

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?

No, but we support and work with partners and on trails that at a part of the Vermont trail system

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 are usually working on relatively small improvements and repairs of trails within existing networks, and therefore our work is rarely been directly affected by

Act 250. However, this year we had a setback to what is potentially the biggest trail project in the history of the UVTA, an ADA trail we have been contracted to build for the Vermont Institute of Natural Science (VINS). Unfortunately, due to delays related to the Act 250 application and approval process, we will not be able to build the trail this fall as planned. We are still hopeful that the trail will be approved, but we will not have the benefit of much needed income in this fiscal year.

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: **While UVTA has not had to go through the application process directly, we support our fellow trail organizations in Vermont through our association with Vermont Trails and Greenways Council. Therefore many of our answers are based on responses we developed during a meeting with a group of fellow Vermont Trails organizations that have more direct experience with Act 250. Many of our answers below are therefore submitted in support of concerns and reforms we have developed together.**

a. How to make the process more efficient

For purposes of how Act 250 relates to trails, terms need to be clearly defined, and District Coordinators and judicial officers need to have a common understanding of those definitions in order to avoid inconsistency in applying them. Examples of needed clarifications are the term “project” and the phrase “material change.” (That is, what types of activities qualify as a “project” for purposes of Act 250 triggers? What outcomes constitute a “material change?” There also needs to be a clear and shared understanding of when the disturbance threshold clock starts.

District coordinators should have benefit of legal counsel prior to any judicial proceeding so that they fully understand the process, with the goal of reducing the length and expense of the review process.

More specifically, greater efficiency would involve:

- **Defining what constitutes a “project” and ensuring that district coordinators understand the application**
- **Working to develop more consistency among district coordinators and their interpretations of the Act**
- **Creating a reporting process that covers approved criteria that the district coordinators send to trail organizations**
- **Clarifying whether or not property boundaries “re-start” the disturbance threshold, as this would be a major threat to the future of outdoor recreation in Vermont**
- **FPR should facilitate an annual meeting between trail organizations and Act 250 coordinators**
- **Provide district coordinators with access to guidance from legal counsel prior to the judiciary process.**

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

Those charged with applying Act 250 standards need to be better educated about the Vermont State Trail System (VSTS) and how it functions so that they are able to differentiate between the “project” of a commercial development and the system of low-impact recreational trails running throughout the state and traversing private property as well as state lands. Unique aspects of the trail system include the fact that it is already extensively permitted with all the regulatory oversight that entails. Also, environmental stewardship is deeply engrained in the culture of trails management.

Many small towns in Vermont rely on the state’s trail system for their economic survival. While the economic benefits of trails are high, the environmental impact is low. The primary goal of any good trail professional is to design and maintain a beautiful, safe and sustainable trail. We are not only compelled to do so by existing federal, state and local laws and regulations, but also by the need to please our landowners, partners and users. Our commitment to the environment and sustainability inspires us to protect our trails and communities by attempting to avoid sensitive areas and design and repair trails in ways that will minimize water and erosion issues.

Confusion created by inconsistent interpretation creates and places unnecessary burdens on private landowners. This real and perceived impact on landowners is of great concern given that 85% of Vermont’s land is privately held. The development, maintenance and use of all current and future trails in Vermont is widely dependent upon the consent, cooperation and good will of our individual private landowners. If trail regulation becomes unnecessarily burdensome, landowners will simply withdraw their permission for public access.

- c. Are Act 250 jurisdictional triggers with respect to trails clear? If not, how should the jurisdictional triggers be clarified?

No, they are not clear. They are not well defined, nor are they commonly and consistently understood and applied. Wherever possible, the trails system makes use of existing trails (e.g., old logging roads). We don’t feel that rehabilitating these trails for low-impact recreational use should be considered a “material change,” for purposes of triggering Act 250, especially when, rather than degrading the environment, trails management actually enhances the environment by preventing run-off into rivers and streams created by flooded and deteriorated old logging roads and other abandoned road beds.

- 5. What are the strengths of Act 250’s regulation of trails?

The Act seems popular among a certain segment of the public who might otherwise not feel they have a voice in the regulation of Act 250 projects. Adjoining neighbors who fear increased noise or traffic could be an example of this type of stakeholder, and it is important to engage the community and here the concerns of stakeholders. That being said, we believe there are other ways to do so, and there should be a limit on how much one person or party can appeal a decision and stall a project.

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

We are concerned that Act 250 is causing more harm than good with regard to trails and trail regulation. Public access to private lands is arguably one the most important motivators for conservation and environmental protection. Unfortunately, Act 250 creates often redundant and time consuming processes for projects that are should not be considered development to be regulated and potentially prevented by Act 250. The philosophies and sustainable practices of trail organizations combine with existing permitting (stormwater, wetlands, etc.) already ensures environmental protection. For trails, therefore, Act 250 is a redundant layer of compliance.

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

See response to question 6.

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

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 the Vermont trail system constitutes “greatest potential for significant impact” on environmental quality, and an adequate layer of regulatory review already exists in the permitting process. Given the limited resources of the state, especially in staffing required to review and rule on Act 250 applications, it seems state resources would be better spent in addressing the challenges posed by large development.

9. 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, but there should be an understanding that most trail projects, including those on properties previously encumbered by Act 250 likely create more conservation and environmental benefit than harm, and there should a clear and logical threshold for any trail-related project to trigger Act 250.

10. 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.

We are not seeking an exemption for all trail-related projects as we are conservationists and believe that Act 250 has been beneficial for Vermont in many way. However, we do believe that most trail projects can be monitored in other ways, and we are very concerned about the possibility that connecting longer trails could get heightened scrutiny. We would like trail and community connection to be encouraged rather than discouraged by increased scrutiny.

Do you have any recommendations for an alternative regulatory scheme for trail projects in the State of Vermont? Please share your thoughts.

As a group, the trails organizations actually have a specific process to recommend that could give those charged with Act 250 implementation a better comfort level that they have oversight while, at the same time, not burdening trail organizations and private landowners with redundant regulatory compliance. (See below.)

b. Should trails be subject to some sort of “general permit”?

Trails are already permitted as mentioned in question #6. Also, the VSTS already has standards and requirements for trails to be considered part of it. Adoption of standards and self-regulation for VSTS through decades of volunteerism and public-private partnerships has proven to be a successful model of environmentally sustainable recreation.

c. If so, what criteria should the general permit cover and how should terms of the general permit be enforced?

d. Do you have any ideas about a possible trail development oversight program managed under the Agency of Natural Resources? Please explain.

We do have a recommendation, based on a reporting form for trails that can be filed for each trail undergoing maintenance projects (moving forward) with ANR or FPR with a 5-year “good standing” review for each trail. This form is based on one that VAST uses for its trail work, and we would be pleased to have the opportunity to discuss this recommendation further.