

State of Vermont
Commissioner's Office
Department of Forests, Parks & Recreation
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801
<http://fpr.vermont.gov>

Agency of Natural Resources
Michael C. Snyder, Commissioner

[phone] 802-828-1534
[fax] 802-828-1399

MEMORANDUM

To: Rep. Amy Sheldon, Chair, Act 47 Commission

From: Michael Snyder, Commissioner, FPR

Re: Report from the Recreational Trails Working Group established pursuant to Act 47 of 2018

Date: November 7, 2018

Please accept this follow-up report from the Recreational Trails Working Group established pursuant to Act 47 of 2018 on behalf of Natural Resources Board Chair, Diane Snelling and myself. Several of our respective key staff and a wide variety of stakeholders continue to discuss and digest the complexities of regulating recreational trails in a way that encourages the development and maintenance of these critical recreation assets while adequately protecting Vermont's environment and natural resources.

Background

NRB and FPR staff and nonprofit trail partners have been working together for several years to seek common ground about applying Act 250 jurisdiction to the robust and diverse network of recreational trails in Vermont. Vermont is unique among other states in that the vast majority of our public trails exist by virtue of the generosity of private landowners and local volunteers associated with our many nonprofit partners. When, where, and how Act 250 applies to these projects has long been a significant factor affecting the success of trail network construction and improvement. Due to the nature of such linear, multi-landowner projects, it is generally felt that trail development is, at best, an awkward fit for Act 250 review. As a result, there has been some confusion, frustration, and expense experienced by some trail groups and landowners. All this is in the context of unanimous consensus that trails have the potential to result in environmental degradation and we should all work to ensure that trails are built, maintained, and used according to the highest standards and best practices. Significant progress has been made among stakeholders to reach consensus on some possible mechanisms to achieve this end, but more work remains to be done.

Participation in the legislative process this past session of the General Assembly (S.276 and H.904) resulted in broad stakeholder agreement on several key concepts. But, owing to the complexities of the issues and the process that inevitably surface during discussions, final agreement could not be reached. The legislature wisely suggested establishing a Recreational Trails Working Group to gather input from the affected constituencies and provide recommendations to the Act 47 Commission on Act 250. The Working Group has since conducted a survey of key stakeholders and presented a report

of that to the Commission on October 1, 2018. That has been followed by a facilitated stakeholder discussion on November 1. Parallel to this effort, several stakeholder groups have been meeting in hopes of reaching consensus on recommendations to be presented to the Working Group. This report presents the current status of those efforts.

Areas in Need of Clarification and/or Confirmation with Current Act 250 Structure

Several stakeholders believe Act 250 is not the appropriate mechanism to regulate recreational trails. But, if Act 250 is to remain the regulatory tool for such projects, there is some general support for clarification and confirmation of certain issues to assure consistent jurisdictional decisions across the program.

Public purpose: There seems to be general support for more clearly establishing trails that are part of the Vermont Trails System to be for a public purpose and therefore subject to higher jurisdictional thresholds that are applicable to state and municipal projects.

Involved Land: A number of questions exist related to what is considered involved land when Act 250 is applied to trail construction including whether existing trails, other activities taking place on a parcel, and shared resources like parking areas and driveways are included for purposes of establishing Act 250 jurisdiction. Trails constructed by nonprofit organizations and volunteers, by nature, usually develop incrementally due to timing opportunities, funding, landowner preference, etc. While they may be part of a broader vision, a concrete plan is rarely pursued. There are lots of questions about the definition of a “plan” and whether a small incremental trail project is truly “part of a larger undertaking” in the context of Act 250 Rule 2(C)(5)(b) (Involved Land) Clarification of “incidental to” was also requested.

Definition of Trail: Creating a definition of a “trail” may improve clarity for potential project applications and district commissioners when considering trail construction projects.

Area of Impact: Determining the area of impact of a trail project, including the default corridor pursuant to Rule 71, may need further clarification and flexibility.

Removing Continuing Jurisdiction: Stakeholders are supportive of the Commission’s examination of a process to remove jurisdiction when a permitted project moves to a new location.

Alternative Regulatory Structures

A group of stakeholders continues to meet in an effort to determine whether an alternative regulatory structure for regulating trails in Vermont would be appropriate, and if so, what such a structure might look like. In the interim, the group shared what they believe to be the critical components for a successful alternative regulatory structure for trails should one be developed.

- **Trail Standards** – Compliance tool to ensure sustainable trail development
- **Adequate Capacity and Resources** – Qualified staff and funding necessary to fully implement a regulatory program
- **Public Involvement** – Some level of public input important to integrity of structure
- **Municipal Input** – Consideration of municipal plans
- **In general**, the mechanism for regulation should be in scale with the potential impact of the regulated activity (“you don’t need a chain saw to split kindling,” as one stakeholder put it)