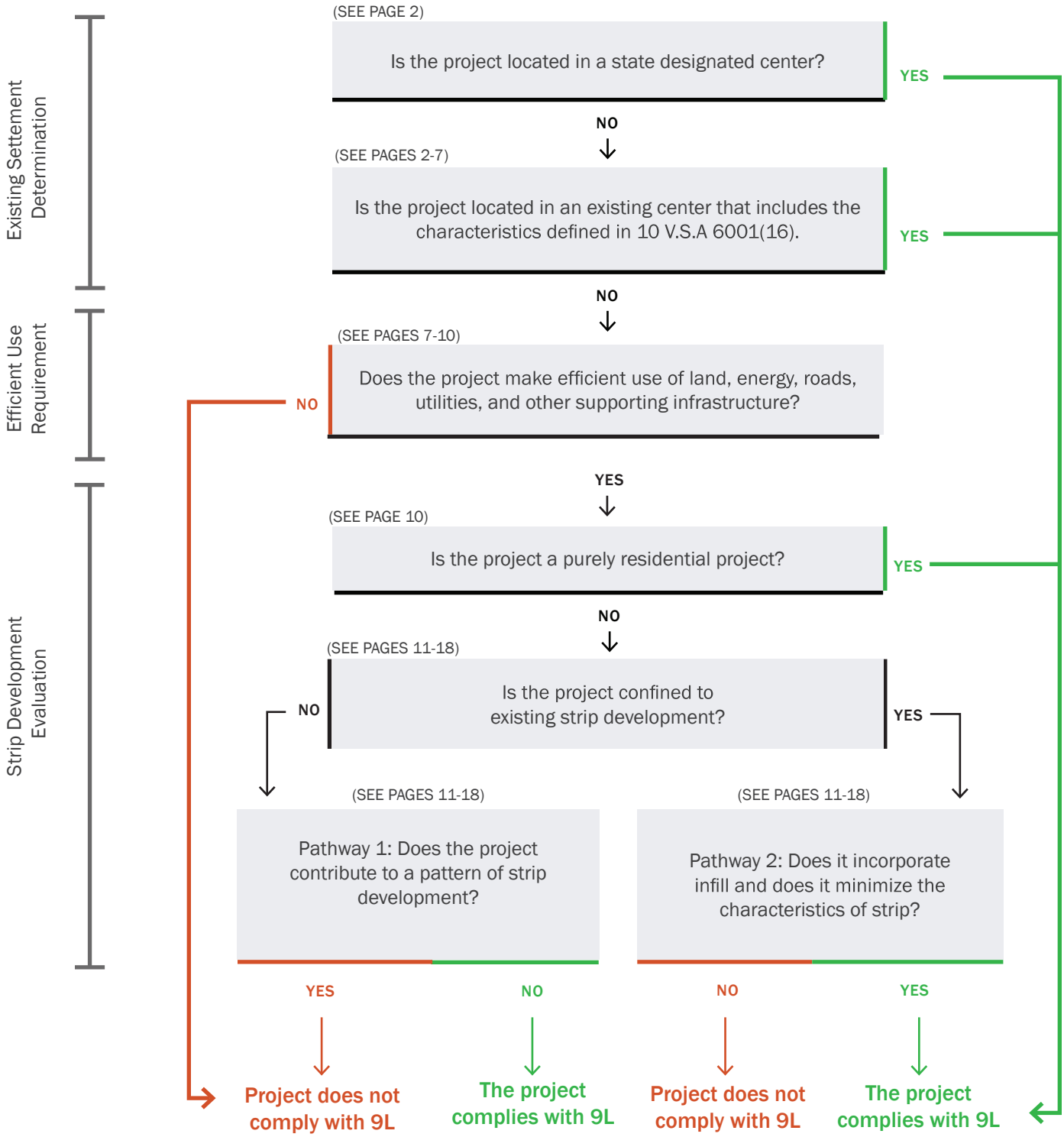
STATE OF VERMONT
NATURAL RESOURCES BOARD
GUIDANCE: CRITERION 9(L) FLOWCHART



02/09/2016

CRITERION 9(L) GUIDANCE 2/9/2016

Disclaimer: The following provides technical assistance on Act 250 Criterion 9(L) (settlement patterns),), 10 V.S.A. § 6086 (a)(9)(L)[1] (effective June 1, 2014). Examples and figures in this guidance material are for illustrative purposes only.

Act 250 Criterion 9(L)
10 VSA § 6086 (9)(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; and

(ii) (I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate 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.

Background

Criterion 9(L)'s underlying goal of promoting Vermont's traditional settlement pattern of compact centers surrounded by working lands is rooted in state planning policy that dates back to "Vision and Choice: The Vermont state framework plan" produced in 1968 by the Vermont Planning Council. For more background on Vermont's commitment to this goal refer to the last page of the document.

Guidance Overview

This document provides guidance to aid in the planning, design and review of a project in conformance with Criterion 9(L). The information provided in the guidance is based on literature in the fields of land use planning and urban design, as well as evidence grounded in data and examples from Vermont. Ultimately the courts will issue decisions that definitively interpret the statute. In the interim, this document is intended to help District Commissions as well as Act 250 applicants understand the key concepts involved in the analysis and interpretation of the terms adopted by the Legislature. The document is divided into 3 sections:

1) Existing Settlement Determination
2) Efficient Use Requirement
3) Strip Development Evaluation

Hyperlinks included throughout this document have been included as footnotes for the benefit of anyone reading a paper copy of the guidance.

[1] http://legislature.vermont.gov/statutes/section/10/151/06086

Existing Settlement Determination

The first step is to determine whether the project is in an "existing settlement" as defined by statute. If a project is within an existing settlement, it complies with 9(L) and no further 9(L) analysis is required. If a project is not in an existing settlement, it can comply with 9(L) by meeting the efficient use requirement and, if applicable, satisfying the strip development evaluation (see proceeding sections of the guidance.) The burden of proof is on the applicant to establish that the project is in an existing settlement.

The definition of an existing settlement is found in 10 VSA 6001 (16.)[2] A project is considered to be inside an existing settlement if **either**:

1. The project is located inside a *designated center. A designated center means an area that is designated by the state pursuant to 24 V.S.A. chapter 76A[3] as a Downtown Development District, Village Center, Growth Center, New Town Center, Vermont Neighborhood or Neighborhood Development Area.* There are over 150 state designated centers in Vermont. Click here: http://smartgrowth.vermont.gov/ and enter the address of the development to determine if the project is located in a state designated center;

   OR

2. The project is located inside an area that meets the following definition: *An existing 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 settlement; and that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit and public parks or greens*.

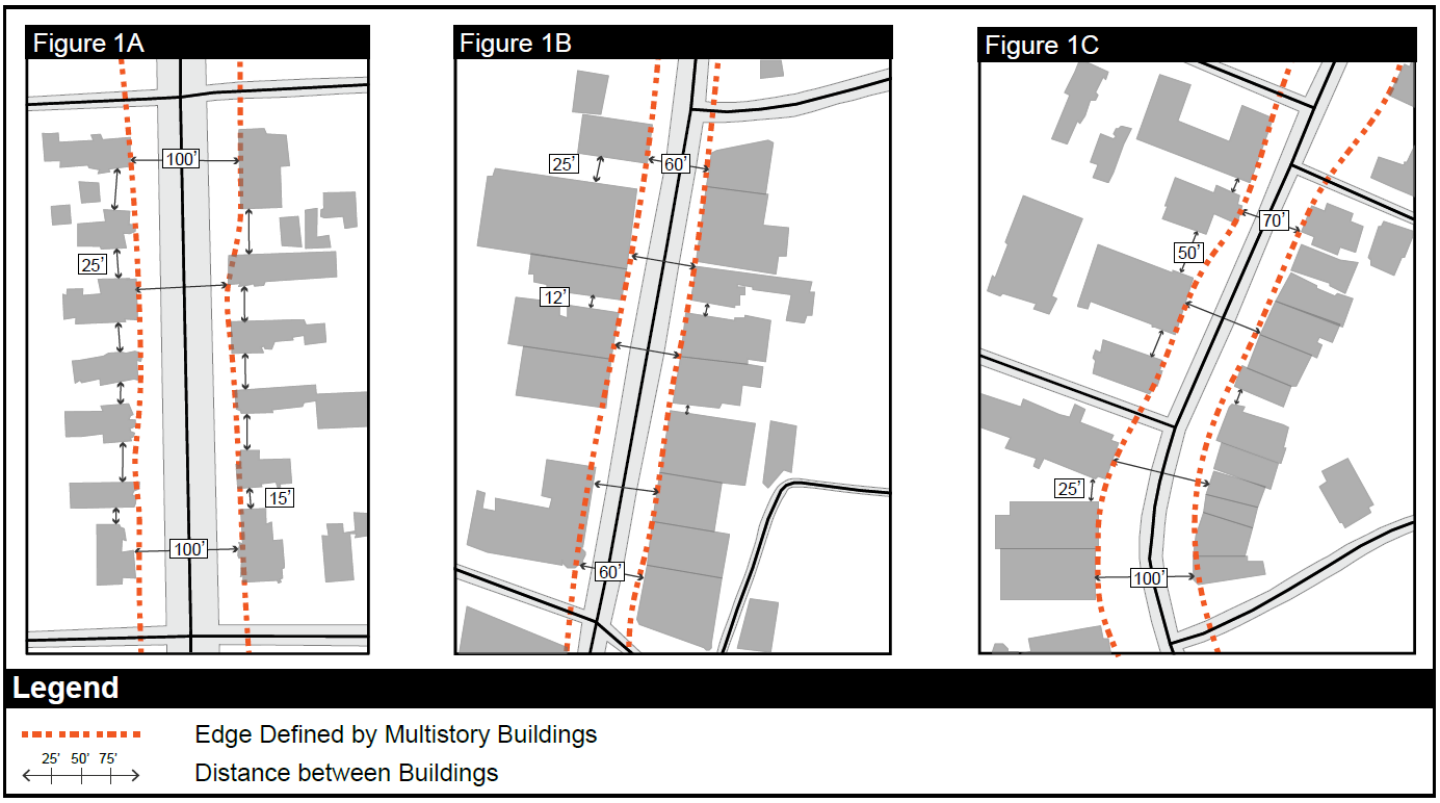
Guidance on how to evaluate whether or not an area has all of the elements of an existing settlement outside of a designated center is provided below. It should be noted that areas just outside the boundaries of state designated centers are often existing settlements, as they tend to be residential areas adjacent to commercial cores that include the four characteristics of existing settlements and thus meet the definition in statute. Existing settlements are not limited by political boundaries. Municipalities may have multiple existing centers.

Element #1 - An existing center that is compact in form and size.

Compactness as it relates to the built form of centers is a concept that has been present in land use planning and urban design literature for over half a century. The characteristics of a compact center include: relatively high density, mixed land uses (such as residential/commercial/civic/recreation etc.), opportunities for social interaction, and contiguous building patterns designed to encourage walking and cycling. An area that is compact should feel comfortable for pedestrians. Compact centers should generally have roads with speed limits of 30 miles per hour or slower, as faster roads are more dangerous for pedestrians. (An exception to this general rule, that would not disqualify a center from being considered compact, would be State Highways, on which the Vermont Agency of Transportation typically requires a speed limit of at least 35 miles per hour.) Streets should have clear and consistent edges defined predominantly by the placement of multi-story buildings close to the street, with few gaps between them, and that are architecturally oriented to pedestrians by having front doors facing the street[4,5].

[2] http://legislature.vermont.gov/statutes/section/10/151/06001
[3] http://legislature.vermont.gov/statutes/chapter/24/076A
[4] Campoli, J. (2012) *Made for Walking,* Cambridge, MA: Lincoln Institute of Land Policy
[5] United States Department of Transportation (2009) *Speed Concepts: Informational Guide*

FIGURE 1 (A, B & C): Compact form at different scales. The images below depict the building footprints that have clear and consistent edges defined by multistory buildings that are close to the street, have few gaps between them and have front doors oriented to pedestrians.



Figures 1A, 1B, and 1C depict typical building patterns that are compact in form for small, medium and larger Vermont municipalities. While communities may be vastly different in scale, streets within their existing settlements have consistent edges defined by multi-story buildings that are close to the street. There are some differences between the spacing of buildings in small villages and bigger centers, as one can see in the different examples provided in Figure 1. Occasional gaps, parks, waterways and topographic features typically provide breaks in the pattern. Figure 2 includes streetscape photos that show compact form within a medium sized downtown and a small village.

FIGURE 2: Compact form in a Vermont downtown and village.

Compact size as it relates to centers is a highly relative concept, especially in a state like Vermont where they can be as small as a country store, a post office, school or church, and a cluster of homes or as large as downtown Burlington and its surrounding area. Small towns, like Townshend, may have centers that are approximately 30 acres in size and less than half a mile from end-to-end. Medium sized towns like Bristol, may a have center that is 1.3 miles across and 230 acres in size. Vermont's largest existing settlement (Burlington's downtown and surrounding area) is over 2.5 miles across and nearly 2000 acres in size. Most centers in Vermont are on the smaller end of that size range.

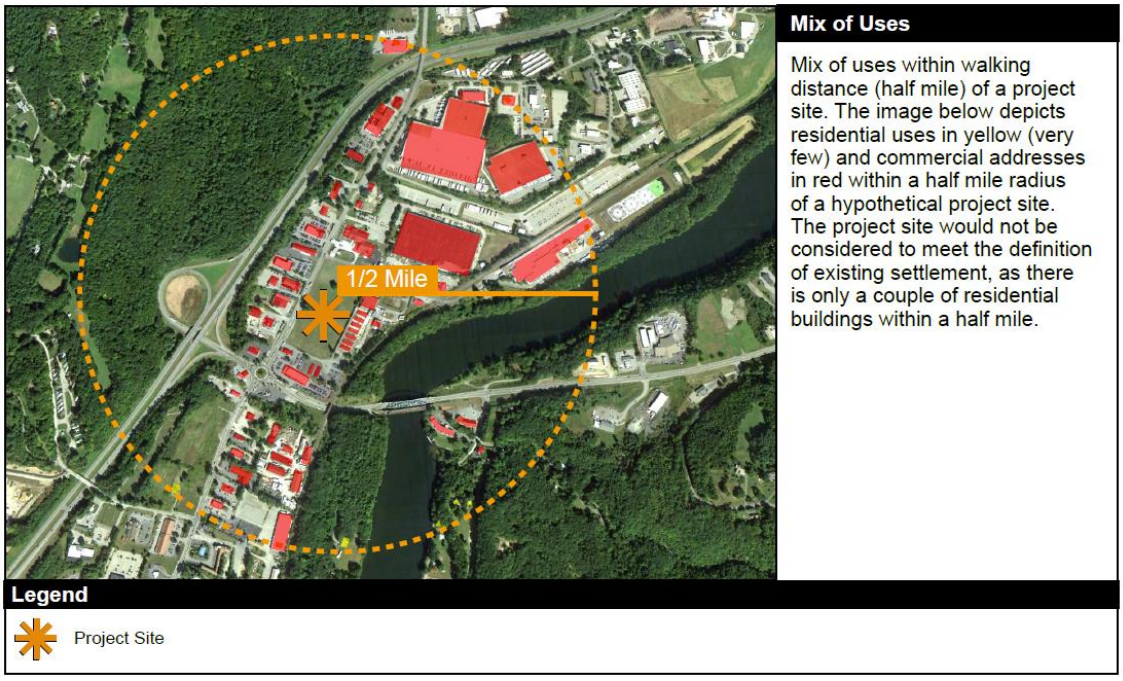
Element #2. An existing center that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other.

An existing settlement includes a blend of retail, office, civic, institutional, cultural and recreational uses, as well as a substantial residential component. Human settlements have traditionally been built with a mix of different uses which reduces distances between where people live, work and access services.

To determine what a 'substantial residential component' was, we examined concentrated centers across Vermont and analyzed the building use types within them and within walking distance. The method we used to perform this analysis involved calculating the percentage of residential structures inside and within a quarter mile of the village centers and half mile of downtowns. These areas include a wide diversity of centers across Vermont, including some without centralized water and wastewater facilities. A minimum of 50% of habitable buildings in those areas are residential and the median % of residential structures is 76%. Based on this finding, this guidance recommends that a 'substantial residential component' is 50% or more.

The planning profession has consistently defined walking distance to be between one quarter and one-half mile. The vast majority of existing settlements in Vermont fit within a quarter mile radius of their commercial centers, while larger centers extend about a half mile from their commercial cores. One method of assessing whether or not there are a mix of uses with a substantial residential component within walking distance is to examine the ratio of uses within a half mile radius. If fewer than 50% of structures within a half mile of project are residential, the project is unlikely to be in an existing settlement as it may not qualify as having a substantial residential component.

FIGURE 3: Mix of uses within walking distance (half mile) of a project site. The image below depicts residential and commercial buildings within a half mile radius of a hypothetical project site. The project site would not be considered to meet the definition of existing settlement, as there is only one residential building within a quarter mile.

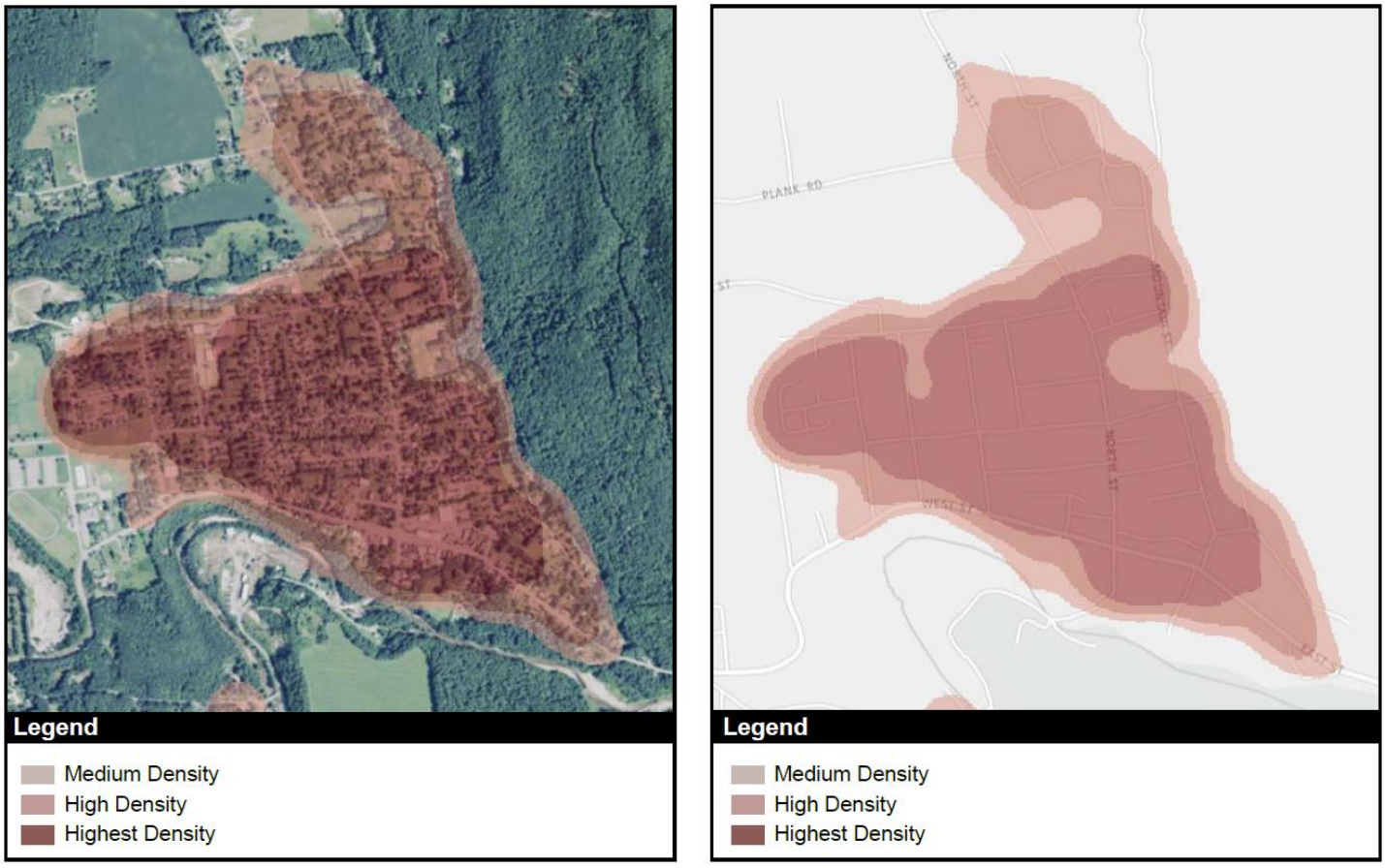


Element #3. An existing center that has significantly higher densities than densities that occur outside the settlement

Density can be measured in many different ways, such as the number of people, floor area or housing units per unit of area. Considering the different scales of settlements in Vermont, what qualifies as 'higher density' will vary considerably. The net neighborhood residential densities for existing centers in Vermont can range from over 20 units an acre in areas of Burlington to close to 1 unit an acre in smaller villages. Vermont's Neighborhood Development Area designation program requires that bylaws allow for a minimum of 4 units an acre and the program's design guidelines[6] include a definition for net residential density and a methodology for calculating it.

While many density calculations can be complex and challenging, one type of density that can be measured statewide with relative ease is E-911 point density, which is based on the street addresses of buildings. The 'Density of Habitable Structures' layer[7] depicted on the ANR Natural Resources Atlas[8] illustrates building densities throughout Vermont and can help assist in determining if the density of an area is significantly higher than surrounding areas. This approach can easily help illustrate if a project is located in an area of higher density (See Figure 4). The 'Density of Habitable Structures' is a statewide layer available for viewing on the ANR Natural Resources Atlas.

FIGURE 4: Screen shot of the 'Density of Habitable Structures' layer on the ANR Natural Resources Atlas. The areas shaded in pink represent areas that have higher densities of E-911 points, with the darkest shade representing the highest density. The image on the left depicts the density layer over an orthophoto while the photo on the right includes the road network of the same area.



[6] http://accd.vermont.gov/strong_communities/opportunities/revitalization/vermont_neighborhoods
[7] The 'Density of Habitable Structures' layer was created using July 2015 EmergencyE911_ESITE data in ArcMap and included all habitable buildings in a kernel density analysis with an output cell size of 10 meters and search radius of 200 meters).
[8] http://anrmaps.vermont.gov/websites/anra/

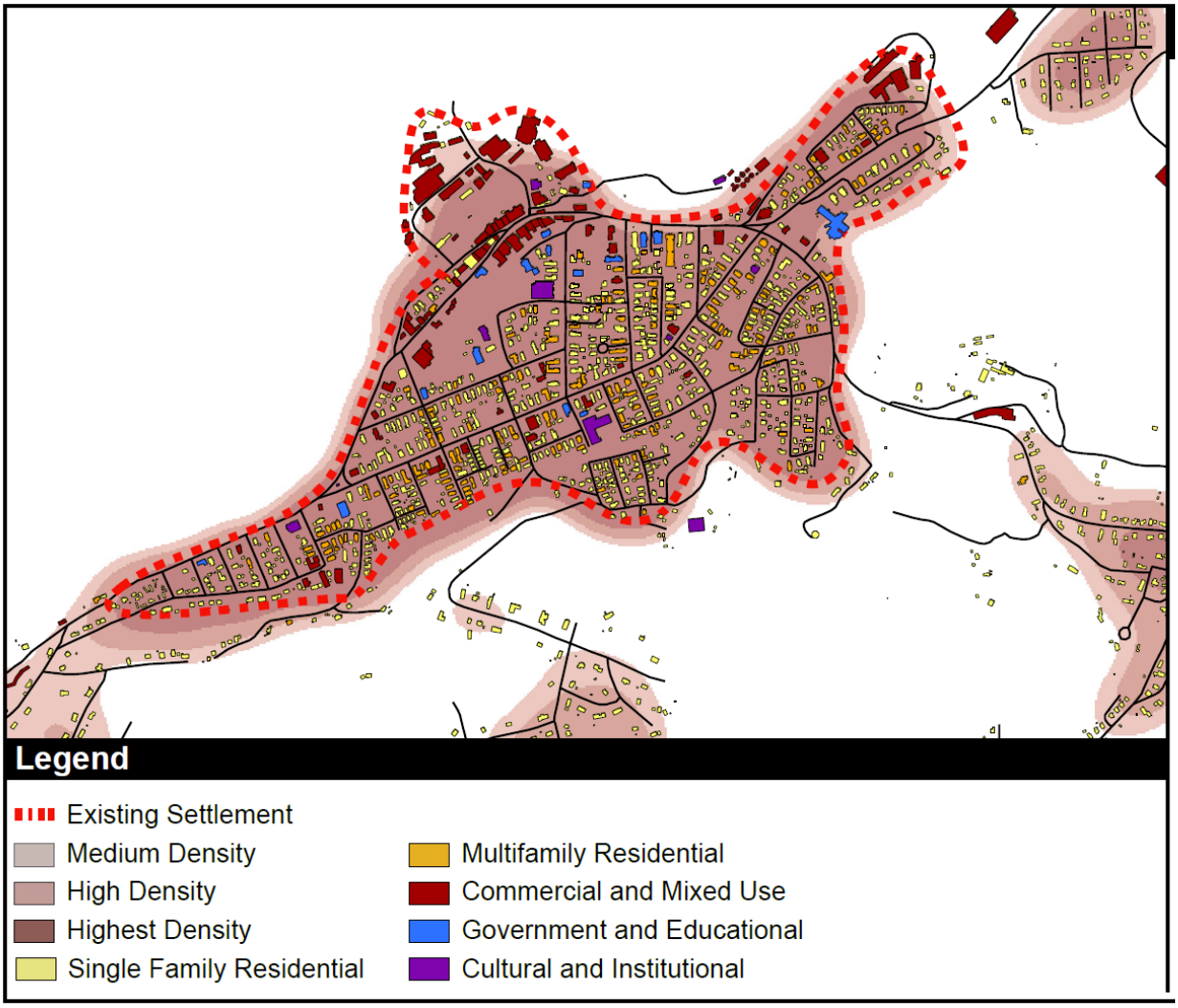
Element #4. An existing center that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

Evaluate the area to see if this municipal infrastructure is present. While no single one is determinative, areas without at least some of this municipal infrastructure are unlikely to qualify as existing settlements. Smaller existing settlements will be less likely to have all of these types of infrastructure.

Looking at the elements together.

Putting together the information described in the above mentioned four elements can be helpful in determining whether or not a project is located within an existing settlement. Figure 5 presents the area of an existing settlement by overlaying the building density, building footprints and uses for an area that is serve by all the infrastructure listed in Element #4. Buildings are predominantly multi-story buildings, close to the street, have few gaps between them and most are architecturally oriented to pedestrians by having front doors facing the street. Building densities are in the 'high' or 'highest' range on the data layer available on the Natural Resources Atlas. Speed limits within the area are 30 mph or lower, with the exception of a portion of state highway that has a speed limit of 35 mph. Residential structures in the area represent 79%, and all are within a half mile from the commercial core of the settlement. The edges of the settlement coincide with a sustained break in the building pattern.

FIGURE 5: An existing settlement boundary that is a center with compact form, significantly higher density than the surrounding area, and a mix of uses within half mile radius of the commercial core for an area served by a diversity of municipal infrastructure.



If a project is within an existing settlement, it complies with 9(L) and no further 9(L) analysis is required. If a project is not in an existing settlement, it can comply with 9(L) by meeting the efficient use requirement and, if applicable, by satisfying the strip development evaluation.

Efficient Use Requirement

If a project is outside an existing settlement, statute requires that the project must make efficient use of land, energy, roads, utilities and other infrastructure. Purely residential projects that meet the efficient use requirement comply with criterion 9(L). Commercial projects that meet the efficient use requirement must be reviewed under the 'strip development evaluation' section of the guidance beginning on page 10.

Projects that include the extension of utilities such as sewer, water, or power beyond areas already serviced, or where there are vacant lands between the proposed project and an existing settlement, must include evidence that the area is planned for growth and that the expansion is necessary to make efficient use of the land and will help minimize characteristics of strip development. Areas where municipal utilities will be expanded beyond existing service areas should be limited to those areas that municipalities have planned for growth where long term fiscal impacts associated with maintenance and eventual replacement of the infrastructure have been considered.

What will qualify as "efficient use" of the land, energy, roads, infrastructure, utilities and other infrastructure will vary widely and depend on the context of the property in relation to neighboring developed, undeveloped, and planned spaces, the nature of the use, the topography and existing natural features of the site. For example, what is considered an efficient layout for industrial uses that require a turnaround for large trucks and loading docks will be different than mixed-use retail, office and residential building.

General strategies to increase efficient use include:

- consolidating and coordinating utilities;
- consolidating and coordinating access;
- mixing uses, such as residential, office and retail;
- multistory buildings;
- clustering development;
- minimizing off street parking and using shared parking;
- using on street parking, which generally utilize half the space of off-street lots;
- planning to accommodate future development;
- design that fosters a grid network of roads;
- redeveloping existing buildings and site;
- minimizing setbacks;
- building energy efficient structures;
- integrating renewable energy generation.

Several examples of projects that make 'efficient use' and others that do not are provided below. The examples are provided to highlight some of the above mentioned points and each reflect their unique circumstances.

FIGURE 6: Efficient Use – Residential, Office and Retail Example

Project includes 122 dwelling units, 55,200 square feet of retail and 26,000 square feet of office on 16 acres of land with 3300 linear feet of road. The project redevelops a driving range and effectively mixes uses, uses on-street parking, shared parking, minimizes setbacks, connects to adjacent water and wastewater infrastructure, connects to an adjacent neighborhood, accommodates future connections, consolidates access to an arterial road and is served by public transit. All buildings in the project are multi-story.

Legend

- Commercial Mixed Use
- Multi-family Residential
- Two-family Residential

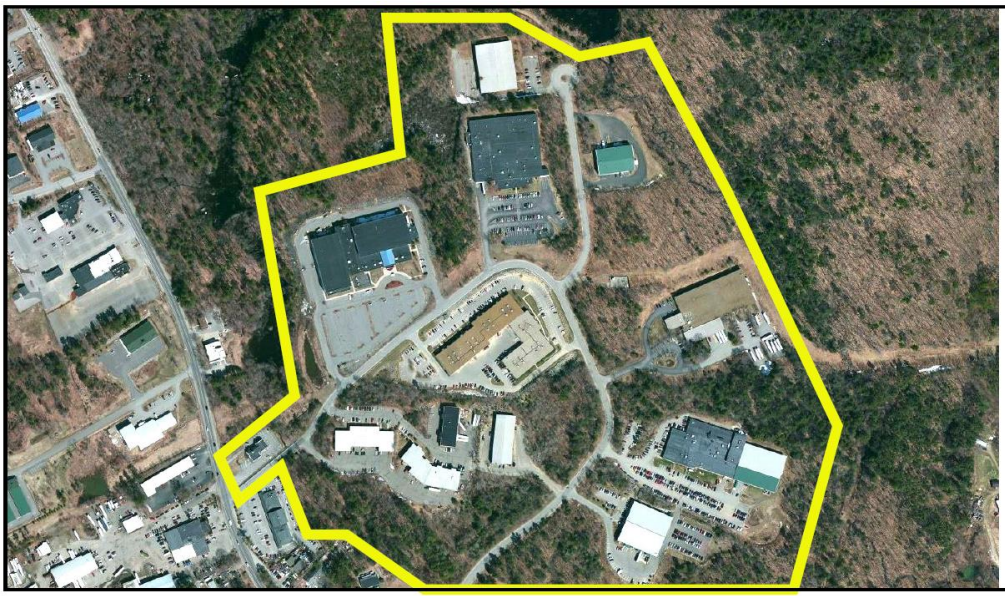
FIGURE 7: Inefficient Use – Residential and Office Example

Development includes 175 single family homes and 50,657 square feet of single story office on approximately 300 acres. 17,000 linear feet of road and approximately 6 times the amount of public water and sewer infrastructure as the mixed use project above. The project does not include: shared parking, on-street parking, shared access, accommodate future development, or connect the residential and commercial development.

FIGURE 8: Efficient Use – Industrial Example

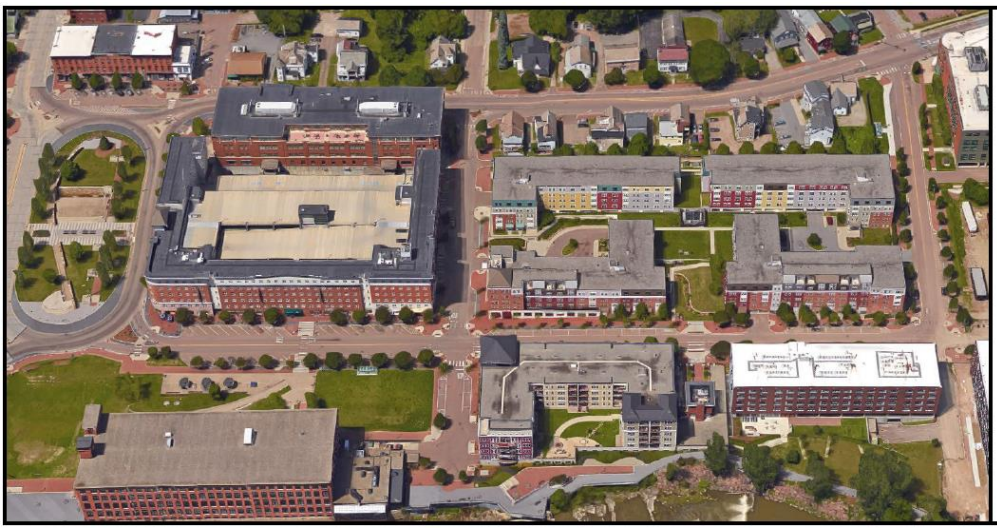
Project is industrial park that includes approximately 500,000 square feet of manufacturing space on 60 acres. The park has 2600 linear feet of road with private communal community water and sewer. The buildings were built over time and range from 18,400 to 100,000 square feet – with the option of subdividing buildings down to 2,500 square feet with shared use of loading docks. The uses are limited to those industrial in nature allowing for minimized setbacks and parking.

FIGURE 9: Inefficient Use – Industrial and Office Example



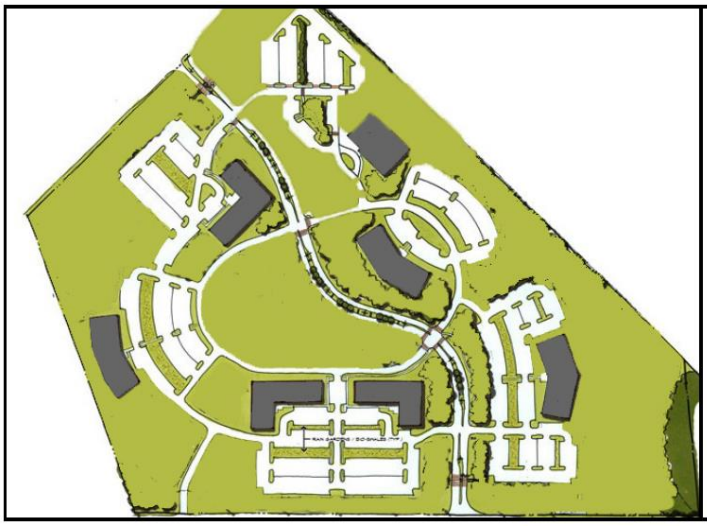
Project includes 485,540 square feet of commercial space on 125 acres with 7245 linear feet of road. Public water and sewer were extended to to serve the project. The inclusion of office use in the park is setback from manufacturing uses. Some parking area were overbuilt and the layout does not make efficient use of the land area. Future expansions were not planned.

FIGURE 10: Efficient Use – Residential, Office and Retail Example



Project includes approximately 300,000 square feet of commercial space on and several hundred housing units on 16 acres. The project is a redevelopment of a strip mall that effectively mixes uses, uses on-street parking, shared parking in a parking garage, minimizes setbacks, connects to adjacent water and sewer pipes, connects to an adjacent neighborhood and is served by public transit.

FIGURE 11: Inefficient Use – Office Example



Project includes 300,000 square feet of office space on 56 acres of open space in 7 single story buildings. There is no shared parking, on-street parking, or connections to adjacent lands. Municipal water and sewer lines are extended 3,000 feet from the existing service area to the property and 6,500 new linear feet of roads are included in the project.

If a project does not make efficient use of land, roads, utilities and other infrastructure, it does not comply with 9(L). Purely residential projects that meet the efficient use requirement comply with criterion 9(L). Non-residential projects that meet the efficient use requirement must be reviewed under the 'strip development evaluation.'

Strip Development Evaluation

If a commercial project is outside existing settlement, but does make efficient use of land, roads, utilities and other infrastructure, an applicant must then demonstrate compliance with criterion 9(L) by showing that the project **either**:

> *(I) will not contribute to a pattern of strip development along public highways;*
>
> ***or***
>
> *(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate 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.*

These are two separate pathways for satisfying 9(L). If one pathway is satisfied, a District Commission is not required to make findings regarding the other pathway. Projects that are confined to areas of existing strip development have the option of being evaluated under pathway 2, whereas projects that are outside of areas of existing strip development should be evaluated under pathway 1. The burden of proof is on the applicant to establish that at least one of the pathways is satisfied.

Because an understanding of the definition and characteristics of strip development is necessary under both pathways, the two pathways are described in detail following the explanation of the definition and characteristics of strip development.

DEFINITION OF STRIP DEVELOPMENT

Strip Development is defined in 10 V.S.A. 6001(36)[9]:

> *Strip development means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, lack of connection to surrounding land uses except by highway, lack of coordination with surrounding land uses, and limited accessibility for pedestrians. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.*

The first component of the definition states that strip development is "linear commercial development along a public highway."

"Linear commercial development" means development that is arranged along a road and lacks depth or additional layers of development away from the primary road.

"Commercial" is defined for purposes of Act 250 as "the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object or service having value."

"Public highway" is defined under Vermont law as "only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the State by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the

[9] http://legislature.vermont.gov/statutes/section/10/151/06001

Agency or town. However, the lack of a certificate of completion of a State or town highway shall not alone constitute conclusive evidence that the highway is not public. The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures…" 19 V.S.A. §1 (12).

The seven characteristics of strip development and examples of how a project can minimize them are listed below. Suggested ways to minimize the characteristics are included because they are relevant to Pathway II, discussed below.

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. An example of topographic constraint that may necessitate a characteristic of strip development is a steep ravine that prevents a connection to an adjacent property. Figure 16, below the listed characteristics, depicts a project that includes all seven characteristics of strip and Figure 17 illustrates an example of an infill project that has minimized characteristics of strip development.

A project is considered strip development for purposes of Act 250 if it includes three or more of the following characteristics:

1) Broad road frontage. Buildings or parking lots that extend along the highway, lack depth and have large side setbacks exhibit broad road frontage.

   Minimizing this characteristic: Adding new buildings in large parking areas and creating new streets and sidewalks that shorten block length is an approach to minimize this characteristic. In order to minimize this characteristic, parking lots should also be reoriented so that they do not dominate the frontage; for example, by adding on street parking relocating parking lots to the side or rear of the building (see Figure 12 A & B).

FIGURE 12 A & B: Infill project minimizing broad road frontage. Adding new multistory buildings to a large parking area in front of a strip mall breaks up broad road frontage and adds depth to the development.

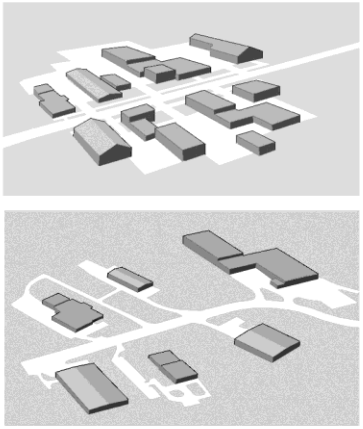
2) Predominance of single-story buildings. If a majority of structures in a project are single story, the project exhibits a predominance of single-story buildings. Note that second story façades simulating two stories should not count as multi-story.

Minimizing this characteristic: Construction of multi-story buildings or the addition of a second-story to existing buildings could minimize the predominance of single-story buildings. Locating multi story buildings in front of single story buildings can also help minimize this characteristic (see Figure 13 A & B).

3) Limited reliance on shared highway access. (i.e. exclusive access driveway). If the primary access to the project is directly onto the highway and if that access does not serve any surrounding development, the project exhibits limited reliance on shared highway access.

Minimizing this characteristic: Closing existing curb cuts, consolidating accesses or connecting access with surrounding properties are approaches to minimize this characteristic (see Figure 13), as is providing shared access for multiple uses on a single property. Another way to minimize or avoid this characteristic is to reserve access for future development or redevelopment on adjoining properties. The District Commission should also consider access management plans and official maps adopted by local communities in accordance with Title 24, Chapter 117 to help determine the applicability of this characteristic.

FIGURE 13: Shared highway access vs exclusive access drives.



4) Lack of connection to any existing settlement except by highway. If there are no sidewalks or other pedestrian multi-use infrastructure that connect a development to an existing settlement, the development displays this characteristic.

Minimizing this characteristic: Building a path or sidewalk connecting the project to an existing settlement would minimize this characteristic. On-street parking, where appropriate, can be part of a pedestrian friendly development and may minimize this characteristic. Depending on the nature of the project and the surrounding area, a plan for future pedestrian infrastructure may suffice to minimize this characteristic, provided that the design allows for connections and there is a reasonable likelihood that a connection to the existing settlement will be achieved in a reasonable timeframe based on municipal plans, plans of other developers, or similar factors.

5) Lack of connection to surrounding land uses except by highway. There is a lack of connection to surrounding land uses if one must drive back onto a highway in order to access a neighboring property. This characteristic considers the immediately surrounding area, while characteristic 4 considers the area between the proposed project and the nearest existing settlement.

Minimizing this characteristic: Providing pedestrian and bicycle access to adjacent properties is one way to increase connectivity. Another way to minimize or avoid this characteristic is to reserve access for future development or redevelopment on adjoining properties.

6) Lack of coordination with surrounding land uses. If the site layout of a property fails to consider its surroundings or doesn't anticipate future connections to surrounding properties – the project may lack coordination with surrounding land uses. This characteristic includes consideration of the built environment as well as the surrounding landscape and topography. Coordination with surrounding land uses does not mean that uses and building sizes need all be the same or similar, diversity does not mean lack of coordination. Some uses, such as heavy industrial or warehousing may not be compatible with other uses, such as residential, and thoughtful separation between them may be needed.

Minimizing this characteristic: Building or redeveloping a site in accordance with a plan for the area such as a regional or municipal plan is likely to minimize this characteristic. A plan should show how the area will develop over time, connecting properties and minimizing other strip characteristics.

7) Limited accessibility for pedestrians. If there aren't any pedestrian walkways separated from vehicular traffic that connect the sidewalk on the highway with the front door(s) of the development, the project has limited accessibility for pedestrians (see Figures 15).

   Minimizing this characteristic: Minimizing this characteristic could include siting a building next to the street, orienting the front door to pedestrians and placing parking lots on the side or the rear of the building (see Figures 14 & 15.) Walkways should connect pedestrians to transit stops, street crossings, buildings and store entry points, and central features and community spaces on or adjoining the site. Pedestrian infrastructure may take a different form in rural areas. On street parking can increase pedestrian accessibility by providing a buffer between walkways and moving traffic. (Figure 14 and 15.)

FIGURE 14: The upper image shows buildings closer to the street, with trees to serve as a buffer between pedestrian areas and traffic, with parking in the rear. The lower image is less accessible for pedestrians because they must cross the parking area to get to the building and there is little or no buffer between the pedestrians and traffic.

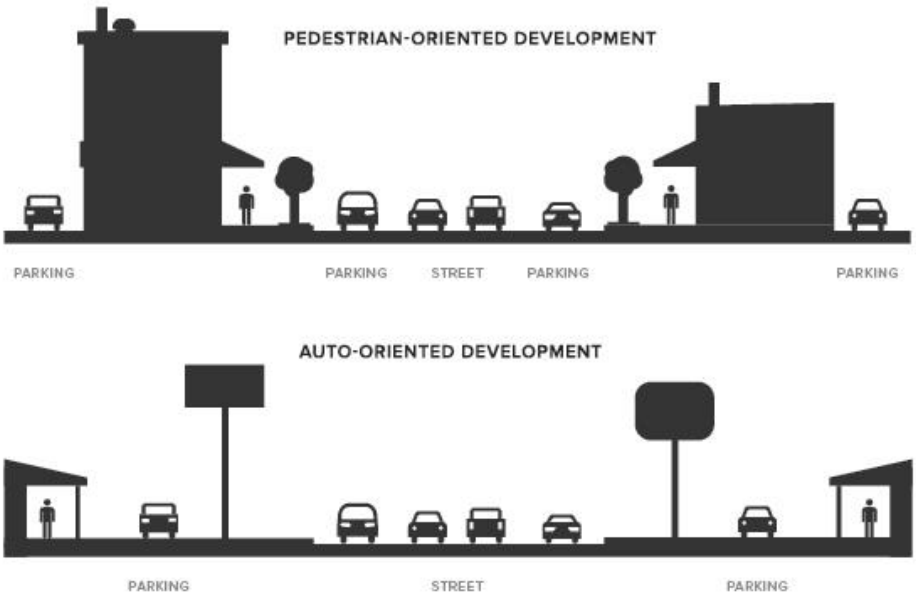


FIGURE 15: The development depicted below includes a multistory grocery store and retail building, both designed with entrances that are oriented to pedestrians and convenient to those using the parking lot.

FIGURE 16: Retail store that exhibits all 7 characteristics of strip development

FIGURE 17: Example[10] of infill project that minimizes some characteristics of strip development.

1. Creation of a grid network of streets, helps give the development depth and minimize road frontage.
2. Multistory building on the street.
3. New street connections to neighboring properties limit reliance on highway access and create multiple points of access.
4. Pedestrian accessibility is increased in a variety of ways: having buildings that front on the streets with new sidewalks make it so that pedestrians don't have to cross large parking areas; pedestrian crossings well designed with brick pavers and bump outs that shorten street crossing distances; on street parking throughout the site create a barrier between pedestrian and moving traffic; breaking up larger buildings create permeability and shorter routes for pedestrian.
5. Mixing uses (high density residential, office and retail) in area planned by the municipality as a 'neighborhood activity center' helps coordinate the land uses and makes efficient use of the land.
6. Pedestrian connection to surrounding land use.

Analyzing whether or not a project is in an area of strip development will first help determine whether or not pathway 1 or pathway 2 is appropriate for a project. Projects that are confined to areas of existing strip development have the option of being evaluated under pathway 2, whereas projects that are outside of areas of existing strip development should be evaluated under pathway 1.

PATHWAY I: THE PROJECT WILL NOT CONTRIBUTE TO A PATTERN OF STRIP DEVELOPMENT.

In determining whether a project will contribute to a pattern of strip development, the first question to ask is whether or not the project is strip development. For purposes of Act 250, a project constitutes strip development if it is linear commercial development along a public highway and has three or more of the seven characteristics of strip development (described on pages 11-13 of this document). 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 less likely that it will contribute to a pattern of strip development.

If a project does constitute strip development, the next question is whether or not there are circumstances that make the project more or less likely to contribute to a pattern of strip development. The context and character of the area, including configuration of the surrounding buildings, roads, parking, undeveloped spaces, and other uses on the land creates a "settlement pattern." "Settlement pattern" is different than site design, which is limited to the project site. 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.

[10] Example used in Julie Campoli analysis for application #1R0948

Even if a project exhibits some of the characteristics of strip development, there may be circumstances where it does not contribute to a pattern of strip development. Generally, these circumstances are where the development is not likely to attract other types of commercial development that will contribute to a pattern of strip development. The following are factors which may result in a finding by a District Commission that a project will not contribute to a pattern of strip development:

- If the properties surrounding the project tract are conserved lands that are unable to be developed and the underlying zoning limits commercial development of these properties. Examples could include a winery, country inn, or cross country ski center.
- If the project is located within an industrial park[11].
- If the project is designed to have limited visibility from a public highway, does not use water or wastewater infrastructure and will not generate significant traffic. An example of this would be a self-storage facility.
- If the project is a use that contributes to and supports Vermont's working lands economy. Such projects traditionally fit into the rural landscape and traditional part of Vermont's countryside. Examples include sawmills or other forest products related facilities, stock yards, feed stores, agricultural processing facilities, small engine repair and agricultural or forestry equipment repair or supply.

Other circumstances may make a project likely to contribute to a pattern of strip development. Some uses, such as office, restaurants and retail uses are likely to attract additional linear commercial development. Projects containing any of these uses that are designed to include at least three characteristics of strip development are more likely to contribute to a pattern of strip development and therefore will not likely comply with 9(L).

Projects that do not meet the definition of strip development are less likely to contribute to a pattern of strip development and would therefore be more likely to comply with 9(L).

[11] The definition of industrial park in statute is "an area of land permitted under this chapter that is planned, designed, and zoned as a location for one or more industrial buildings, that includes adequate access roads, utilities, water, sewer, and other services necessary for the uses of the industrial buildings, and includes no retail use except that which is incidental to an industrial use, and no office use except that which is incidental or secondary to an industrial use 10 VSA 6001(37)."

PATHWAY II: IF A PROJECT IS CONFINED TO AN AREA THAT ALREADY CONSTITUTES STRIP DEVELOPMENT, COMPLIANCE WITH 9(L) MAY BE DEMONSTRATED IF THE PROJECT INCORPORATES INFILL AND IS DESIGNED TO REASONABLY MINIMIZE THE CHARACTERISTICS OF STRIP DEVELOPMENT.

A project is "confined to" existing strip development if it is surrounded by strip development on both sides of the project along the same side of the public highway, not merely near other strip development or in an area of scattered development or sprawl. Consistent with legislative intent, the "confined to" requirement ensures that this provision can apply only to sites fully within existing strip development, to guard against leapfrog development, rural sprawl, and any extension of existing strip.

FIGURE 18: Example of an area confined to existing strip development. The area outlined in red represents the area confined to existing strip development. Construction or development with in this area would be considered 'infill'.

If a project is confined to strip development the next question to ask is whether it incorporates infill. Infill is defined as "the use of vacant land or property within a built-up area for further construction or development" 24 V.S.A. § 2791[12]. An area that is confined to existing strip development is considered to be built up, therefore further construction or development in an area confined to strip should be considered infill.

If a project is confined to existing strip development and constitutes infill, the next step is to consider whether or not the project minimizes the characteristics of strip development. Refer to the seven characteristics described on pages of this document to help determine if the characteristics of strip development are being minimized.

Projects that are confined to strip development and minimize the characteristics of strip development comply with 9(L).

[12] http://legislature.vermont.gov/statutes/section/24/076A/02791

REFERENCES & BACKGROUND INFORMATION

For a history of Vermont's commitment to promoting a traditional settlement pattern of compact centers surrounded by working lands refer to these publications:

Report of the Smart Growth Committee (2009)
- Committee created by Act 176 of the 2007 Legislative Session

Vermont by Design: Challenges and Recommendations on Improving the Structure of Planning in Vermont (2006)
- Vermont Council on Planning

Vermont Interstate Interchange Planning & Development Design Guidelines (2004)
-Department of Housing and Community Development (DHCD)

Status Report: 15 Years After Act 200 (2003)
-Department of Housing and Community Development (DHCD)

Legislative Council Staff Report on Mechanisms to Address the Issue of Cumulative Growth(2002)
- Alan Boright

History of Planning in Vermont (1999)
-Department of Housing and Community Development (DHCD)

Report of the Governor's Commission on Vermont's Future: Guidelines for Growth (1988)
-Commission established by Governor Kunin by Executive Order No. 50 in 1987

Vision and Choice: Vermont's Future, The State Framework Plan (1968)
-Vermont Planning Council