

Report to the Act 47 Commission regarding Act 250 and Recreational  
Trail Regulation in Vermont

In response to Act 194 of 2018

October 1, 2018

Developed by:

Act 194 Recreational Trails Working Group

Submitted by:

Diane B. Snelling, Chair

Vermont Natural Resources Board

Michael C. Snyder, Commissioner

Vermont Department of Forests, Parks and Recreation

Invited stakeholder representatives included:

- Catamount Trail Association
- Cross Vermont Trail Association
- Green Mountain Club
- Green Mountain Horse Association
- Kingdom Trail Association
- New England Chapter of Backcountry Hunters and Anglers
- Stowe Land Trust
- The Nature Conservancy
- Trust for Public Land
- Upper Valley Trails Alliance
- Vermont Association of Snow Travelers
- Vermont Horse Council
- Vermont Hut Association
- Vermont Land Trust
- Vermont Mountain Bike Association
- Vermont Natural Resources Council in partnership with Audubon Vermont
- Windham Regional Commission
- Windham Hill Pinnacle Association

The Working Group also welcomed input from the Vermont Agency of Transportation, given their role as owners of significant rail-trail projects in Vermont, and the Vermont Trails and Greenways Council provided direct input to the FPR Commissioner and ANR staff. Because the Vermont Trails and Greenways Council is a statutorily constructed entity<sup>2</sup> designed to advise ANR, the Working Group concluded the Council should not participate directly in the process as an invited stakeholder, but rather advise and inform ANR's participation; that said, many of the member organization that make up the Council were invited to participate as stand-alone entities.

Once constituted, the Working Group asked the invited stakeholders to complete a written survey. The survey was intended to gather baseline information about Act 250 jurisdiction, recreational trails regulation, alternative regulatory models, and experiences with the Act 250 process, in order to provide foundational information and recommendations from affected parties to the Commission. All eighteen organizations listed above responded to the survey. Of the respondents, sixty-one percent (11) represented they were members of the Vermont Trail System; the remaining respondents represented planners, environmental advocates, and land trusts – some of which manage trails of their own.

This report largely includes and relies on the results of that survey. As indicated above, the Working Group will meet later this fall, in person with the invited representative stakeholders, to discuss in more detail the survey results and broader issues related to Act 250 and recreational trails regulation, with the goal of providing additional information and recommendations to the Commission at that time.

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<sup>2</sup> <https://legislature.vermont.gov/statutes/section/10/020/00445>

primarily non-profit or volunteer organizations to support the costs associated with the current regulatory process.

- Not all trail projects are the same; they vary in type, use and potential impact.
- Vermont would benefit from a clearing house of trail building/maintenance and regulatory information, as well as a better platform for peer-to-peer information sharing, such as an annual meeting or series of workshops.
- There is a perceived need for better clarity and consistency around the definition and application of certain key Act 250 terms such as “project” and “material change”.
- There is a perceived need for better consistency across Act 250 districts related to jurisdictional decisions and Act 250 regulation of trail projects.
- Not all of Act 250’s criteria appear relevant for most trail projects.
- Many trail organizations are seeking clarity as to whether the disturbance threshold used to determine jurisdiction ‘re-starts’ at property boundaries.
- The incremental build-out of trail networks may not afford the opportunity for cumulative review of networks, and it is unclear if the current review process addresses cumulative impact adequately.

The survey results offered no major surprises and all the comments generally fell within familiar themes expressed to the Working Group during the 2018 legislative session, albeit with some additional focus and specificity. The survey did identify a range of positions; however, it also confirmed there is a significant agreement around certain values and that an opportunity may exist for the Working Group and representative stakeholders to envision a regulatory process that better addresses the unique nature of recreation trail projects in Vermont without compromising environmental protection or the interests of abutters, municipalities and other engaged citizens.

### **3. NEXT STEPS**

As indicated above, this report is in no way the end of the Working Group’s engagement around this issue. The Working Group plans to meet with the representative stakeholders on November 1 and will work over the next month to prepare for that meeting, analyze the survey results further, and develop questions and concepts through which to more constructively engage stakeholders. The Working Group would welcome the opportunity to supplement this report to the Commission after the November 1 meeting, and testify before the Commission in person if invited. Per a separate Commission request, the NRB is also gathering data on the number of Act 250 trail projects to share with the Commission.

### **4. CONCLUSION**

The Working Group values the opportunity share this report with the Commission and appreciates the Commission’s attention to this timely and important regulatory issue. As Vermont seeks to expand trail-based outdoor recreational opportunities as a strategy to improve economic, health and quality of life population-scale indicators, it is critical that the state maintain a regulatory framework that is protective, transparent, and addresses the legitimate concerns of both the regulated community and engaged citizens. The Working Group looks forward to supplementing this report in the future and continuing to support the Commission’s work on Act 250 and recreational trail regulation.

- we've done initial legwork only to be told that 250 won't be triggered. Inconsistencies are challenging for small organizations.
- Applied for 3 permits. Application very time-consuming. Some criteria difficult to interpret in relation to trails. Significant differences in interpretation of regulations from different 250 offices. In one we were required to file an amendment to reroute small section around a rare plant; in another with similar issue we were told it was a non-significant change – no amendment required.
  - Setback to biggest trail project in history of the UVTA – an ADA trail for VINS. Due to delays in 250 approval process, it will not be built this fall.
- If you or your organization has been through Act 250 process with respect to trails, please recommend any changes including, but not limited to:
- *A. How to make the process more efficient? B. How to make the process a better fit for the unique development aspects of trails. C. If Act 250 jurisdictional Triggers are not clear, identify how the jurisdictional triggers should be clarified.*
  - **A. How to make the process more efficient? There were 3 identical responses, synopsisized as follows:**
    - Terms need be clearly defined. District Coordinators and judicial officers need a common understanding of definitions to avoid inconsistency in applying them.
    - Need clear and shared understanding of when disturbance threshold clock starts.
    - District Coordinators should have benefit of legal counsel prior to any judicial proceeding so they fully understand process, with outcome of less time in the entire process and less need for expensive judicial process.
    - Important for third party enforced environmental standards
    - Oversight that ensures trails don't disrupt important wildlife habitat, wetlands, water quality, neighboring property owners.
    - Define *project*, *commercial* and *material change* more clearly so that they apply to trails
    - Synchronize understanding and application of definitions across the districts
    - Clarify handling of trail projects that cross property boundaries
    - Allow simple definition for a trail project that does not include a existing or abutting trails in a given network
    - Recognize difference between public trail network and commercial outdoor recreation business – streamline process of the former while maintaining protections for the latter
    - Design a special application for trails
    - Trails should have a checklist that triggers Act 250 and assesses whether there are notable impacts
    - Create clarity around key terms/thresholds
    - What types of trail development constitute a "project"? Apply consistently in each district

- Those charged with applying 250 standards need better education about VT State Trail System and how it functions so that they are able to differentiate between the “project” of a commercial development the system of low-impact recreational trails. Environmental stewardship is already deeply engrained in the culture of trails management. Many small towns rely on trail system for economic survival. Inconsistent interpretation creates and places unnecessary burdens on private landowners. If trail regulation becomes unnecessarily burdensome, landowners will withdraw permission for public access.
  - Suggestion to mirror the EPA process in evaluating the cumulative impact(s) of projects.
  - Clarity on what constitutes a project and what constitutes a plan for determining jurisdiction. Consistent application of Act 250 criteria across jurisdictions. Cumulative impact and what constitute a project for determining jurisdiction as it relates to trail systems is an issue. Does Act 250 encumber a trail system forever or is it applied on a project by project basis?
- **C. If Act 250 jurisdictional Triggers are not clear, how should the jurisdictional triggers be clarified**
- Improvements to existing trail/road corridors should not be considered a material change
  - 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?
  - The different Act 250 districts have their own way of dealing with trails. Trails on minimally disturbed soils existing forest roads, ancient roads, railroad beds, etc. should not have to go through the Act 250 process. New trails added to a previous Act 250 trail project that are limited to minimally disturbed soils, existing forest roads, ancient roads, railroad beds, etc. should not have to go through the Act 250 process.
  - Trails need their own definition since they are not traditional development
  - It’s unclear where trails fall in the ACT 250 DOES REGULATE AND CONTROL list. If trails fall under number 2: “The construction of improvements for any commercial or industrial purpose...” further defining the terms “improvements,” “commercial,” and “industrial” would be helpful to the reader.
  - They are not clear. They are not well defined, nor are they commonly and consistently understood and applied. Wherever possible, our trail 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.

- Criterion 4 (4)  
I erosion caused by trail development/use
- Criterion 5 (4)
- Criterion 6
- Criterion 7
- Criterion 8 (6)
- 8A (1)
- Criterion 1c
- Criterion 9 (1) Some parts of 9 – B & C particularly;  
(1) 9 A – C  
(1) 9C
- Criterion 10 (4)
- N/A & No Answer (3)
- For trails, 250 seems to be redundant layer of compliance. (6)
- Other answers:
  - Act 250 originally written w/out clear intent around regulation of trail development.
  - All criteria have relevance; some are more important (those have been counted in above)
  - Relevant criteria include looking at the big picture of trail development/remote character of location/stream & soil requirements (knowing that trails WILL cause erosion).
- **Least relevant criteria with respect to trails**
  - Criterion 1 1C (1)
  - Criterion 2 (3)
  - Criterion 3 (3)
  - Criterion 5 (1)
  - Criterion 6 (4)
  - Criterion 7 (3)
  - Criterion 8
  - Criterion 1c (1)
  - Criterion 9 (1)  
sub-criteria other than 9 B & C (1)  
All sub-criteria (1)
  - Criterion 10 Difficult to classify trail projects as either developments or subdivisions; leads to subjectivity and inconsistent application of the rule as it was intended.
  - Do not believe trail system constitutes “greatest potential for impact” (6)
  - No, but should be clear/logical threshold for trigger and clear understanding of when Act should not be triggered
  - All criteria are important

non-sensitive areas, no accessory facilities such as trailhead parking or restrooms.

- Interconnectedness holds tremendous economic opportunities for VT. Can be done in manner that conserves forests, protects open space, creates more access for people.
  - Trails should be exempt unless there is an adequate alternate structure in place to review and minimize the potential adverse impacts of trails.
  - Development and sub-division must be clearly defined, understood by all parties.
  - We believe most trails can be monitored in other ways and are very concerned that connecting longer trails could get heightened scrutiny. We would like trail and community connection to be encouraged rather than discouraged by increased scrutiny.
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- **Should trails be subject to a general permit?**
    - This question seemed to generate some confusion, and for this reason, interested persons should read the responses directly in order to ascertain the nuances of respondents.
    - **Other Comments:**
    - The VFP would benefit from seeing the scientific studies conducted on New England forests to be utilized more frequently in stakeholder engagements.

**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 17<sup>TH</sup>, 2018**

1. Please indicate your name, name of organization, and contact information (including email address).
2. Is your entity a member of the Vermont Trails 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.
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
5. Are Act 250 jurisdictional triggers with respect to trails clear?
  - a. If not, how should the jurisdictional triggers be clarified?
6. What are the strengths of Act 250's regulation of trails?