

Vermont Chamber of Commerce

Prepared by Michael Zahner

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Testimony and recommendations on House Bill 45

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

Rationale: *The Vermont Chamber expressed serious reservations in 2014 regarding a re-write of Act 250's Criterion 9L which purports to encourage smart growth but with some 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 9L 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. I am aware of projects with significant economic benefit to local economies, in full conformance with local and regional plans have pulled out of the Act 250 process after filing complete applications. In the past, we have recommended thoughtful, constructive changes to Criterion 9L and we will continue to do so (as noted below) which will make the new law more clear and easier to implement.*

Criterion 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 **through compact site development avoiding 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)(I) will not contribute to a pattern of strip development along public highways **by designing the development or subdivision to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title;** or

(II) 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 fully coordinate its findings under criterion 9(L) with its findings under criteria 9(H)¹, 9(K)² and 10³ in order to promote the goals and objectives of approved local and regional plans.

¹ 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.

² 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,

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.

(36) "Strip development" means linear commercial⁴ 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 **excluding mixed use**, lack of connection to ~~any~~ existing settlements **or 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** topographic⁵ constraints in the area in which the development or subdivision is to be located, **as well as applicable local and regional plans. New or existing industrial and commercial parks, as well as new or existing recreational resorts, which by their very nature need to be located outside of existing settlements shall not be considered strip development notwithstanding the existence of three or more characteristics described herein.**

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.

³ (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.

⁴ "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)

⁵ 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>