

**Comments on the 9(L) December 2015 Draft Guidance Document and  
How Comments Were Addressed in Final Document**

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 Comments are grouped under the major headings of the December 2015 draft guidance document.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

***Flowchart***

Based on comments from the October draft, a flow chart was added to the December draft provided to stakeholders.

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
In the final document, add page references within the boxes of the flowchart that link to the appropriate section in the guidance to help make it easier for people to find clarifying language, diagrams, photos, etc.	✓ Added in final draft	
Add 'opt out' path for industrial parks and ski areas similar to purely residential.		✗ 'Purely residential' developments are not commercial development and thus, the flow chart indicates that these types of development do not need to be evaluated for strip development pathways. Industrial parks and ski areas are (in some regards) commercial development.
Do not add the 'opt out option' as noted above as they are included in the definition of strip development	✓ See above.	
Fix typos	✓	

### **Background and Guidance Overview**

Based on the comments from the October draft, the *Overview* section was removed and a new format was added that included a brief background of state planning policy in a *Background* section with detailed links to this history at the end. An overview on how to use the document is included.

<b>Comment</b>	<b>Addressed</b>	<b>Not Addressed and Reason</b>
Additional links to historical documents provided.	✓ Added to the final section of the document.	
After examples used in this outreach material are for illustrative purposes, add actual conditions on the ground are likely to vary significantly by community.		✗ This is already implied by the first sentence and is also included throughout the document.

### **Existing Settlement Determination**

<b>Comment</b>	<b>Addressed</b>	<b>Not Addressed and Reason</b>
“An area that is compact should feel safe and comfortable for pedestrians.” “Safe and comfortable” is subjective. Suggest replacing with “An existing center will typically have features that cater to pedestrians helping make it a more comfortable and inviting place to walk.”	✓ Deleted ‘safe’.	✗ ‘features’ are addressed elsewhere and not in the compact evaluation.
“Street should have clear and consistent edges...” Suggest instead “the built environment along streets will generally have consistent placement close to the street...”	✓ Modified language as suggested.	
“Predominantly multi-story buildings...” – I know this is in statute but disagree with this factor.		✗ It is in statute and thus guidance is provided.
Walking distance – something should be added to clarify that this does not mean ‘existing centers’ are limited to one-half mile radius.	✓ Modified language and included Burlington as an example of a larger area. Municipalities may also have multiple centers.	
Element #2 has a distressing ‘should’ in the first sentence, implying that a mix of uses is not in fact required.	✓ ‘Should’ was removed.	

### Efficient Use Requirement

Comment	Addressed	Not Addressed and Reason
Recommend hard-page break before this section	✓ Formatting changed.	
Figure 10: this is not obviously inefficient use.	✓ Modified figure to clarify.	

### Definition of Strip Development

Comment	Addressed	Not Addressed and Reason
Recommend hard page break before this section.	✓ Formatting changed.	
“Strip Development means linear commercial development along a public highway...” This suggests that this is a threshold criterion and thus linear and public highway need to be clarified.	✓ Definitions added.	
Add ways to minimize broad road frontage...	✓ Addressed by new language in linear commercial development. Minimization of broad road frontage is in the following sections.	
Be clear upfront why you are talking about minimizing the characteristics of strip as it is particularly relevant to Pathway 2.	✓ Clarifying language added.	
There were comments at the meeting suggesting that a project being proposed in the ‘middle of nowhere’ could lead to strip development over times. While I understand that this can happen, it doesn’t necessarily mean that it will and we should not be asking District Commissions to make this determination. <i>If someone wants to make an argument like this in an Act250 hearing that is fine, but we shouldn’t be adding anything to the guidance to aid in making project decisions based on the likelihood of future development.</i>	✓ No language was added.	
In the second sentence of the first paragraph under Pathway 1: Please consider revising the sentence to read: “for the purposes of Act 250, a project constitutes strip development if it is <b>linear commercial development along a public highway</b> and has three...	✓ Edits added.	
Suggest that each of the 7 tests for Strip Development have the test and not include ways to minimize or mitigate failing to meet the test.	✓ We reformatted to try and provide separation.	✗ We did not split out into two sections as we felt the current flow was more coherent.

<b>Comment</b>	<b>Addressed</b>	<b>Not Addressed and Reason</b>
<b>Broad Road Frontage</b>		
Add that 'layering uses behind' helps to minimize.	✓ This is addressed in the new language regarding linear commercial development that was added.	
<b>Predominance of Single-Story Buildings</b>		
Predominance of single-story buildings – recommend adding a statement that acknowledges that some uses are not readily amenable to multi-story and that sometimes the market and financing requirements will not support or enable multi-story.	✓ The minimization suggestions provide options for addressing this requirement.	✗ This is the language in statute. As with any Act 250 criterion, the applicant will make the case for why they do or do not meet the requirements.
<b>Limited Reliance on Shared Highway Access</b>		
This can relate to shared access for more than one property or <i>shared access for multiple uses on a single property.</i>	✓ Language changed.	
<b>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</b>		
Clarify “an adequate mechanism for funding the connection to the existing settlement.” Perhaps better phrasing along the lines of “provided the design allows for connections and there is a reasonable likelihood that the connection to the existing settlement will be achieved in a reasonable timeframe based on municipal plans, plans of other developers or similar factors.”	✓ Language modified.	
The irony of planning parking to the side or rear of the building is to make it less convenient for the majority of pedestrians.		✗ No change, this comment is inaccurate.
Limited reliance on shared highway access – I think it should be clearer as to whether or not this relates to access within the confines of the development or how the proposed development area is accessed externally via a public highway.	✓ Modified text to clarify.	

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
<b><i>Lack of Coordination with Surrounding Land Use</i></b>		
May want to clarify to indicate that this looks at the ‘smaller context’ of just looking at neighbors while the above characteristics look at the bigger picture – spanning the distance between the proposed project and the closest existing settlement.	✓ Made additional reference to surrounding properties/uses.	
Concerns with this element as it is not achieved simply with good landscaping and aesthetically pleasing design. A well-designed and aesthetically pleasing development that is proposed in an area that has minimal existing development is a well-designed node of sprawl. Suggested edits were provided that gave examples. Suggested deleting reference to regional or municipal plans.	✓ Made several of the suggested edits based on these and other comments; eliminated the reference to municipal and regional plans.	
Coordination could mean coordination with the built environment as well as the surrounding landscape/topography.	✓ Clarified.	
<b><i>Limited Accessibility for Pedestrians</i></b>		
Need to clarify that the limited accessibility for pedestrians relates to EXTERNAL connections to the surrounding areas (public highway), not the external connections.	✓ Clarified.	

***Pathway 1: Contribute to a Pattern of Strip Development***

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Change ‘not’ to ‘less’ in the following sentence – If a project does not constitute strip development on its own and makes efficient use of land, energy, roads, utilities and other infrastructure, it is not likely that it will contribute to a pattern of strip development.”	✓ Changed language.	
Troubled by the idea of ‘significant traffic.’	✓ Changed language to refer to uses that attract others. (Although, left reference in self-storage facility example, as it seemed appropriate to mention.)	
Modify “... designed to include <u>at least three</u> of the characteristics of strip development are <u>more</u> likely to contribute to a pattern of strip development...”	✓ Changed language.	

<b>Comment</b>	<b>Addressed</b>	<b>Not Addressed and Reason</b>
"Projects that do not meet the definition of strip development are <del>unlikely</del> <u>less likely</u> to contribute to a patter on strip development..."	✓ Changed language.	
Must look at settlement patterns surrounding land uses (existing and zoned) and context.	✓ Clarified.	
Clarify site vs context in regards to characteristic so strip.	✓ Added language to clarify.	
Consider other rural uses like the Wildflower Inn in Lyndonville.	✓ Added additional rural use examples.	
Consider stating a presumption that a proposed greenfield development violates 9(L) and that the applicant must rebut it by showing that this type of development does not attract more sprawl.		✗ This goes beyond what we understanding to be the role of this guidance and beyond what it outlined in statute.
In the second paragraph, delete the final sentence, "In addition to the project use and design, the context of the surrounding settlement pattern is a factor to consider in evaluating whether or not project circumstances will contribute to a pattern of strip development" and substitute. "The context and character of the area are significant factors in determining whether a project contributes to strip development."	✓ Made the edits.	
Add a reference to attracting other types of commercial development that may be a factor in consideration.	✓ Modified the language to add this concept.	
<i>Add: Other types of settlement patterns, like the creation of a 'leapfrogging pattern' where there are vacant lands between the proposed project and an existing settlement may also contribute to a pattern of strip development. A leapfrog development may also involve the extension of public infrastructure and facilities to serve an area or project through intervening undeveloped areas and thus accelerate the conversion if a rural area to strip development.</i>		✗ This comment is largely addressed in the efficient use section of the guidance.
Additional information provided to help assess the surrounding context so that a decision about whether putting a project in that context will ultimately contribute to strip because of the characteristics of the location. Additional considerations included: <ul style="list-style-type: none"> <li>✓ Proximity to an existing settlement</li> <li>✓ Underlying zoning</li> <li>✓ Traffic generation</li> <li>✓ Visibility from the roadway</li> <li>✓ Magnet effect of uses</li> <li>✓ Blurring the edges</li> </ul>	✓ Added some additional language regarding context and character of the area and 'magnet effect'. Some the other issues (zoning, traffic, visibility) also mentioned in document.	✗ No consensus on content of suggested information beyond what was included. May go beyond what is intended in statute.

**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>
The example helps to illustrate this concept. However, it shows a single, linear highway. A lot of “existing strip development is located at a crossroads.” What would the map look like if it was an X or square.		✘ We did not modify as the definition of strip development in the statute is ‘linear commercial development along a highway.
How does ‘confined to’ related to creating additional depth of development.	✓ As mentioned in the guidance, additional depth can help minimize the strip characterization.	
How far back can new development occur and still be considered infill?		✘ There was not literature that we could provide guidance on this question.

**General Comments**

<i>Comment</i>	<i>Addressed</i>	<i>Not Addressed and Reason</i>
Be careful to no ‘write over’ legislative intent.	✓ Reviewed suggested comments and final document with this in mind.	
9L evaluation relies on judgmental opinions instead of prescriptive definitions.	✓ Many Act 250 criterion are written to provide flexibility. The District Coordinators make their judgements based on the information provided and over time, the courts help provide additional information.	
Professionals needing to advise clients have no way to assess the viability of a project.	✓ The guidance was written to assist professionals design projects to meet the criterial. In addition, the NRB will offer stakeholders training on how to use the guidance.	

<b>Comment</b>	<b>Addressed</b>	<b>Not Addressed and Reason</b>
Typically building patterns in communities may not conform to 9 L.	✓ The statute and guidance provides for alternatives for projects whether in an existing settlement or outside.	
In state designated Village Centers, there are often gaps in building structures and these structures are not contiguous even though in existing settlements.	✓ Project is located within an existing settlement, like a state designated center, meet 9(L).	
May eliminate otherwise qualified parcels with adequate soil and structural needs for future development. Topographic constraints are merely listed as a footnote.	✓ Topographical constraints language moved to main body of document.	
I think we should be careful not to make our guidance so specific, or black and white, that we end up with a project this is generally supported by the community but disapproved because it doesn't fit neatly into any box that we create.	✓ The guidance must address a range of development and is therefore written to be flexible. The guidance is intended to help those involved in the process understand key concepts involved in the analysis and interpret the terms adopted by the Legislature Ultimately, District Commission decisions are reviewed by Environmental Court and case law refines this understanding over time.	
The group discussed who the guidance was for and we focused largely on it as guidance for developers and the DC's. We should also recognize that it could also be used to help communities develop plans and bylaws to facilitate infill and non-strip development that is in compliance with 9(L)	✓ If the guidance is helpful for communities, that is a benefit, but the focus is on DC's and those developing projects. RPCs and VPA should consider developing training options for communities interested in crafting plans and bylaws for those municipalities that are interested.	