

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

Thank you for the opportunity to provide input into the appropriate level of state regulatory review and public process for the development of trails in Vermont. At the outset, we would like to convey several themes that provide important context for our responses.

First, our organizations are deeply committed to providing encouragement and opportunities for people to get outside to enjoy Vermont's landscape of wild places, and our working forests and farms across all seasons. We have a long history of working with land conservation organizations, diverse partners and landowners to promote outdoor recreation and tourism as core to Vermont's economic and ecological vitality.

A second and important point, captured below and in comments from our partners in the Vermont Forest Partnership, The Nature Conservancy and Trust for Public Land, is that not all trail projects are alike. The impacts of any given trail proposal may vary based on the scale of

the project, the type and frequency of projected use, and the nature of the lands that are impacted. An effective oversight program, one consonant with Vermont's long and consistently expressed values regarding the protection of our shared interest in a healthy landscape, must be based on a scientific evaluation of the impacts of any given trail project, and the opportunity for public understanding and engagement.

Third, before answering the questions below, we would like to register our concern that we do not believe stakeholders were provided an adequate time to submit thoughtful responses to a complicated and important set of questions. Our organizations participated in the development of Act 194 calling for a thoughtful process to evaluate recommendations on the strengths and challenges associated with the regulation of recreational trails under Act 250, and any alternative structures for the planning, review and construction of trails. This legislation was passed in May, yet interested parties have been provided only seven work days to provide responses to the important questions posed below.

Taken as a whole, the survey appears premised on the presumption that Act 250 is burdensome and an impediment to responsible trail development in the state. As advocates for both the protection and enhancement of Vermont's natural resources and communities, and outdoor recreation and sustainable trail development, we find several of the questions appear to invite proposals for limiting Act 250 oversight of trail development. While a different regulatory regime may be appropriate for trail development, we cannot comment on alternatives (i.e., Qs 10, 11 and 12) until we have had an opportunity to better understand the issues and consider other stakeholder input. We believe this is an important part of the process, and are committed to ongoing conversations outside of this survey to provide meaningful input to the ANR, NRB, and Act 250 Commission. To that end, please consider the following as preliminary response to the survey questions in the hope that additional opportunities for input will be possible.

1. Please indicate your name, name of organization, and contact information (including email address).

These comments are submitted on behalf of VNRC and Audubon Vermont.

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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.

Not applicable.

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

This question should also be posed to organizations that have not been applicants in the Act 250 process. Other stakeholders/interests may have opinions about the process, and we encourage you to expand both the types of questions and the persons invited to participate in the survey process. VNRC has been through the Act 250 process with respect to several trails, but not as an applicant. In regards to the first question, it is our understanding that the Act 250 Commission is looking at options to make the overall process more efficient. Specific to trails, to whatever degree it is not already clear, trail organizations should be able to apply for a permit, and exclude the need for landowners to be co-applicants as long as trail organization have secured landowner permission for access.

In regards to comprehensive trail development, there are a number of ways to ensure that entire trail networks achieve the appropriate level of review. For example, one option would be to look at some kind of overarching permit for trail network that are built in phases. Since trails are often times built in order to connect with other trails, it is our understanding that trail organizations are fearful that trail development will over time eventually trigger Act 250 review. Because of this fear, trails are built a segment at a time, often under the jurisdictional trigger. We think the process should be improved to allow trail groups to be transparent about their comprehensive trail planning development, including connecting to other trails as part of a large trail network. An improved process could allow trails to be built without concern about triggering an arbitrary jurisdictional threshold, but this should be balanced with an appropriate level of environmental review, including the consideration of cumulative impacts from full trail build out. This is just an example of one option to improve the review of trails in Vermont. We hope there are opportunities to explore other options after reviewing the responses of other organizations.

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

The triggers are clear in the sense of how much acreage needs to be disturbed before triggering review. As noted above, we believe it is important to ensure that trail

networks are appropriately reviewed, and the ability of applicants to segment projects to avoid jurisdiction works against achieving a comprehensive review. It is our understanding that based on the definition of “involved land,” when a project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction. We believe there is confusion around this requirement, and thus we support either developing clear guidance or a new approach for the implementation of this definition (for example see #4 above). We also believe Act 250 Rule 71 should be codified so that it is very clear that jurisdiction only applies to the trail corridor and not an entire landowner’s property.

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

Certain trails, depending on how and where they are built, the density, nature of the activity, and all associated infrastructure can impact natural resources and adjoining landowners. The strength of Act 250 is it considers and minimizes environmental impacts, allows for input from affected landowners, and addresses impacts to trail related uses, such as parking areas.

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

With respect to trails, Act 250 is only beneficial to the environmental quality of the state if trails are actually reviewed. When Act 250 reviews trails it can address the issues set forth in our response to number 6 above.

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

We believe all criteria may have some relevance depending on the nature and scope of the proposed trail, and thus will not comment on which are more relevant than others, but Criterion 1, 4, 5, 8 and 10 are extremely important.

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

See above.

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. While we believe trail development is both a positive benefit to the state, and the people who recreate on trails to enjoy the outdoors, we do not believe trails should be exempt unless there is an adequate alternate structure in place to review and minimize the potential adverse impact of trails.

11. 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.

See response to 10 above.

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”?
- 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.

We are open to understanding an alternative scheme, but refrain from offering specifics until we have engaged in the process mentioned before the questions. In the last legislative session, we and the other members of the Vermont Forest Partnership 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.