

ACT 250 and TRAILS QUESTIONS FOR COMMENT

*Thank you for taking the time to complete this survey. Please only fill out **one survey** for your organization.*

Act 250, Vermont's land Use and development law, was passed in 1970 to mitigate the effects of certain developments and subdivisions through a permitting process that addresses the environmental and community impacts of projects that exceed a certain threshold. Currently, recreational trails may be subject to Act 250 and a variety of permits issued by the Department of Environmental Conservation.

With respect to Act 250 only, the threshold for jurisdiction (meaning that a project will need an Act 250 permit) depends on certain factors:

- 1) If the proposed trail is part of the Vermont Trail System, the key question is how much ground disturbance will occur as part of the project (10 acres of disturbance or more is the threshold)*
- 2) If the proposed trail is not part of the Vermont Trails System, jurisdiction is triggered only if the trail is commercial, and depending on the size of the tract (or tracts) where the trail will be located*
- 3) Jurisdiction over trails may also be triggered if the proposed trail is considered to be a "material change" to an already existing Act 250 permitted project.*

The Vermont Natural Resources Board and the Vermont Department of Forests, Parks and Recreation are seeking input concerning state regulation of trails, and we hope you will take the time to complete this brief survey. Your answers will be collated into a report to [The Commission on Act 250: the Next 50 Years](#) for consideration.

PLEASE RETURN THIS SURVEY NO LATER THAN 5 PM ON SEPTEMBER 17TH, 2018

1. Please indicate your name, name of organization, and contact information (including email address).
[Shelby Semmes, VT/NH State Director, The Trust for Public Land.](#)
Shelby.semmes@tpl.org. 802-223-1372.
2. Is your entity a member of the Vermont Trails System? **No.**
3. Have you experienced any challenges in obtaining Act 250 permits for trails (please explain)? Please limit your response to personal experiences that you or your organization have experienced. [We do not directly seek Act 250 permits because we are not a trail development entity, nor do we hold land permanently. We do, however, work with landowners on conservation projects where their property and/or trail network is subject to Act 250 jurisdiction or where their current or future trail segment or trail network may be subject to Act 250 jurisdiction, depending on interpretation by the particular district.](#)

4. If you or your organization has been through the Act 250 process with respect to trails, please recommend any changes including, but not limited to the following topics:
 - a. How to make the process more efficient. [Our second degree understanding is that the process would benefit landowners if there were more uniformity as to how decisions on Act 250 jurisdiction are applied so as to decrease uncertainty. The commission should also consider eliminating the requirements to address criteria that trails do not impact, such as those to water supply or utility services.](#)
 - b. How to make the process a better fit for the unique development aspects of trails. [Though we are not expert on what distinctions should be made at a environmental review level, permanent paved trails should be treated differently than dirt ones, and 8-ft or 12-ft wide trails also have different impacts than singletrack or hiking trails. Logging roads that are also used as trails should be treated differently. Distinctions should also be made between impacts from motorized winter, motorized non-winter, and human powered trails.](#)
5. Are Act 250 jurisdictional triggers with respect to trails clear? [For landowners we work with, they seem to lack clarity.](#)
 - a. If not, how should the jurisdictional triggers be clarified? [The definition of 'commercial' is difficult for landowners to understand. E.g. Would a non-profit vs for profit make a distinction in being 'commercial'? What if fees are only applied for parking but not for walk/bike on use?](#)
6. What are the strengths of Act 250's regulation of trails? [It is important that trail development have third party enforced environmental standards and oversight to ensure that trails don't, wittingly or unwittingly, disrupt important wildlife habitat, wetlands, water quality, or neighboring property owners.](#)
7. How is Act 250 beneficial to the environmental quality of the state with respect to the regulation of trails? [See answer above.](#)
8. Which [Act 250 criteria](#) are most relevant with respect to the regulation of trails (please explain)?
 - [Criterion 1e and f. Water pollution \(wetland and stream disturbance\);](#)
 - [Criterion 4: Erosion and capacity of soil to hold water;](#)
 - [Criterion 5: Municipal services \(Traffic\)](#)
 - [Criterion 8: Rare and irreplaceable natural areas and necessary wildlife habitat.](#)
 - [Criterion 10: Local and regional plans.](#)
9. Which [Act 250 criteria](#) are least relevant with respect to the regulation of trail projects (please explain)?
 - a. [Criterion 2](#)
 - b. [Criterion 3](#)
 - c. [Criterion 6: Educational services](#)
 - d. [Criterion 1c: water conservation](#)
 - e. [Criterion 9: all subcriteria](#)

10. Should all trail projects be exempt from Act 250 review? If so, what makes development of recreational trail projects different from other development that is subject to Act 250? *Intentionally not providing an answer as we are not regulatory expert.*
11. Should some trail projects be exempt from Act 250 review? *Intentionally not providing an answer as we are not regulatory expert.*
 - a. If yes, please explain which types of trail projects should be exempt, and why.
12. Do you have any recommendations for an alternative regulatory scheme for trail projects in the State of Vermont? Please share your thoughts.
 - a. *In the last legislative session, we and the other members of the Vermont Forest Partnership (Audubon Vermont, The Nature Conservancy, Vermont Land Trust, Vermont Natural Resources Council, and Vermont Conservation Voters) supported certain steps to bring more clarity to the regulation of trails under Act 250, but ultimately supported a summer study to step back and examine the role of Act 250 and trails, potential improvements, or alternative structures for promoting trail development and environmental review. The Forest Partnership is currently engaged in a conversation with trail groups to understand the challenges that Act 250 presents, and to consider potential policy options that would support trail development while maintaining appropriate review. We plan to follow up with the Act 250 Commission if we reach any recommendations based on our current effort to identify potential solutions, and we will certainly do the same with the Department of Forests, Parks and Recreation and the Natural Resources Board.*
 - b. Should trails be subject to some sort of “general permit”? *Not sure what this means.*
 - c. If so, what criteria should the general permit cover and how should terms of the general permit be enforced? *See above.*
 - d. Do you have any ideas about a possible trail development oversight program managed under the Agency of Natural Resources? Please explain. *Intentionally not answering as we are not regulatory expert.*
13. *Other commentary: we note a dearth of scientific inquiry specific to Vermont’s or Northern New England’s forest systems to study the impact of the range of recreational trails to wildlife and other ecological resources. Many studies cited apply to Northern Rockies or intermountain west ecosystems. FPR and academic research centers in Vermont would be well advised to support rigorous study of the impacts so that we can have a more evidence-based discussion about impacts. Or if they exist already, the trails community would benefit from seeing these referenced more systematically in stakeholder engagement.*