

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).**

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2. **Is your entity a member of the Vermont Trails System?**

Yes

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.**

Yes. Several years ago we went through an extensive Act 250 review (along with VAST and ANR) improve a section of trail in the Phen Basin area. The process was triggered

because the property had once been considered for development. Despite the fact that it had since been conserved, the Act 250 review board still had jurisdiction and forced us to undergo a review. The CTA, VAST, and ANR were forced to reroute the trail away from a beaver pond despite the fact that the trail (an old logging road), was long since established and was not violating an applicable trail standards. At other times, we've anticipated being subject to an Act 250 review, based on previous experience, and have done initial legwork, only to be told that the Act wouldn't be triggered. This inconsistency can be challenging for a small organization with limited resources.

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

While there is much that could be done in this regard, some clarity around key terms/thresholds within Act 250 is much needed. What types of trail development constitute a "project", and what is considered a "material change" with regard to trails needs to be defined and consistently applied by Act 250 review boards across the state to make the process more predictable for trails groups and landowners. We also feel it is important to clarify whether or not crossing property boundaries "re-starts" the disturbance threshold, as this would be a major threat to trail development in Vermont. It could also be helpful to use the Vermont State Trails System (VSTS) designation, and the environmental/trail standards that are mandated by being a part of that system, as a way to differentiate trail development by groups who are a part of VSTS.

b. How to make the process a better fit for the unique development aspects of trails

It is important to make sure we're structuring review of trail work (particularly that work done by those in the VSTS) in a way that acknowledges that this work is being done by small organizations that have very limited capacity. We are not developers and do not have the associated resources. We rely heavily on volunteers and private donations to maintain trail resources that ultimately improve the quality of life for Vermonters while helping to provide a basis for sustainable recreational tourism.

5. Are Act 250 jurisdictional triggers with respect to trails clear?

No

a. If not, how should the jurisdictional triggers be clarified?

Having a consistent interpretation of the rules statewide would be a big step in the right direction. Having concise definitions of the terms "project" and "material change" as they pertain to the development of trails by members of the VSTS is important. We're particularly concerned about improvements to existing trail/road corridors. We feel this work helps reduce overall environmental impact and should not be considered a "material change" under Act 250.

6. What are the strengths of Act 250's regulation of trails?

We firmly believe that Act 250 is an important tool for Vermont and Vermonter's. However, we don't feel that trails are clearly addressed within the current legislation. Furthermore, it seems to us that trying to fit trails into definitions clearly intended to describe traditional development has, at times, lead to significant confusion for trail groups and landowners.

7. How is Act 250 beneficial to the environmental quality of the state with respect to the regulation of trails?

Act 250 is an important regulation for maintaining the type of open, working landscape that many trail users want to use our trails to access.

8. Which [Act 250 criteria](#) are most relevant with respect to the regulation of trails (please explain)?

Again, we feel it's clear Act 250 was originally written without clear intent around the regulation of trail development.

9. Which [Act 250 criteria](#) are least relevant with respect to the regulation of trail projects (please explain)?

10. See Act 47 document, p. 5, 3A: "The purpose of Act 250 jurisdictional threshold is to focus Act 250 review on projects that have the greatest potential for significant impact due to their size or scope, or where the forms of adequate regulatory review do not exist." We don't believe that trails built by members of the Vermont State Trail System constitute the "greatest potential for significant impact" on environmental quality in Vermont. In many instances, we feel there are better tools for regulating trails and their environmental impact than Act 250.

11. 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, we don't believe we should be exempt from all environmental review, or from all Act 250 review.

12. Should some trail projects be exempt from Act 250 review?

a. If yes, please explain which types of trail projects should be exempt, and why.

Yes, some of our projects are small scale and are already exempt from Act 250. We believe that should continue to remain the case. We also do not believe that a trail should trigger Act 250 simply because it connects two existing trails or networks. Generally, we believe the bar for triggering Act 250 for trails that are part of the VSTS should be relatively high.

13. 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"?

VSTS trails already have to meet specific criteria, and are already subject to all applicable wetland and storm water permitting.

- b. If so, what criteria should the general permit cover and how should terms of the general permit be enforced?**
- c. Do you have any ideas about a possible trail development oversight program managed under the Agency of Natural Resources? Please explain.**