

Act 250 and Recreational Trails Bill Language

The Department of Forests, Parks, and Recreation is continuing work with the Vermont Trails Alliance, the Forest Partnership, and additional staff in the Agency of Natural Resources to streamline and modernize the Act 250 permitting process for recreational trails, including the development of an alternative mechanism to remove recreational trails from Act 250 jurisdiction.

This requires thoughtful, collective work, and although these changes are needed now, it takes time to get them right. In response, the group has proposed a series of interim changes to how Act 250 jurisdiction applies to recreational trails, even as it continues work on a long-term solution. Broader changes to Act 250 are underway in the legislature, and the group has developed bill language that would clarify how trail projects are treated under Act 250 and enact some clarifying changes for an interim period as we continue our progress toward creating an entirely new and more appropriate way to regulate trails outside of Act 250.

On February 28, 2020, the House passed H.926, an act relating to changes to act 250, with language concerning recreational trails included as an amendment. The specific language added is largely the same as what the group process recommended, with a few changes made by the House Natural Resources, Fish and Wildlife Committee in their amendment to their bill.

H.926 will now move to the Senate where it is expected to be taken up by the Senate Committee on Natural Resources and Energy. Should H.926 be passed by the Senate with any changes from the version passed by the House, it would then go to a Committee of Conference made up of three house members and three senators charged with working out the differences. There is a long way to go. But for now, we thought it would be timely to share what passed the House. The explanation that follows describes the bill language passed out of the House. The actual language from this section of H.926 is also included at the end of the document. This bill language:

Clarifies the definition of a trail

- Trails are for recreation, transportation, and other compatible purposes. This definition is purposefully inclusive of both motorized and non-motorized trails, and affirms trail use as a means of transportation as well as recreation. This definition does not include land primarily used for the operation of a motor vehicle, except for ATVs and snowmobiles. Land used for ATVs and snowmobiles is considered trails.
- E-bikes are not specifically called out in the bill but not for any particular reason other than the late-breaking nature of the trail language being added as an amendment and they may indeed be included later in the process.

Establishes the definition of a recreational trail and a Vermont Trail System Trail

- A *recreational trail* has the same meaning as a *trail*. Different sections of Vermont law refer to a trail or a recreational trail, and this definition makes the connection between the two.
- *Vermont Trail System Trail* is defined to have a municipal or state purpose. Ratifying this purpose in law provides regulatory benefits to trails within the Vermont Trail System and the

non-profit organizations who manage them. It makes the threshold for jurisdiction based on actual disturbance of at least 10 acres of land. This is the same threshold a state or municipal trail is currently subject to.

For an interim time period, clarifies the threshold under which a Vermont Trail System Trail would not need to obtain an Act 250 permit

- This section defines the scope of work being evaluated to determine Act 250 jurisdiction over a trail. If the scope of work disturbs less than ten acres, it is not subject to Act 250.
- It clarifies that only the amount of physical disturbance or clearing is used to determine jurisdiction for Vermont Trail System trails.
- Any trails developed prior to July 1, 2020 will not be considered in calculating the amount of involved land in a future trail project. If an existing trail on the same tract of land was built before this date, it doesn't factor into the amount of disturbance considered for new trail construction.
- In addition to the trail itself, the amount of disturbance considered for a Vermont Trail System trail project includes the trail infrastructure necessary to operate the trail, such as restrooms, parking areas, shelters, picnic areas, kiosks, and trail signs. Other infrastructure that exists on the tract of land but isn't supporting the trails is not included in the calculation of disturbed land. This protects landowners' infrastructure, such as private outbuildings or driveways, from Act 250 jurisdiction for a trail project.
- The total acreage of involved land only includes areas of disturbed ground, rather than the entire tract of land. This means that only the parts of the property that include the trail and the trail infrastructure will be subject to Act 250, rather than the entire property.
- For separate commercial projects on a tract of land that also includes a trail, the trail would be used in the calculation of the disturbed land, but would not be reviewed as part of the application.
- These changes to Act 250 will only be in effect for a temporary, interim time period while FPR, ANR, VTA, and the Forest Partnership continue work on a permanent alternative to Act 250 for Vermont Trail System trails.
- These changes will take effect on July 1, 2020 and will be repealed on January 1, 2022.

Limits the scope of Act 250 jurisdiction only to areas impacted by the trail

- When a trail is subject to Act 250, jurisdiction is only applied to the area directly or indirectly impacted by the trail. Jurisdiction does not extend to the rest of the parcel. This protects a landowners' property (beyond the sections of it that are impacted by the trail) and their private infrastructure from Act 250 jurisdiction for a trail project.

Clarifies that an Act 250 permit is not needed for property access across a trail unless the access is related to the trail

- If a landowner engages in an activity on their property that involves the trail but isn't related to the trail, and this activity wouldn't otherwise require an Act 250 permit, they do not need a new permit or an amendment to the trail permit.

- For example, if a landowner wants to create an access road or driveway across a recreational trail to access other parts of their property, this access road or driveway would not require an Act 250 permit amendment unless their own activity would require an Act 250 permit.

Requires submitting recommendations to the legislature for the development of a best management practices, technical assistance oriented alternative oversight program

- On or before December 15, 2020, the Agency of Natural Resources shall report legislative recommendations for a best management practices driven program for Vermont trails system trails that includes technical assistance, education, and oversight from the Agency of Natural Resources. The report shall include recommendations for a strategic plan and comprehensive mapping, legislative authority to administer the program, and potential funding sources.
- The Agency of Natural Resources shall consult with stakeholders on the proposed program, including the Vermont Trail Alliance, the Forest Partnership, and the Vermont Agency of Transportation.

For the statutorily inclined, here is the bill language:

First: A Sec. 3a be added to read:

Sec. 3a. 10 V.S.A. § 442(3) is amended to read:

(3) “Trails” means land used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar activities. Trails may be used for recreation, transportation, and other compatible purposes. “Trails” does not include land primarily used for the operation of a motor vehicle. For purposes of this definition, “motor vehicle” shall not include all-terrain vehicles or snowmobiles.

Second: In Sec. 3, 10 V.S.A. § 6001 be amended to add subdivisions (50) and (51) to read:

(50) “Recreational trail” shall have the same meaning as “trails” in subdivision 442(3) of this title.

(51) “Vermont trails system trail” means a recreational trail recognized by the Agency of Natural Resources pursuant to section 443 of this title. The construction, operation, and maintenance of a Vermont trails system trail shall be for a municipal or State purpose under this chapter.

Third: In Sec. 3, 10 V.S.A. § 6001 is amended to add subdivision (3)(A)(xiii) to read:

(xiii) The construction of improvements for a Vermont trails system trail on a tract or tracts of land involving more than 10 acres.

(I) This subdivision shall be the exclusive mechanism for determining jurisdiction over a new or proposed recreational trail that is or will be a part of the Vermont trails system.

(II) This subdivision shall apply to the construction of improvements made on or after July 1, 2020.

(III) For purposes of this subdivision, involved land includes infrastructure that is necessary for the operation of the trail, including restrooms, parking areas, shelters, picnic areas, kiosks, and interpretive and directional signage. Involved land does not include any recreational trail constructed before July 1, 2020.

(IV) The total acreage of involved land shall include any ground disturbance and clearing that will occur. Area where no ground will be disturbed or cleared shall not be considered involved land.

(V) Development and subdivisions requiring a permit under another provision of this chapter shall include recreational trails for determining the amount of involved land that relates to that development but shall not consider the construction of improvements related to the trail as a part of the review of that permit application.

Fourth: In Sec. 3, 10 V.S.A. § 6001 is amended to add subdivision (3)(C)(vi) to read:

(vi) Recreational trails. Jurisdiction over a recreational trail shall extend only to the recreational trail and infrastructure that is necessary for the operation of the trail. Jurisdiction shall not extend to the rest of a parcel or parcels where a recreational trail is located.

Fifth: In Sec. 3, 10 V.S.A. § 6081, subdivision (y) is added to read:

(y) No permit or permit amendment shall be required for the construction of improvements on a tract of land that would provide access across a trail provided that the access is not related to the use of the permitted recreational trail and would not establish jurisdiction under 10 V.S.A, chapter 151 on its own.

Sixth: A Sec. 14a is added to read:

Sec. 14a. RECREATIONAL TRAILS RECOMMENDATIONS AND REPORT

On or before December 15, 2020, the Agency of Natural Resources shall report to the House Committee on Natural Resources, Fish, and Wildlife and to the Senate Committee on Natural Resource and Energy with legislative recommendations for a best management practices driven program for Vermont trails system trails that includes technical assistance, education, and oversight from the Agency of Natural Resources. The report shall include recommendations for a strategic plan and comprehensive mapping, legislative authority to administer the program, and potential funding sources. The Agency of Natural Resources shall consult with stakeholders on the proposed program, including the Vermont Trail Alliance, the Forest Partnership, and the Vermont Agency of Transportation.

Seventh: In Sec. 21, by striking in its entirety and adding in lieu thereof the following:

Sec. 21. EFFECTIVE DATES AND SUNSET

(a) This act shall take effect on passage, except that 10 V.S.A. § 6086(a)(8) (Ecosystem protection; scenic beauty; historic sites) shall take effect on September 1, 2021.

(b) 10 V.S.A. § 6001(3)(A)(xiii) shall be repealed on January 1, 2022.