. Shelburne, Middlebury and Johnson are examples with a mix of one story and multiple story businesses, a wide state road with higher speed limits, village greens causing gaps, some buildings on the street...	✓ Added language re: gaps due to parks, etc.	
Figure 2 – no medium sized communities – Randolph, Barre. Need to have map of how defined the areas.	✓ Added medium sized community.	
Walking distance – nuanced and includes other factors – relative attractiveness of the destination, perceived safety, number of major roads crossed, etc.	✓ Changed from 0.25 miles to 0.5 miles for purpose of measuring mix of uses. Walkability factors addressed as part of compact form.	
Tactics to increase efficiency – consolidating and coordinating use of utilities, roads, stormwater, etc. with surrounding properties; utilization of technologies and design to increase energy saving.	✓ Where appropriate, added to ‘Strip Development Definition’ Section and how to minimize characteristics.	✗ These additional strategies not relate to the definition of existing settlement.

Efficient Use Requirement

Comment	Addressed	Not Addressed and Reason
<p>Suggestions RE: Examples Used (Figures 5 & 6). Figure 5 – Inefficient vs Efficient Use example is unrealistic. Industrial parks don't develop like the example and need room to expand buildings. Multiple stories are not efficient for industrial buildings. Need 100 feet to turn a tractor trailer around—need lots of road or big parking lot. It's also comparing an office park vs industrial park. Concerned the images would be interpreted literally. Examples good, but less building detail could be a solution. Concerned over the structured the parking lot—which are expensive; however, others felt it should still be an example that is included. Wanted realistic examples (including parking garage).</p>	<p>✓ Information added and new examples provided.</p>	
<p>Should be accompanied by a discussion of specific considerations/tools for making efficient use of land, infrastructure (e.g., conservation subdivision design, clustering, access management, shared infrastructure). Would provide additional guidance with regard to what constitutes “efficient use” in this context, such as include shared community facilities, services (parks, recreation, community buildings, gardens, parking, transit stops, etc.) to at list provide some support services and infrastructure on site...</p>	<p>✓ Information added to general strategies list.</p>	
<p>Some don't like assumption that expansion of infrastructure is not efficient use and others stress emphasis to try and first to get more from what you have with regard to infrastructure/efficient use. There was a suggestion to add that some expansion of infrastructure can allow more efficient use of existing infrastructure – “gets more out of what you have.”</p>	<p>✓ Language rewritten to include this concept.</p>	
<p>Would highlight the benefits of efficient use for the developer (reduced costs of land, infrastructure, etc.).</p>		<p>✗ Determined this should not be part of the analysis; developers could do this analysis if they wanted.</p>
<p>Make reference to ANR's Waste Water Rule in reference to water/sewer extensions</p>		<p>✗ Upon reviewing ANR WW Rule, concerned that this reference would create additional confusion.</p>
<p>Should include considerations addressing the context of proposed development (greenfield, strip, leapfrog, rural growth area, etc.) as identified in local and regional plans.</p>	<p>✓ Added some language.</p>	<p>✗ Note: Conformance with local and regional plans is considered in other Act 250 criterion.</p>

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Should include considerations addressing the need to minimize or avoid impacts to protected resources under Act 250 (VANR Atlas).		✘ Considered in other Act 250 criterion.
The determination of “efficient use” needs to take into account the spatial requirements for water, wastewater, and storm water.	✓ Noted in new draft.	
Would specifically reference incorporating regional transit /bike path facilities and services (TOD development?) in this context, to provide connectivity apart from auto/highway network.	✓ Concept covered in discussion of strip development characteristics.	
Allow phasing the potential for further development should play a role in determining if the application is making efficient use of land.	✓ Noted in new draft.	
Providing guidance on how to structure local land use bylaws to enable efficient use of land will need to be a priority if the goals of 9(L) are to be realized.		✘ Outside the scope of this guidance document; but will be provided in training material for communities when requested.
Consider efficient use on a community scale		✘ Could not determine how this analysis could be consistently accomplished, and applied in project reviews, although elements of this analysis do get at this.
Why do/should “purely residential” projects that meet the efficient use requirement comply with 9L?	✓ According to statute, strip development analysis is for commercial development so 9 (L) analysis for residential projects includes only existing settlement and efficient use.	
Are their measures of ‘efficient use’ that could be shared? Identify other utilities. Clarify how clustering development while leaving the remaining portion undeveloped is efficient use.	✓ Information provided in general strategies list.	
Should note that extensions of sewer and water that allow for more density and infilling of current strip areas are acceptable but extensions into greenfields are not acceptable.	✓ Added information re: extensions.	✘ Extensions in greenfields and strip development need to be evaluated by ANR.

Definition of Strip Development

Comment	Addressed	Not Addressed and Reason
Note at the front of this section that this evaluation comes into play for commercial projects.	✓ Information added.	
The Guidance should address the fact that many villages are linear-by nature due to topography, and ensure that these areas are not deemed to be strip development. The beginning. <i>Topographic constraints should be considered State Statute requires that the District Commission consider topographic constraints when evaluating whether or not a project is strip development, as the topography may make it impossible to avoid certain characteristics of strip development...</i>	✓ Information added.	
Broad Road Frontage		
This seems to suggest that buildings should be setback from the road, rather than built close to it. This is contrary to much of the rest of the guidance. Buildings located close to the road are a key component of a pedestrian friendly atmosphere. Language should be reworded to focus on the location of the parking rather than the location of the building. <i>Reorienting a building so that it is perpendicular to a highway, while placing and has parking along the road frontage, does not minimize this characteristic. In order to minimize this characteristic, parking should also be reoriented so that it does not dominate the frontage; for example by relocating parking areas to the side or rear of the building.</i>	✓ Language rewritten to include this concept.	
Additional illustrations might be helpful	✓ New illustrations added.	
Predominance of Single-Story Buildings		
Should this refer to majority of the visible buildings/ buildings along the frontage? Use of multi-story “frontage buildings” can be used as a screening technique for uses that are by nature single story (warehouse, auto-repair, etc.).	✓ Concept added.	
In many rural settings, the market does not support second stories, especially if an elevator is required. The guidance should allow applicants to meet this criterion if a single story is designed to appear to have a second story AND the building is designed such that additional stories may be added in the future.	✓ Rural development addressed in pathway 1.	✗ Single story buildings don’t minimize the predominance of single story buildings.

Comment	Addressed	Not Addressed and Reason
Market may not be there for upper stories banks not likely to lend for speculative development, owners may not want to also be landlords and some uses do not lend themselves to having upper floors (gas stations, supermarkets, etc.)	✓ Noted that minimizing can mean adding multi story buildings in front of single story.	✗ See comment above.
Limited Reliance on Shared Highway Access		
Reserving access for future redevelopment or development on adjoined properties should be included as an option for avoiding this characteristic of strip development. The District Commission should also consider access management plans and official maps adopted by local communities in accordance with Title 24 Chapter 117 when determining the applicability of this characteristic of “strip development.”	✓ Noted in new draft.	
Lack of Connection to Any Existing Settlement Except by Highway, Lack of Connection to Surrounding Land Uses Except by Highway, and Limited Access for Pedestrians		
Pedestrians walk straight paths and in parking lots and sidewalks in parking lots often do not get used—may not be the right solution		✗ Many individuals will use the safest path. Good site design will result in sidewalks being used more.
Parking in back of store creates some very difficult logistical challenges for certain retail. Not good to have a blanket statement that door needs to be in front with parking in back, need to have some flexibility built in. Dual entrances can sometimes work, but not always.	✓ Provided an example of how this could work.	
Useful to acknowledge that on street parking can be part of a pedestrian friendly development. (Example—Underhill flats)	✓ Information noted.	
Revise to support local efforts to improve connectivity. Direct the applicant and District Commission to consider future plans for pedestrian connectivity, such as a capital plan, downtown/village master plan, or other document approved by the municipal legislative body, when determining whether or not a development exhibits this characteristic of “strip development.” Interpretation of 9(L) could create a Catch 22 where commercial uses cannot be created without formal pedestrian infrastructure, but pedestrian infrastructure cannot be constructed without commercial uses. Consider \$ contribution to future connections as a way to minimize this characteristic.	✓ Added information.	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Recognize that pedestrian infrastructure often takes a different form in rural area settings. Diverse, alternative means of providing pedestrian access and non-motorized connectivity in rural settings include trail systems, expanded shoulders, and multi-modal paths.	✓ Added information.	✗ Expanded shoulders are still the highway.
<i>Lack of Coordination with Surrounding Land Use</i>		
Sometimes “coordination” with other land uses may be “thoughtful separation.” e.g -- CCTA and Burton.	✓ Concept added.	
Coordination with other land uses should also consider/acknowledge local zoning, context, existing uses. Get rid of signage and lighting discussion. The guidance places too much focus on signage in particular, which is already highly regulated.	✓ Added information on other land use coordination and removed signage/lighting information.	
More discussion of landscaping, use of shared parking, and context sensitive design should be included. While Master Plans are one tool for ensuring coordination of surrounding land uses, other techniques, should also be given effect.	✓ Concepts included.	
Include shared storm draining, other utilities, connected walkways, shared bike shed or racks, collaborative landscaping for energy savings as innovative collaboration.	✓ Concept regarding connections included.	✗ Some of items, such as shared bike racks, not seen as meeting criteria.
‘meant’ should be ‘mean.’	✓ Edited.	

Pathway 1: Contribute to a Pattern of Strip Development

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Before this section, make it clear the difference between ‘settlement pattern’ and ‘site design’. Recommend using statutory definition of strip development to assess the characteristics of the surrounding area.	✓ Information added (note comment also in “Overview Section”).	
Some trepidation about the list though stakeholders appreciated the pragmatic end. Looking at #2 in particular, industrial use in an industrial park can still use land inefficiently. There were concerns about the meaning of “approved industrial parks.”	✓ Tried to clarify. This section will be the focus for December 2015 stakeholder meeting.	
Should include– ‘located within or proposing to create an industrial park.’ What about stand-alone industrial uses?		✗ Differing views/perspective (see below); will discuss at Dec. 2015 stakeholder meeting

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Confused about industrial development – are all developments approved under the definition? Perhaps delete.		✗ Differing views/perspective (see above); will discuss at Dec. 2015 stakeholder meeting
Add note that some uses attract strip development	✓ Added.	
Define “home occupation’		✗ Deleted example (see comment below)
Trying not to laugh that a ‘home occupation’ and ‘vegetable stand’ determined not to be contributing to strip. Gee thanks	✓ Deleted both examples.	
This language seems to be limited to the visually attractive portions of Vermont’s working landscape. Uses such as sawmills, stock yards, feed stores, agricultural processing plants, and equipment repair/supply are critical to Vermont’s working landscape economy, but they may not be aesthetically pleasing to some tastes. “If the proposed project is a use that contributes to and/or supports Vermont’s working lands economy, including, but not limited to traditionally fits into the rural landscape and traditional part of Vermont’s countryside, such as a roadside vegetable stands, sawmills or other forest products related facilities, stock yards, feed stores, agricultural processing facilities, and/or agricultural or forestry equipment repair/supply.”	✓ Added suggested language.	
More guidance needed on when a project will not contribute to strip if the proposed project does not meet the characteristics of strip. If a project doesn’t meet the definition of strip, can it still contribute to a pattern of strip development? Be clear.	✓ Tried to clarify. This section will be the focus for December 2015 stakeholder meeting.	
Doesn’t know how to get an affirmative finding that it is not going to contribute to strip development. Wants more clarity on how to get green light.	✓ Tried to clarify. This section will be the focus for December 2015 stakeholder meeting.	
There is nothing referring to lot size and acreage in the document, or frontage, or existing curb cuts, or any existing condition that more specifically defines what contributes to strip development.	✓ Tried to clarify. This section will be the focus for December 2015 stakeholder meeting.	✗ Did not want to be too prescriptive size and scale varies in Vermont – rural, suburban and urban. This section will be the focus for December 2015 stakeholder meeting.

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Add bullet to list of factors: 'If the proposed project is built at a scale that traditionally fits into a rural landscape.'		✘ Not sure how to determine this; did not include.
Bullet re: limited visibility from the road' may be contrary to accessibility to pedestrians – why can't buildings be integrated into the landscape?		✘ This doesn't preclude from being integrating into landscape. Design is for uses with limited trip generation (such as mini-storage facility.)
Only includes development in rural areas and needs to address infill in areas that are developed, but not considered strip (ie. Office and commercial parks' or areas of scattered development or sprawl.	✓ Tried to clarify. This section will be the focus for December 2015 stakeholder meeting.	

Pathway 2: Confined to Strip Development, Infill and Reasonably Minimize the Strip Characterization

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Other ways to minimize the characterizations of sprawl – design with building(s) on the road; strong pedestrian links; strong vehicular connections (possibly including design that fosters gridwork of roads – immediately or in the future through easements, etc.); mixed uses; layering of uses back into site (as done at Ethan Allen Plaza and Hannaford Plaza); inclusion of public or quasi-public features such as parks, plazas, bike paths, etc.	✓ Information added and new examples provided.	
Can there be a vacant lot in between that is still part of the strip? If so—clarify	✓ Added example.	
State that projects located outside of strip development in pathway 2 would not comply with 9(L).	✓ Outlined before Pathway 1 and 2 how to determine which 'pathway' to provide analysis.	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
On page 8, back to back sentences defining infill sows confusion. The statutory definition describes it as ‘the use of VACANT land or property within a built-up area for further construction or development.’ The following sentence may not be construed as justification for the statutory definition, but an expansion of the definition by referring ‘further construction or development’ to be considered infill. Without a definition of construction and development, any improvement to existing property could be defined as infill.	✓ Tried to clarify. Act 250 has definition of development. Essentially, if it’s being reviewed under Act 250 and it’s confined to strip, it meets the definition of infill.	
Move info on topography to the beginning and make stronger “State Statute requires that the DC considers topographic constraints...”	✓ Added language.	

General Comments

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Should map all existing settlements and all existing strip development in the state		✗ Difficult and resource intensive task ; areas change over time..
Would like to see a flowchart included	✓ Flowchart added.	
In addition to or before looking at whether project is strip, look at the area and decide if the area is strip. This analysis should be done prior either pathway 1 or pathway 2 b/c it will force you into one of the paths.	✓ Language rewritten to include this concept before discussion of Pathway 1 or 2.	
Incorporate work from other Vermont publications and policies. Build on guidance documents been developed in this area through VPA, Smart Growth VT, VNRC, DHCD and RPCs – including past definitions included within DHCD documents.	✓ Included in new ‘Background’ section and new references added	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
<p>Provide more context/background specific to 9 (L) under Act 250 as a regulatory process including legislative directives—and limit vague aspirational stuff, instead ref: goals in §4302 and smart growth principles. Please lend weight to the document by anchoring the reason for the guidance in the long legacy of historic statute and rule, and policy documents – giving it a more substantial foundation and reference points. The language (about “traditional settlement pattern” that led to the overarching land use goal) in the 1988 Report of the Governor’s Commission on Vermont’s Future: Guidelines for Growth (see p. 16, lead to recommended guidelines) came almost directly from the 50 yr old 1968 Vision and Choice document issued under Gov Hoff. Please keep that historic anchoring going! It set Vermont apart, and should continue to do so.</p>	<p>✓ Included in new ‘Background’ section and new references added</p>	
<p>Present more as ‘how-to’ guidance for making determinations – include info/data sources, checklists.</p>		<p>✗ Additional material may be developed for training purposes.</p>
<p>What happens if local zoning does not allow for a more ‘efficient’ use of the project. Need clarity as to if one ‘trumps’ the other.</p>		<p>✗ District Commissions deal with this issue and look at all the criteria, make findings and develop final requirements. This is not different than any other criterion.</p>
<p>Build in connection to town and regional plans in this process, both as a reference and future training.</p>		<p>✗ Town and Regional Plan conformance is outlined in another Act 250 criterion.</p>
<p>Could provide justification for District Commission to deny permits to developers who want to make improvements to a property that are in existing strip area that are commercially zoned by the municipality.</p>	<p>✓ Pathway 2 provides information on how to meet 9 (L) within an existing strip development. District Commissions can deny on any criteria.</p>	
<p>Nothing referring to lot size and acreage in the document. There are many lots ranging from ¼ to 2 acres that are sandwiched between commercial buildings in areas of strip development. As stand-alone lots, they probably cannot reasonably meet the efficient use recommendations of the guidance document for mixed use.</p>	<p>✓ Language added related to future connections should make it possible.</p>	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Add a one page cover sheet that simply describes the main parts of 9L as worded in the guidance, with page references for more details.	✓ Flowchart utilized for this purpose	
Double check on final document that all page references are correct.	✓ Will do!	
Need to work with communities after this guidance is finalized to help them see how to structure local bylaws to enable efficient use, etc.	✓ Once guidance document is finalized, trainings will be scheduled.	
Define E-911, net density, commercial, infill, closing existing curb cuts.	✓ Provided where information was available.	
Include 'how to' information – where to go for resources and information.	✓ Done via hyperlinks, footnotes and reference section.	
Not necessary to say that burden of proof in on applicant		✗ Requested by others so included
Consider communication piece around the practical implications of this law on pre-existing strip development areas.		✗ The guidance documentation provides information for this type of land use.