

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). *Phil Huffman, Director of Government Relations and Policy, The Nature Conservancy, phuffman@tnc.org, (802) 229-4425 x109*
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: We have applied for three Act 250 permits for trail improvement projects and found the permit application to be very time-consuming and some of the criteria difficult to interpret in relation to trails. We also found significant differences in the interpretation of the regulations from the different Act 250 offices. For example, in one office we were required to file an amendment to reroute a small section of trail around

a rare plant, while in another location with a similar issue we were told this was a non-significant change and no amendment was required.

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: *Eliminate the requirement to address criteria that trails do not impact, such as impacts on water supply or utility services.*
 - b. How to make the process a better fit for the unique development aspects of trails: *Same as previous answer.*
5. Are Act 250 jurisdictional triggers with respect to trails clear? *More or less, although as mentioned above and as noted by other trail groups, the triggers are not always applied consistently by different Act 250 districts.*
 - a. If not, how should the jurisdictional triggers be clarified?
Beyond more consistent application of the triggers, it would be helpful to clarify what constitutes a "commercial" trail. Is any trail that is open to the public considered commercial?
6. What are the strengths of Act 250's regulation of trails? *Act 250 provides a structured framework and process for assessing potential environmental impacts of trails. Since trails can have significant impacts depending on their location, density, type(s) and frequency of use, etc., it is important for the State to have a thoughtful framework and process in place to ensure appropriate review. This type of review is an essential part of balancing trail development and all the benefits it provides to Vermonters and visitors with sound stewardship of our lands, waters, ecosystems, and all they encompass – which after all are the foundational resources upon which all of our outdoor recreation and tourism opportunities depend.*
7. How is Act 250 beneficial to the environmental quality of the state with respect to the regulation of trails? *Through its established criteria and process, Act 250 helps ensure that trail development is done in a way that does not result in significant degradation of Vermont's environmental quality in all its many forms.*
8. Which [Act 250 criteria](#) are most relevant with respect to the regulation of trails (please explain)? *Criteria 1, 4, 5, 8, some parts of 9 (particularly B and C), and 10. Trail development projects have the potential to cause environmental harm and should be evaluated against those criteria. Increased recreation following a trail development project can also impact parking and traffic patterns.*
9. Which [Act 250 criteria](#) are least relevant with respect to the regulation of trail projects (please explain)? *Criteria 2, 3, 6, 7, and the other sub-criteria in 9. Trails don't impact many local services the way residential or commercial development do.*
10. Should all trail projects be exempt from Act 250 review? *No, unless an alternate framework is established to provide necessary and appropriate environmental review, in the most efficient and predictable way possible. If so, what makes development of recreational trail projects different from other development that is subject to Act 250?*

11. Should some trail projects be exempt from Act 250 review? *Possibly. Another approach for projects that are likely to have minimal impacts – such as a short, linear trail that is only open for foot traffic, sited in non-sensitive areas, and does not require accessory facilities such as trailhead parking or restrooms – could be to consider some sort of expedited review.*
 - 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. *In the last legislative session, we and the other members of the Vermont Forest Partnership (Audubon Vermont, Trust for Public Land, 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.*
 - a. Should trails be subject to some sort of “general permit”?
 - 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.