

Natural Resources Board

District #7 Environmental Commission
374 Emerson Falls Road, Suite 4
St. Johnsbury, Vermont 05819

May 30, 2017

Thomas Decker
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kingdomfurs@gmail.com

RE: Jurisdictional Opinion #7-280; Caledonia Trail Collaborative, aka Kingdom Trails South, Danville, St. Johnsbury

Dear Mr. Decker;

This letter is a jurisdictional opinion issued pursuant to the provisions of 10 V.S.A. §6007(c) and Act 250 Rule 3, in response to a request and related documents received from you on February 13, 2017.

This jurisdictional opinion concludes that an Act 250 permit is not required for the mountain biking trails, as outlined below.

STATEMENT OF FACTS

Based on submittals from Chris Dussault, here is the history of this mountain biking trail building project.

Over the past few years, two landowners in Danville, in the Crow Hill area, one on Library Rd. and one on Clark Rd., opened their lands to local organizations, including St. Johnsbury Academy, the Fairbanks Museum, and the St. Johnsbury Recreation Department to use for education, service projects, and recreation. These lands were not (and are still not) open to the general public.

A few years into these arrangements, some of the individuals who were involved with these lands thought that building trails on these properties for walking, running and biking would be of benefit to the organizations that had access to these lands.

The vision was to create a small, community-based trail system that would offer local schools, clubs and individuals places to recreate on purpose-built, human-powered recreation trails that would appeal to mountain bikers, walkers, snowshoers, and XC skiers.

As explained more fully below, some of the existing trails were simply using existing woods roads created over the years by land owners for forestry purposes and private xc ski trails.

To date, work on the trails has been under the auspices of Kingdom Trails (a nonprofit 501 (c)3 organization) which offers "umbrella support," including for example:

- Liability protection to landowners, as detailed in the Landowner Permission Form
- Trail design consultation
- Trail system oversight consultation
- Status as a trail within the Vermont Trails System

Similarly, the Vermont Mountain Biking Association (VMBA) also provides status as a trail within the Vermont Trails System. On May 4, 2017, the board voted to become a chapter of VMBA (currently there are about 26 chapter groups around the state). The working name is now Caledonia Trail Collaborative (CTC).

Prior to the Board's vote to become a chapter of VMBA, this was a Kingdom Trails Association project, approved by and administered by its Board of Directors and the Kingdom South (KS) subcommittee.

The KS/CTC projects were and are physically separate from Kingdom Trails Association existing trail system in Burke and Lyndon. (by about ten miles, as the crow flies) This allows the KS/CTC trails to operate on a much smaller scale, with a focus on developing a community-based project through volunteers and donations. Aside from the new name, this physical separation also assures that there will be no confusion between CTC's model of "open to the public, without user fees," vs. Kingdom Trails' user fee-based model. Volunteerism and donations will be necessary to make this a success, though users will not be required to purchase memberships or day passes. People may choose to become a member of the Chapter/VMBA but it will not be a requirement to use the trails.

As it stands, CTC has landowner agreements with three local landowners, and is currently working to secure final permissions on two other properties. Three of these five properties are in St. Johnsbury, two are in Danville.

Project A is an approximately 75 acre parcel on which we were given verbal permission to build. This land has a number of existing woods trails, and had seen some trail development by the landowner before Kingdom South came into being in July 2016. There has been 1 mile of new trail built on this property. Since this mile of work began, this property has changed ownership and is now owned by St. Johnsbury Academy. At present time, Kingdom South does not have a landowner agreement with the new landowner, though permission is being sought. This property has potential for on-site parking in an existing graveled location.

Project B has a number of existing woods roads built by its owner over the past 40 years. The trail that is marked on this map was built by Kingdom South volunteers. Most of it is new construction, though it also includes a few small sections of existing woods roads. This trail (loop) measures 1.5 miles long. Project B also has an existing onsite parking lot. At present time, this trail project is not yet open to the public, but CTC hopes

to open it in the summer 2017. Before doing so, CTC will remap it, place signs on the trail, and make arrangements with the landowner for using the existing parking location.

Project C is owned by the same landowner as Project B. There has been no development, but a simple loop over existing fields may suffice, avoiding wooded wetlands nearby.

Project D is a location for possible future development. CTC/KS has secured Landowner permission for this but has not developed any trails here.

Project E is a parcel of land owned by the Agency of Transportation that permission has been sought though not yet received. A trail here would provide LVRT users (the blue line) an opportunity to use 1-2 miles of new trails and existing woods roads in this area to bolster their outdoor experience. If permission is granted, the proposed connection to the LVRT will occur on an existing (though currently unused) VAST snowmobile trail.

As of the date of this JO, there are no concrete plans for additional trails, but more trails are expected to be built in the future.

Project disturbance area

Added together, and including the parking area on Project B (0.06 acre), the as-built new trails disturbed 0.7 acres. This was calculated by GPS mapping the length of all trails new and existing (9,351' new and 2211' existing woods roads) multiplied times a conservative disturbance width of 3 feet. $(9351 \times 3 = 28,053 \text{ divided by } 43,560 \text{ square feet /acre} = 0.64 \text{ acres disturbed as of this date by KS.}$ On May 23, 2017, I rode the entire trail network and observed that much of the trail is simple "rake and ride" where no soil disturbance has occurred, simply raking the leaves away. Other discreet locations have earth bermed turns, while some limited portions have minor cuts and fills. Most portions are one to two feet wide. My use of three feet is a very conservative measure, and should be fine-tuned in the future if new future trail building ever approaches the 10 acre threshold. The 0.7 acre of disturbance is well below the threshold of 10 Acres of disturbance needed to trigger under Act 250 Rule 71 as explained below.

The Town of St. Johnsbury has adopted permanent zoning and subdivision bylaws, whereas Danville has not.

ISSUES

Whether the Project is a "development" subject to Act 250 jurisdiction.

RELEVANT LAW

Construction of improvements for commercial purposes constitutes development for purposes of Act 250 if it occurs on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles in a town with zoning and subdivision or more than 1 acre in a town without both zoning and subdivision regulations. 10 V.S.A. ' 6001(3)(A)(iii). Construction of improvements for municipal, county or state purposes constitutes development for purposes of Act 250 if 10 or more acres of land will be physically disturbed, including land incident to the use of the project. Rule EBR 2(F)(2). Thus, the first question is whether these trails exist for a commercial purpose or a state purpose.

Commercial Purpose or State Purpose?

The Vermont Trails Act (Act) provides in part that [t]he development, operation, and maintenance of the Vermont trails system is declared to be a public purpose. 10 V.S.A. ' 4418). *Re: Vermont Association of Snow Travelers (VAST)*, Declaratory Ruling #430, Findings of Fact, Conclusions of Law, and Order (Altered), Page 9.

I am persuaded that the trails in question are part of the Vermont Trails System (VTS), and that these trails exist for a public purpose by operation of the statute, 10 V.S.A. ' 441(c). This is due to KS/CTC being part of the larger organizations, first the Kingdom Trails, then VBMA, both of which are part of the VTS. The fact that VBMA and its local chapters collect membership fees do not persuade me that these trails exist for a commercial purpose. "Commercial purpose" is defined as "the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object having value." EBR 2(L); *In re Spring Brook Farm Foundation, Inc.*, 164 Vt. 282, 285 (1995), affirming *Spring Brook Farm Foundation, Inc.*, Declaratory Ruling #290 (May 20, 1994) As set forth above, the Project exists for a state purpose because it is part of the Vermont Trails System. 10 V.S.A. ' 441(c).

On the question of whether the trail segments in the separate Project areas should be considered separately or together, Act 250 Rules provide, in relevant part, that: 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 a project is incidental to or part of a larger undertaking, all land to be physically altered in the entire project shall be included for the purposes of determining jurisdiction. Rule 5(b)

Act 250 Rule 71 Jurisdiction over Trails

(A) When jurisdiction over a trail has been established pursuant to 10 V.S.A. § 6001((3)(A), such jurisdiction shall extend only to the trail corridor and to any area directly or indirectly impacted by the construction, operation or maintenance of the trail corridor. The width of the corridor shall be ten feet unless the Commission determines that circumstances warrant a wider or narrower corridor width.

(B) Except in the case of construction on state lands which are subject to an

independent review of environmental impacts by a state agency, or construction of a trail which is recognized as a trail within the Vermont Trails System pursuant to 10 V.S.A. Ch. 20, when the construction of improvements for a trail is proposed for a project on both private and public land and for both a private and governmental purposes and the portion of the project on private land reaches the threshold for jurisdiction under 10 V.S.A. § 6001(3)(A)(I) or (ii), as applicable, then the portion of the project on public land shall also be subject to jurisdiction under 10 V.S.A. Ch. 151, even if jurisdiction would not otherwise apply under 10 V.S.A. § 6001(3)(A)(v) or Rule 2(C)(5)(b) of these Rules. -- Adopted September 13, 2013, eff. October 1, 2013. (emphasis added)

Trails considered part of the Vermont Trail System, and which physically disturb more than 10 acres or on lands with continuing jurisdiction require an Act 250 permit. There are presently no Act 250 permits on these Project lands. At some point in the future, the newly acquired Project A by the Academy may trigger jurisdiction for other improvements the Academy may undertake as a part of their educational mission. At present there are no plans for such. If jurisdiction does trigger on the Academy land for other purposes in the future, then Rule 71 could be invoked for future trail construction.

ANALYSIS AND CONCLUSIONS

The Project is for “state purpose” as outlined above.

(i) Commercial Development

Since the projects are part of the Vermont Trail System, the parcel size triggers for Act 250 are not applicable. 10 V.S.A. Section 6001(3)(A)(iii).

(ii) State Purpose

The Project will physically disturb (“involve”) approximately 0.7 acre of land, which is less than 10 acres of land, and thus does not qualify as “development” pursuant to §6001(3)(A)(v). It is noted that the existing roads to be maintained as trails are not counted because these are not new improvements nor were they constructed by KS/CTC.

If new trails are constructed in the future on any parcels controlled by CTC, then a running tally of disturbed area should be kept, so that if the planned trail construction reaches the 10 acre threshold, then an Act 250 permit may be required for trail work beyond that threshold.

Conclusion

The Project does not require an Act 250 permit.

Sincerely,



Warren Foster, Acting Coordinator
District #7 Environmental Commission
802 786-5922

cc: Certificate of Service

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Senate Bill 123 (Act number pending), Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2nd Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur, Natural Resources Board Technician, District #7 Environmental Commission, sent a copy of the foregoing document [**Jurisdictional Opinion #7-280 for Thomas Decker, St Johnsbury VT**] by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 30th day of May, 2017.

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify our office of any e-mail address changes.

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