



COMMON SENSE SOLUTIONS
FOR A CHANGING VERMONT

To: Commissioner Noelle MacKay, Department of Housing and Community Development

From: Kate McCarthy, Vermont Natural Resources Council

Date: October 16, 2015

RE: Comments from VNRC on draft 9L guidance of September 18, 2015

Thank you very much for the opportunity to comment. We recognize the amount of work that goes in to coordinating among the many groups with an interest in the implementation of Criterion 9L. We hope that these comments will contribute to that discussion and to the successful implementation of the law.

General comments and suggestions: reinforcing the big picture

There are three big picture issues that are important to understanding the content of the guidance: 1) What the policy underlying Criterion 9L is meant to achieve, and why it matters; 2) why certain planning concepts, like compactness, matter, and what they get us; and 3) the difference between settlement pattern and site design. Below are some suggestions in each of these areas.

Goals of underlying policy

We see opportunities to reinforce the underlying policy goals in the opening section (“Overview,” p. 1), by relating the policy to the many other, long standing state policies and investments that Vermont has made over the decades. The comments submitted by VPA (Peg Elmer Hough, Sharon Murray) on this topic capture these policies and investments well.

How planning concepts translate into on the ground outcomes

In describing how to comply with Criterion 9L, the document mentions various planning concepts. As a way to help bring these ideas to life for people less familiar with planning, we suggest elaborating on them wherever possible. For example:

- On p. 2, you could summarize the first paragraph of “It is an existing center that is compact in form and size,” with a concluding sentence such as, *In sum, well-designed compact centers are important because the mix of features – buildings, sidewalks, roads, and uses – add up to places that are attractive and appealing, that feel safe for people who want to walk, and that help avoid sprawl.*
- On p. 3, the two views in Figure 1 could be supplemented with photos of the streetscape in each of these places, to help the reader understand how “compactness” as viewed from above translates into a certain feeling, look, and type of place on the ground.

- On p. 5, some explanations could be added: In item (4), “Typically served by...”, we suggest concluding the sentence with an explanation. For example: “...areas without at least some of this municipal infrastructure are unlikely to qualify as existing settlements. 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. (Etc.)

The differences between settlement pattern and site design

One of the complicated – but very important – elements of the “settlement patterns” criterion is that it must first evaluate the settlement pattern (the context of the area where the project is located) and then the site configuration (what happens on the project parcel itself) to figure out whether a project complies. Because of this, it’s important to find ways throughout the document to reinforce the difference between the two concepts. We make more detailed suggestions on this below, but the big picture concept of “settlement pattern” could also be foreshadowed early in the guidance, for example:

- In the “Overview” section, for example, you could add after the bulleted list: 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 of the reasons listed above. Criterion 9L was written to help reinforce these goals for projects subject to Act 250 review.

General comments and suggestions: usability of document

We offer the following additional suggestions to increase usability for all readers:

- Flow chart or decision tree – As discussed by stakeholders on October 8th, a flow chart would help get all users of the guidance on the same page about how the decisions about existing settlements and strip development are made, particularly about the “pathways.”
- To help orient the lay reader, consider elaborating on certain terms, for example:
 - p. 4 - define “E-9-11 data” the first time it’s used
 - p. 5 – define “net density”
 - p. 5 (bottom) provide Act 250’s definition of “commercial”
 - p. 6 - define “infill”
 - p. 9 explain what “closing existing curb cuts” means.
- Where possible, include “how to” information – for example, where to go for data sources and how to use them. This would help people take action to define better projects after reading the guidance.

Specific comments and suggestions for Pathway I and Pathway II: Evaluating both the site characteristics and the surrounding context of projects.

When projects are outside of existing settlements, they are evaluated to determine whether they “contribute to” or are “confined to” or strip development. However, it’s hard to determine whether the project *contributes to* or is *confined to* without first determining if the project is *in an area of strip development*.

This means that to analyze “contribute to” and “confined to,” it’s necessary to look at the characteristics of the area where the project is located (context of the area). This is important because Criterion 9L is charged with achieving a certain settlement pattern – not just a certain site design.

Currently, the guidance for Pathway II addresses both context and site by first looking at whether a project is confined to strip development, and then describing how to minimize the characteristics of strip development on the site itself. However, the Pathway I guidance – which tells how to analyze whether a project “contributes to” strip development – currently only focuses on whether the project’s site design contributes to strip development.

Below, we offer a general suggestion on how to integrate context and site design, plus a specific suggestion to incorporate context into the Pathway I analysis.

General suggestion: settlement pattern and site design

We suggest adding text before the “Pathway I” header that makes it clear to the reader how “settlement patterns” and “site design” are different but related. We offer this sample text for your consideration, and would be willing to provide photos or graphics later if it would be helpful:

Settlement pattern refers to how land is used, and how those uses relate to each other. It is the pattern created on the land by the arrangement of buildings, roads, parking, undeveloped spaces, and other uses. Examples of different types of patterns include compact patterns (as discussed earlier), rural areas, and strip development. The type of settlement pattern that exists around the proposed project is part of what is evaluated when determining compliance with Criterion 9L. This is because the objective of Criterion 9L, Settlement Patterns, is to “promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside.”

Site design refers to the arrangement of buildings, roads, parking, undeveloped spaces, and other uses on a particular parcel of land or project site. See p ____/Pathway II for further discussion of how to minimize the characteristics of strip development.

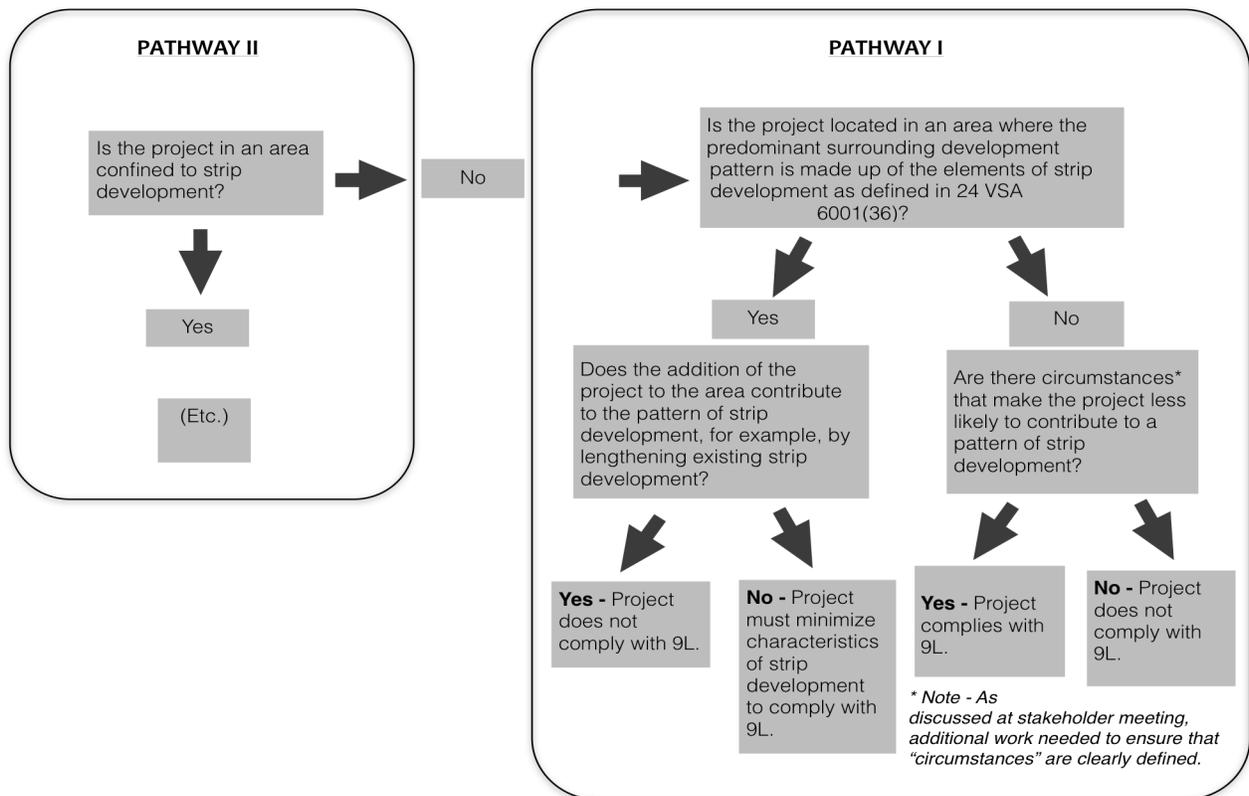
Both of these concepts are part of the Pathway I and Pathway II evaluations described below.

Though settlement pattern is discussed earlier in the guidance document, in the “existing settlements” section, the suggestion above is a way to be more explicit about these concepts, leading into the “contributes to” and “confined to” analyses.

Specific suggestion: incorporating context into the Pathway I analysis

The Pathway I analysis currently says that in determining whether or not a project “contributes to” strip development, “the first question to ask is whether or not the project includes the characteristics of strip development.” However, just assessing the project’s characteristics – that is, the site – does not provide sufficient information to determine whether the project “contributes to” strip development. The primary consideration is the context within which the project is located.

We recommend the following analysis to ensure that the context of where the project is located is considered in Pathway I’s (the “contribute to”) analysis.



Above, in Pathway I, we suggest using the statutory definition of strip development to assess the characteristics of the surrounding area. This approach warrants and merits further discussion by stakeholders, but we put it forth for consideration.

We recognize that every project area – like every project site – will need to be analyzed separately, and that this is not always straightforward. However, whether a project “contributes to” a particular settlement pattern can’t be known unless you first look at what settlement pattern exists.

Additional comments: Pathway I

The bulleted list of “circumstances” recognizes that some uses that cannot or should not be located in compact settlements, and are unlikely to contribute to strip development. We recognize that such uses need to be considered, and suggest that this list requires more work to provide clarity and specificity. Some our questions and concerns are:

- If properties surrounding the proposed project site are conserved lands, does this make it acceptable to put an auto-dependent commercial development there if it minimizes the characteristics of strip development?
- Regarding industrial parks, projects within an “approved” industrial park are considered less likely to contribute to strip development. However, there is no authority that approves industrial parks. Furthermore, an industrial park that meets the Act 250 definition may or may not be an efficient use of land. The site design of the industrial park should be taken into account when considering whether a project is less likely to contribute to strip development.
- Regarding uses that fit into the rural landscape, we suggest framing this as those uses that support the continuation and function of the working landscape and working lands economy.” Focusing on uses that support a particular settlement pattern (rural lands) also removes the focus from only “traditional uses.”

Other comments

- *Existing settlement definition:* While important to acknowledge local planning efforts, we feel strongly that the existing settlement definition – and accompanying exemption from 9L – should not include local areas planned for growth, since these areas may be located and designed in ways that actually contradict the purposes of Criterion 9L (the town of Swanton’s local growth area is one example).
- *Second stories of buildings to increase intensity of use:* It has been suggested that second story facades should count as helping to minimize the characteristics of strip development. The purpose of a second story is to use land more efficiently by increasing the intensity of use on a site. A façade does not accomplish this goal and should not be considered as a technique to minimize the impacts of strip development.

Again, thank you for the opportunity to submit this feedback, and for the opportunity for continued conversation on how to make 9L work for applicants, District Commissioners and Coordinators, and all other users of this important policy.

Sincerely,

Kate McCarthy, AICP
Sustainable Communities Program Director