

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).
 - Alyssa Sabetto, Planner at the Windham Regional Commission (WRC), asabetto@windhamregional.org;
 - Jeff Nugent, GIS Planner at WRC, jnugent@windhamregional.org;
 - John Bennett, Senior Planner at WRC, johnbenn@windhamregional.org
2. Is your entity a member of the Vermont Trails System?
 - No. We do not know what the official "Vermont Trails System" is and information about it is not readily available, for example, information about it does not appear in a search of the VT Dept. of FP&R website.

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.
 - The WRC has not applied directly. We do review Act 250 applications from the standpoint of the regional planning commission, and work with both applicants and the District Environmental Commission in evaluating proposed projects.
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
 - Trail groups applicants are mostly volunteer based and find putting together the applications to be somewhat difficult for those who may never have worked with Act 250 before. The process seems burdensome for volunteer organizations in relation to the minimal impact that most trails have, particularly trails intended for non-motorized use.
 - b. How to make the process a better fit for the unique development aspects of trails
 - Having guidance available for the lay person assembling an application might be a good idea.
 - Establish clear(er) thresholds triggering jurisdiction, and require that trail projects only have to meet applicable criteria 1, 4, 5, 8 and 8a, and 10.

Suggested triggers for requiring an Act 250 permit:

 - Designed for motorized or other high impact use (horseback)
 - Ownership and/or management by commercial for-profit entity
 - High use trails (lots of use by mountain bikes is one example)
 - Acreage of direct impact
 - Define what constitutes impact; is it to ground only, to vegetation?
 - Threshold number TBD in further discussion
5. Are Act 250 jurisdictional triggers with respect to trails clear?
 - No.
 - a. If not, how should the jurisdictional triggers be clarified?
 - Current jurisdictional triggers seem somewhat random; some minor foot trails are required to get a permit, while other, major trails open to motorized uses, are not.
 - What exactly does 10 acres of disturbance constitute (direct or overall)?
 - Some trails that are under jurisdiction don't seem to meet current criteria.
 - Why does tract size have anything to do with it? We don't see how size of tract has anything to do with impact.
6. What are the strengths of Act 250's regulation of trails?

- It works in terms of preventing erosion and sedimentation, protecting water quality and habitat values of resources such as surface waters, wetlands, streams, etc.
 - It can work well in protecting wildlife habitat, e.g., Deer Wintering Areas, Bear Scarred Beech, etc.
7. How is Act 250 beneficial to the environmental quality of the state with respect to the regulation of trails?
- It is good in terms of protecting surface waters, wetlands, streams, etc.; minimization of erosion and sedimentation. It protects necessary wildlife habitat. It provides a holistic look at projects.
8. Which [Act 250 criteria](#) are most relevant with respect to the regulation of trails (please explain)?
- All of 1, 4, 5, 8 and 8a, and 10. Environmental impacts of trails need to be considered.
9. Which [Act 250 criteria](#) are least relevant with respect to the regulation of trail projects (please explain)?
- Criteria 2, 3, 6 and 7 are least relevant to evaluating the impacts of trails.
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?
- No, there should not be any blanket exemption for all trails.
11. Should some trail projects be exempt from Act 250 review?
- Yes.
 - a. If yes, please explain which types of trail projects should be exempt, and why.
 - Trails designed for non-motorized foot traffic (including skiing and snowshoeing) and under a certain acreage threshold (acreage number TBD) should be exempt.
12. Do you have any recommendations for an alternative regulatory scheme for trail projects in the State of Vermont? Please share your thoughts.
- a. Should trails be subject to some sort of “general permit”?
 - No.
 - b. If so, what criteria should the general permit cover and how should terms of the general permit be enforced?
 - Rather than creating a new general permit, providing clarity under criteria 1, 4, 5, 8 and 8a, and 10 in Act 250 proceedings is the way to go, with clear relevant thresholds for permit requirement. Projects that are required to get permits under the new thresholds should only need to satisfy criteria 1, 4, 5, 8 and 8a, and 10. Enforcement should go through normal enforcement mechanisms of ANR.

- c. Do you have any ideas about a possible trail development oversight program managed under the Agency of Natural Resources? Please explain.
- No.