

Randy Richardson  
H. 904  
4/17/18



April 17, 2018

Dear Commissioner Snyder,

We thank you, Governor Scott and everyone involved for shining more light on the value and influence of outdoor recreation and trails in Vermont. The 2017 Executive Order creating the Vermont Outdoor Recreation Economic Collaborative (VOREC) highlighted the opportunity to drive economic development, community and personal health and conservation through continued development and stewardship of Vermont's outdoor recreation assets.

The powerful lure of Vermont's natural landscape has helped establish outdoor recreation as a \$5.5 billion industry, providing 51,000 direct jobs, \$500 million in state and local tax revenue, and \$1.5 billion in wages and salaries (Outdoor Industry Association Report 2016). Further evidence of the industry's vitality, the Vermont Trails and Greenways Council's 2016 Economic Impact Report found over \$30.8 million in economic activity supported by trail use on just four trail systems alone, and The Vermont Association of Snow Travelers reports \$500 million per year in economic impact. Much of this economic activity occurs in some of Vermont's most rural towns in great need of economic stimulation.

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 law and regulations, but also by the need to keep maintenance manageable and please our landowners, partners and users. Our commitment to sustainability and to the environment inspires us to protect our trails and communities by attempting to avoid the sensitive areas and by designing pathways to minimize water and erosion issues. Perhaps the most important conservation benefit of trails is providing safe and sustainable access to our beautiful landscape. This accessibility is the key to inspiring Vermont citizens to protect our lands and environment.

While the current positive impact of outdoor recreation is impressive, there are obstacles we must overcome to fully realize the tremendous potential of our trail systems for Vermonters and visitors alike. The Vermont Trails and Greenways Council, representing trail organizations across the state, has been concerned for many years about Vermont's land use permitting law, Act 250, which, in its current form and application, limits our ability to build and maintain Vermont's essential recreation trail infrastructure, and potentially puts an unnecessary burden on our landowners. 85% of Vermont's land is in private ownership, and the development, maintenance and use of current and future trails is widely dependent upon the consent, cooperation and good will of individual landowners.

Specifically, the current application of Act 250 constrains recreational trail building and maintenance in the following ways:

- Act 250 does not provide a clear definition of what lands are included in a single project, as opposed to separate trails or networks joined by connecting trails. The lack of formal guidance creates an

unnecessary and unfair roadblock for landowners, trail groups and trail developers trying to build valuable additions to Vermont's trail infrastructure. More precisely, the Act 250 definition of "involved land" states "...in the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction...", and has been used to make determinations that entire trail systems make up the "project" and therefore jurisdictional if the involved land totals more than 10 acres. As all trails in the Vermont Trail System are intended to be "part of a larger undertaking" it is feasible that they would all be computed as such for determination of jurisdiction, creating an unnecessary burden for the improvement and expansion of the Vermont Trail System.

- While the 10 acre trigger may be appropriate for some forms of land development, it is inappropriate for narrow and low impact recreational trails. Moreover, the definition of a physical disturbance of 10 or more acres of land, including land incident to the use of the project, is confusing and has been inconsistently applied. Therefore, Act 250 jurisdictional rulings on the 10 acres of disturbance rule have been unpredictable from district to district, creating confusion and unnecessary obstacles for trail organizations and land owners. We have compiled and attached examples of these inconsistencies for your review and reference.
- The current application of Act 250 unwittingly discourages landowners who might be willing to host trails on their property. They have virtually none of the economic incentives of typical Act 250 applicants, as trail development provides community benefit and public good, but cannot be deemed to have "commercial purpose, for host landowners and trail groups.", and, yet, they are expected to shoulder the same permitting requirements and fees.
- Across the state, Vermont's trail systems have greatly benefited from towns and nonprofit organizations coordinating dedicated volunteers who have done the lion's share of the building and ongoing maintenance of our trail infrastructure. As a consequence of Act 250's administrative requirements, under-resourced organizations divert limited funds and human resources away from necessary trail construction and maintenance activities.
- Act 250 jurisdiction has hindered the development of interconnections among existing trails and trail networks which will provide significant benefits for Vermont as defined in the stated purpose of the Vermont Trail System. These linkages are essential to connect Vermont communities and provide better access, user experience, community health and economic development in rural communities. Additionally, these linkages are a key objective outlined for the Outdoor Recreation Friendly Community Program stipulated in S.276 in which the program seeks to target "communities with good opportunities for connecting assets within the community with assets of other nearby communities".

To help address some of the aforementioned concerns, we support the current language in H.904:

*(C) For the purposes of determining jurisdiction under subdivision (3)(A) of this section subdivision (3), the following shall apply:*

*(vi) Vermont Trail System projects. In the case of a construction project for a trail recognized as part of the Vermont Trail System pursuant to section 443 of this title, the computation of land involved shall not include any existing or planned portion of the trail or of the Vermont Trail System unless that portion will be physically altered as part of the project and is on the same tract or tracts of land.*

As the Department's statute-appointed advisory group for the Vermont Trails System, we ask that you give these concerns and our support for H.904 your full attention and strongly encourage you to advocate for this language as the legislation moves forward.

As you know, the Vermont Trails and Greenways Council represents over 120,000 Vermonters through membership and over 100 Vermont businesses through sponsorship. These members are responsible for 100,000+ hours of volunteer time annually. These people *are Vermont* and share a deep passion for ecologically responsible trails.

We are striving to make the Council's extensive network of members and supporters aware of the current obstacle and the opportunity represented by this change to more clearly define the application of Act 250 to trails. We are convinced that this relatively minor change will help support land owners, trail builders and maintainers and all Vermonters by reducing ambiguity and inconsistent enforcement. To support the Vermont Trail System, we have asked for examples and encouraged verbal and written endorsement for the H.904 language above. Please see the attached appendices for examples of how the current language and interpretations of Act 250 has created counter-productive hurdles.

Thank you again for your consideration and all of your work to support trails in Vermont. Please reach out to us directly with any questions and concerns as we are ready and able to make time to help address this important issue.

Respectfully,

***The Vermont Trails & Greenway Council:***

***Mike Debonis***  
*Green Mountain Club*

***Cindy Locke***  
*Vermont Association of Snow Travelers*

***Ted Chase***  
*Lamoille Valley Rail Trail*

***Randy Richardson***  
*Upper Valley Trails Alliance (Chair)*

***Danny Hale***  
*Vermont ATV Sportsmen's Association*

***CJ Scott***  
*Kingdom Trails Association*

***Mariah Keagy***  
*Sinuosity*

***Tom Steussy***  
*Vermont Mountain Bike Association (Vice Chair)*

***Breck Knauft***  
*Vermont Youth Conservation Corps (Treasurer)*

**Attached Letters/Examples:** Vermont Association of Snow Travelers (VAST), Vermont Mountain Bike Association (VMBA), Woodstock Inn and Resort (WIR), Woodstock Area Mountain Bike Association (WAMBA)



Woodstock  
Inn & Resort



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To Whom It May Concern:

I have worked for the Woodstock Inn & Resort since the fall of 2015 as the Recreational Trails and Nordic Center Director. I also serve on the Board of the Woodstock Area Mountain Bike Association (WAMBA). In these capacities I have had the opportunity work on several trail related projects that have needed both local and State Act 250 permitting. The following describes the process for two projects that I have been directly involved in.

**Mt Peg Nordic and Mountain Bike Trail system**

In the spring of 2015 the Inn began an extensive forestry project on Mt Peg in accordance with its forest management plan. It was understood at the outset of this project that the Nordic Ski trails, which were used as access points for logging equipment, would need to be re-graded and any culverts damaged replaced. Due to concerns raised by an abutter over crossing the Kedron Brook by logging equipment, the State was asked to review the project. The crossing of the brook was found to be in accordance with logging regulations, however once on-site, the State officials decided to explore the logging operation further. It was decided during this site visit, that the clean-up of the Nordic Ski trails from the logging operation constituted "trail improvements" thus triggering the need for an amendment to our Act 250 permit on the property. This required multiple visits from ANR officials to look at the "trail improvements" including culverts managing water under the trails. We were required to change the size of 2 of the culverts as well as change the orientation of one culvert.

Additionally, grass seed, erosion matting, and rip-rap were required on various sections of trail to be in compliance. All of this came at a considerable cost to the Inn

In the fall of 2016, the Town of Woodstock requested that the Inn file for a Conditional Use permit for summer use of the Ski trails and the construction of Mountain Bike trails that had begun that spring. As this local permitting process began, we were informed that an Act 250 amendment would be required for these trails as well. This required GPS mapping of all proposed trails and a site visit from ANR to review trails that crossed intermittent streams as well as ones that were in proximity to the Kedron Brook buffer zone.

These two projects cost the Inn \$4000 in permitting fees and hiring an engineering firm to assist in the permitting process. An additional \$5,000 was spent on culverts, grass-seed, erosion

matting, and labor to bring us into compliance. Further, countless payroll dollars were spent by Inn staff on site visits and mapping the proposed mountain bike trails.

### **Suicide 6 Downhill Mountain Bike Project**

In the spring of 2017 we began permitting for our lift serve mountain bike project at Suicide 6. In addition to the mountain bike trails this also included a site on the top of the mountain to put a tent for events. This process was pretty straightforward to a point. We had visits from ANR officials to look at proximity to wetlands, deer habitat, and water run-off through intermittent streams. We adjusted location of several sections of trail to smooth the process of getting the permit granted.

Where we have run into a huge issue is that the Dept. of Fish and Wildlife has decided to use this opportunity of us applying for a permit to leverage changes to use of Inn property along the Barnard Brook. Suicide 6 as a ski area predates Act 250 by several decades. As a result, there is a significant amount of infrastructure within what now would be a buffer zone on either side of the Brook. Though our Mountain bike project in no way impacts or comes anywhere near the Brook we are still being held up in the permitting process as we go back and forth with ANR.

In addition to an hiring an Engineering firm to prepare our permit and assist with the process, we have now had to hire legal counsel to ensure that we do not lose valuable real estate for both summer and winter operations. To date the permitting process at S6 has cost us just over \$10,000!

I completely understand and agree with the general premise of Act 250. However, it seems prudent to take into consideration what type of project we are looking at when evaluating environmental impacts. A housing complex, shopping mall, etc have a much different impact than trails in the woods that are well constructed and maintained. Trail based projects should not be subject to the same scrutiny under Act 250 that these larger projects are.

One last consideration is that the success of our trail projects would not be feasible without a significant contribution in man hours from our local VMBA chapter. However, instead of logging volunteer hours on trail building projects many of our members have spent countless hours in local and State permitting hearings voicing their support for our trails. While I greatly appreciate and acknowledge all the support, I would much rather see these people out building new trails or riding their bikes. It is ironic, that in the name of protecting the environment, so much time and money has to be spent on getting permission to build trails that allow people to get into the woods and enjoy nature.

Respectfully,

Nick Mahood  
Recreational Trails & Nordic Center Director  
Woodstock Inn & Resort  
Woodstock VT 05091



WOODSTOCK AREA MOUNTAIN BIKE ASSOCIATION  
3420 Cox District Road, Woodstock, VT 05091 802-356-2207

February 26, 2018

Vermont Mountain Bike Association  
PO Box 2055  
South Burlington, VT 05407

Tom,

The following narrative describes WAMBA's efforts toward permitting free and publicly accessible recreation trails in our community. Feel free to reach out if you have any further questions.

#### Overview

Woodstock Area Mountain Bike Association (WAMBA) was formed in 2016 as a chapter of the Vermont Mountain Bike Association. Our mission is to work with landowners, public officials, and other stakeholders to build, maintain, and preserve trails for non-motorized public recreation in the Woodstock area, and encourage opportunities to experience them. Through our efforts, we hope to enhance community health, promote economic development, and foster a passion for the protection and enjoyment our region's magnificent natural landscapes.

In 2016, our first membership year, we had 46 discrete memberships (family and individual). By 2017 our membership expanded to 74 discrete memberships (family, individual, add-on). Currently, our email distribution list reaches over 200 people and our Facebook posts have reached up to 5,000 people. Active members in our growing mountain bike community include men, women, and children.

Securing enduring access to and improving existing trails for Mountain Bike use in and around Woodstock has been a primary focus for WAMBA over the last two years. The Woodstock region, like much of Vermont, is endowed with natural beauty and an environment that offers incredible outdoor recreation potential. While certain recreation resources are well established (hiking trails, horseback riding trails, and ski trails), mountain biking has been historically developed "under the radar." This makes access to riding difficult for new residents, visitors, and newcomers to the sport.

WAMBA decided to focus public trail access on land owned by the Woodstock Aqueduct Company for several reasons: (1) the Woodstock Aqueduct Company, the landowner, has historically allowed the property to be used by the public for recreation, including hunting, fishing snowmobiling, hiking, biking, and cross country skiing, (2) the property is near the downtown Woodstock area and local schools, and (3) a network of single track trails, logging roads, and class IV road already exist on the property. In 2016, after working with VMBA to develop a model landowner agreement for public mountain bike trails on private land, we entered into a 10-year agreement with the Woodstock Aqueduct Company - ensuring continued public access to the Aqueduct property.

Additionally, WAMBA has supported the Woodstock Inn's efforts to develop two fee-based mountain bike trail networks: at Suicide Six in South Pomfret and at Mt. Peg in Woodstock.

WAMBA has also tried to broker a trail access agreement for the Town of Woodstock Town Forest, which abuts the Aqueduct property and the Woodstock Inn property on Mt. Peg. While we have not reached an agreement, we remain hopeful.

### Trail Improvements

Over the course of two years WAMBA has organized and facilitated over 15 trail work sessions at the Aqueduct and Mt. Peg trails. Our members and partners have contributed hundreds of volunteer hours to improve the durability, sustainability and overall user experience of the trail networks in Woodstock for the benefit of the community at large.

In the Spring of 2017, Senator Allison Clarkson, Chair of the Woodstock Trails Partnership, recognized WAMBA's efforts to promote and steward trail-based recreation within our community and awarded WAMBA with the 2017 Annette Compton Trails Stewardship for "impressive trail stewardship on the Woodstock Aqueduct land."

While our organization has invested significant time into trail improvements on the ground, the bulk of our time and efforts to date have been spent attempting to change biased public perceptions about mountain biking, and shepherding our proposed singletrack trail project through permit processes that are designed to review development parameters for buildings and hard infrastructure. (For reference, singletrack trails range in width from 18-24" and generally hand built, or built with rubber tracked micro-excavators)

#### Local Permitting and Public Engagement

In order to establish these public trail networks, WAMBA has coalesced, grown, and mobilized the local mountain bike and trail advocate communities; and fostered public engagement and participation in the local in the local political conversation and zoning process.

WAMBA supported the Woodstock Inn's efforts to obtain a Conditional Use Permit for their fee-based (commercial) singletrack network on Mt. Peg. WAMBA members and advocates attended and testified at several public hearings before the Woodstock Conservation Commission and the Zoning Board and participated in several site visits with Commission and Board members.

Following the Inn's Conditional Use Permit, the Town of Woodstock required WAMBA to apply for a Conditional Use Permit for the Woodstock Aqueduct Trail network. WAMBA officers prepared the application and supplemental material, which included extensive maps, narratives, testimony, and third-party reports about the impacts of mountain bike trails. We mobilized the local mountain bike and trail advocate communities and organized participation in the permit proceeding and facilitated several site visits with the local Conservation Commission and Zoning Board members. This process required several hundred hours of our officers volunteer time.



WAMBA also supported the Woodstock Inn's efforts to expand their mountain bike trail offerings to the Suicide Six ski area in Pomfret, Vermont. WAMBA members and advocates attended a 4-hour Act 250 hearing, and two of our officers provided testimony during that proceeding.

#### Act 250

In December of 2016, WAMBA applied for a grant through the Recreational Trail Program (RTP) with the intention of using the funds to hire local contractors to build a new trail and expand an existing parking area at the Aqueduct property. The project has the potential to create several obvious benefits to the local economy. First, by improving a public resource, Woodstock can increase commerce and tax revenues by retaining residents who otherwise would move, attracting new residents looking for a healthy and vibrant community, and attracting visitors during all seasons. Additionally, the grant funds would be paid directly to local contractors, who otherwise struggle to make a living in our state due to the high cost of living and relatively sparse job opportunities.

In the process of applying for an RTP grant to fund trail crews in the summer of 2018, we were told that WAMBA would be required to submit an Act 250 permit amendment for the trail improvement project proposed in the grant application. Previous diligence and conversations with local zoning officials did not alert us to the existence of an Act 250 permit affecting the Woodstock Aqueduct property, issued in 1989 for the purpose of constructing a water tank. When we reviewed the 1989 permit, it had an expiration date of 2009; however, we were subsequently told by the district coordinator that, by statute, the permits were set to never expire.

Without an underlying permit, trails alone trigger Act 250 when the total amount of disturbance exceeds 10 acres. However, if there is an existing Act 250 permit associated with the land, and if the local coordinator decides that the trails might have an adverse impact on any of the 10 Act 250 criteria, a full blown Act 250 permit amendment (as opposed to an administrative amendment) is required. If the trails were not viewed as having the potential to have an adverse impact on any of the Act 250 criteria, then the project would have triggered

at most, an administrative amendment. There is a considerable difference between an administrative and full amendment. The full amendment requires the completion of a new complete Act 250 application with exhibits, demonstrating that the project does not have an adverse impact on any of the Act 250 criteria. It involves responding to nearly 23 pages of ambiguous questions which are mostly drafted with traditional forms of development in mind and requires reference to external inventories and databases (including the ANR Atlas Mapping Tool and the NRCS soil database). A "one size fits all" permitting approach, as Act 250 has been applied in this case, fails to acknowledge the difference between a trail and industrial development. It creates an inordinate burden on applicants and seriously jeopardizes good projects like this one from coming to fruition.

While our local Act 250 coordinator has been very accessible and responsive, the Act 250 process itself is simply unduly onerous for a low impact and environmentally benign public recreation resource and is borderline untenable for our small chapter. After going through the proper steps to gain approval via the local zoning process, Act 250, as applied to this project, may become the regulatory straw that breaks our volunteer backs.

As a volunteer organization run by young Vermonters with families and careers, pulling together an Act 250 application is onerous, and time intensive. In the last 2 weeks, three of our chapter officers have invested approximately 25 hours in completing the initial application, and we are not yet finished. Once the application is received and processed, additional hours will be required for site visits, hearings, etc.

The time spent on this proceeding is time taken away from our jobs and our families, as well as diluting the effort we can put into improving the trails in our community. Anecdotally, the prospect of going through this process has cast a chill on other volunteers and landowners across the state from undertaking community trail projects. The Act 250 process in its current form encourages singletrack trail advocates to keep their trail systems out of the Public review process.

The recent revelations of Act 250 requirements for our chapter has introduced uncertainty as to whether we will be able to proceed with the proposed project this Summer.

and we've had to tell our contractors that their summer jobs are now uncertain. At this point, it remains to be seen whether these young Vermonters will seek work elsewhere or remain in the State.

Conclusion:

The trails created by intensive volunteer action and community-based fundraising provide great benefits to residents and visitors of our State. Public trails are a resource to keep and draw a talented work-force, an accessible culture that promotes healthy habits and pastimes, a place for communities to form and gather, a pastime that encourages a deep appreciation for scenic and natural resources, and climate adaptation for our ski economy as a viable off season complement.

We encourage Vermont leadership to re-consider the current approach to regulating single-track trail systems. Without real change to how trail projects are regulated by the State of Vermont, volunteer trail organizations will struggle under the undue regulatory burden of a law that applies no nuance to the level of actual impacts, and the creation of public trail networks in our State will be stifled.

Seth C. Westbrook

A handwritten signature in black ink that reads "Seth C. Westbrook". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

President

Woodstock Area Mountain Bike Association

Dear Mr Stuessy

I am a member of VMBA and have enjoyed mountain biking in Vermont for the past ten years even though I am not (yet) a resident of the state.

I write to you to express my frustration with the existing Act 250 regulatory environment in Vermont, which serves to inhibit the development of trails on private and public land through the imposition of excessively onerous permitting requirements and opaque rules and regulations.

Although I have been enjoying the mountain biking trails of Vermont for the past 10 years, I only became aware of the absurd regulatory environment as it relates to the trails after I started exploring the possibility of investing in land and relocating to Vermont. Regrettably, what I found has forced me to put my plans on hold.

By way of introduction, I have recently taken early retirement after a 30-year career as a senior executive with a global mining company, where I was a member of the group executive and responsible for sustainable development and stakeholder management in the 20 countries where the company operates. I retired early in order to escape the corporate rat-race and to live a simpler life.

Our family's plan is to move to a small town somewhere in rural America where we could get involved in the local community and immerse ourselves in outdoor activities, in particular mountain biking, which is our passion. I also hope to volunteer my experience in sustainable development in service of our new community, wherever that is.

Our vision is to buy a piece of land in or near an existing four seasons trail network with a view to extending the trails onto our own land. The intention is for our two adult children and their spouses to eventually join us. My daughter is an accomplished artist and my son is an entrepreneur in the mountain biking industry.

After a year-long search and many miles of mountain biking in Vermont, California, Utah, Montana, the Dakotas, Colorado and the Carolinas, we decided on Vermont and, in particular, the town of West Windsor/Brownsville.

We chose Brownsville for a number of reasons but, in particular, because of the community's enthusiasm for mountain biking as a potential economic driver for the community. As you may know, after the closure of the ski resort on Mount Ascutney in 2011, Brownsville went into a near terminal decline. In recent years the people of Brownsville have recognized the potential of outdoor recreation, and mountain biking specifically, to revitalize the local economy. The local trails organization, STAB, as well as Ascutney Outdoors together with the town council, have done commendable work to advance mountain biking infrastructure, despite a particularly onerous regulatory environment.

Today there is a network of more than 30 miles of "legal" mountain biking trails on public lands around the base of Mount Ascutney and probably more than double that in "illegal" or secret trails on private land in the surrounding community. It is important to note that most of the "illegal" or secret trails exist with the informal approval of the landowners. The combined "legal" and "illegal" trail network in the Brownsville area is one of the best networks of its kind in the country and, unfortunately, one of the best kept secrets in the mountain biking community! A quick look at the Strava heatmap for the area shows how extensive the secret trail network really is.

While the existence of the trail network is commendable, it is disturbing that such an invaluable resource exists only in the shadows. In researching the local property market as well as the mountain biking infrastructure, I tried to understand why most of the best trails in the Brownsville area are kept secret and not marketed as the valuable community resource that it could be. In my discussions with the people of

Brownsville on this matter, everybody is in agreement that Act 250 in its current form is the single most important constraint on the development of Brownsville as a leading trails destination.

In Brownsville, where Act 250 applies to the Town Forest which hosts most of the community's "legal" trails, they cannot do any trail improvements without going through a time- and cost-intensive permit amendment process, requiring review by about a dozen state agencies. They just went through this process to get approval for a simple path to be mowed through a working hay field! Whenever they want to improve a trail, say to mitigate erosion risks, they need to apply for another amendment! This process is an exceptional obstacle that affects not only trail development but, by extension, the town's economic development potential. Needless to say that all of this frustrating work is undertaken by unpaid community volunteers.

For private landowners who fall under Act 250, it serves as a total disincentive to host legal trails on their land. Likewise, for landowners who are not currently under the Act, the fear of triggering a review due to trail development is a major concern, even if the actual risk is fairly low. In these cases, there is a general lack of understanding of Act 250, carefully cultivated through little apparent effort on the part of Act 250 coordinators to clarify the situation. The result is that many landowners refuse to make their land available for trails development, while others allow trails, but only if they are kept secret and under the radar.

As a consequence, the vast majority of the awesome trails in the Brownsville area are "illegal" and under the radar. These trails are not mapped, are kept secret and only local people who know the area ride them. As a result these trails cannot form part of any economic development or marketing plans to promote the Brownsville area to visiting mountain bikers.

Because of this I had to shelve my plans to relocate to Brownsville until this situation improves. While I can buy an awesome piece of land right in the middle of one of the best trail networks in the country, the trails effectively do not exist and cannot be used by anybody but local people, and then only furtively. Who would want to invest into such a restrictive environment?

Trail networks with 30 miles of legal trails are a dime a dozen through-out the region but networks with close to 100 miles of diverse trails in a compact geographic area surrounding a quintessentially New England village are truly rare.

If Act 250 is reformed to allow for less cumbersome regulation of trails on both public and private land, Brownsville has the potential to become one of America's premier trail destinations. The bonus is that the trails already exist, albeit secretly! All that we need is a responsive regulatory environment that would encourage these trails to be brought out of the shadows so that they can work for the community.

As a sustainable development professional that has directed community and economic development projects in 20 countries around the world for 30 years, it strikes me that Vermont's trails-based outdoor recreation industry will never realize its full potential unless the restrictive regulatory environment of Act 250 is reformed. Sustainable development 101 teaches one that an enabling regulatory environment is a prerequisite for sustainable economic and community development.

I hope that VMBA would see its way clear to make the reform of Act 250 its highest priority.

Yours sincerely

Willie Jacobsz  
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[Willie.Jacobsz@outlook.com](mailto:Willie.Jacobsz@outlook.com)

Representative, Steve Larrabee &  
Representative, David Brown  
Vermont State House  
115 State Street, Drawer 33  
Montpelier VT 05633-5501

January 15, 2003

Re: Amendment - Chapter 151 of Title 10 (Act 250)

Dear Representatives Larrabee and Brown,

Thank you for taking interest in the proposed amendment to Act 250. This amendment would exclude the construction and maintenance of snowmobile trails and snowmobile trailhead parking facilities from the definition of "Development" within Chapter 151 of Title 10.

Your support is greatly appreciated by all Vermont snowmobilers. If Chapter 151 of Title 10 is not amended, with the proposed language, the requirement to obtain Act 250 permits for snowmobile trail construction would sign the death warrant for our sport and its \$511,000,000 impact on Vermont's economy would be lost.

Can you imagine asking a landowner to sign an Act 250 permit application after he/she has given you permission to locate a snowmobile trail on their property? Regardless of what rules applied to the permit, it would be the kiss of death for that trail. Just the perception alone, of requesting that they sign an Act 250 permit is enough to turn off most landowners. When this is added to all of the concerns that landowners already have it would be the final straw! Landowners have many concerns about allowing the use of their land for any and all forms of recreation, including hunting and fishing. Listed below are a few of those concerns:

- Continued high taxation of farm and forestland that causes many to have to sell portions of, or all of their property to pay their taxes, thus causing a great fragmentation of Vermont's landscape.
- They see others capitalizing on, and making money off the use of their land.
- What's in it for me?
- High levels of recreational use of their land, in many areas, threatens the future access because it interferes with the owners' own uses and/or their quiet time.
- Liability is also becoming a major concern! Even though Vermont statutes hold landowners harmless, in most instances, many insurance companies are telling their policy holders that they will not provide Homeowners insurance to them if they allow high risk activities to take place on their land, activities like hunting, snowmobiling, sledding, ATV use as well as many others.

In the past, snowmobile trails have been built and they have not been required to apply for Act 250 permits. Over the years we have had many conversations with the Environmental Board leadership about this issue and it has always been determined that they would not impose jurisdiction over snowmobile trails. That has all changed over the last five years and the staffs of the following District commissions have been pushing hard to gain jurisdiction over all snowmobile trails. They firmly believe that the construction of snowmobile trails constitutes development and that they exist for a commercial purpose; therefore, they belong under the jurisdiction of Act 250. The Districts involved are District 2; District 3; District 5; and District 8. The following are some of our concerns:

- **District 5** – This district has even gone so far as to go back 15 years in time and to indicate that a permit should have been required for a trail that was built in towns of Fayston and Huntington. This trail was constructed in 1988 and for the most part followed log roads, skid roads and Class IV highways. The total length of the trail was approximately six miles in length and it was constructed for less than \$8,000. Approximately 3/4 of a mile of this trail has now been ruled to be above 2,500 feet in elevation by 100 feet. With today's GPS technology it is easy to determine this; however, fifteen years ago it wasn't quite so easy. At

the time the trail was built, it was approved by the Vermont Department of Forest, Parks and Recreation as a portion of it crossed state land. Most of the trail now lies in what has become known as the Phen Basin Parcel, and is owned by the state at this time.

- **District 5** – Ten years ago in the Town of Fayston and in the same area as the above work was accomplished the local snowmobile club upgraded a three-mile loop trail that utilized existing log roads and trails. The District now says that the land had been subdivided and was under an Act 250 permit at the time that the work was done. The club had the permission of the landowner to accomplish the work that was done and they were never indicated that the land was under the jurisdiction of Act 250. There was no change in use as the trail existed prior to its' upgrade and prior to the subdivision of the land by the owner.

**(Both of the above Jurisdictional Opinions (J.O.s) are being contested by VAST.)**

- **District 5** – The District 5 Commission is currently pursuing control over all trails located in the Phen Basin parcel of state land in Fayston. When the land was originally subdivided it was accomplished through a minor Act 250 process and therefore, it was done without public hearings. The District Coordinator now indicates that at the time the subdivision was granted, there was no mention of trails on the properties; therefore, any trails there now must be new and therefore, an amended Act 250 permit must be filed even for work that should only be maintenance to existing trails. If public hearings had been held, at the time of the subdivision, the trails that existed would have been entered into the record and maintenance work would be allowed without an Act 250 amendment. Currently, District 5 is requiring everyone, including the State of Vermont, to file for Act 250 amendments just to perform maintenance on pre-existing trails. The system is broken and needs to be fixed! It is costing every taxpayer in Vermont unneeded money!

- **District 8** – Several years ago a local snowmobile club in Bennington County, improved what turned out to be a town owned Class IV highway within the Green Mountain National Forest (GMNF). The project was approved by the GMNF staff and involved approximately five miles of trail upgrade. Ultimately, the town got involved because permission was not obtained from them to accomplish the work on their property. As a result, the District 8 Coordinator wrote a J.O. indicating that he believed that the trail also required an Act 250 permit. Through a series of negotiations with the Town, USFS and the District 8 Coordinator this issue was resolved and the J.O. withdrawn. However, it was not without cost to all involved and required many hours of time to resolve.

- **District 2 & 3** – Over the past five years there have been at least five instances where the coordinators of these two districts have imposed there will on projects that included snowmobile trail construction and therefore, the trails have not been built. One of the projects include a portion of trail on state land owned by the Vermont Department of Fish and Wildlife and they too have been reluctant to go forward with the project due to the precedent that it would set regarding the construction of trails on land that they control.

The above are just a few of the issues that we have had to face over the last five years with Act 250. It appears to be a growing problem and one that ultimately will impact more than snowmobile trails and that will continue to be injurious to Vermont's economy and if not corrected in a timely and expeditious manner. We look forward to working with you and the rest of the Legislature on this issue.

Sincerely,

**Bryant M. Watson**

Bryant M. Watson  
Executive Director