

Recommendations for Future Improvements to Recreational Trail Oversight

Submitted by Commissioner Michael Snyder, Forests, Parks, and Recreation

Overview

Executive Order 04-20 directed the Agency of Natural Resources (ANR) to “...make recommendations for an alternative, best-management-practices-driven program for the oversight of planning, construction, use, and maintenance of recreational trails...”

Following consultation with stakeholders, ANR recommends the creation of an optional, additive Vermont Trail Certification Program. The certification program would establish an alternative oversight framework specific to recreational trails that ensures these trails do not result in undue adverse impacts to human or natural environment, that better aligns oversight with the unique impacts of trails as compared to other forms of land use and development, and that is more accessible to the nonprofit, volunteer-led organizations that typically develop and maintain Vermont’s recreational trail system. Trails enrolled in the Vermont Trail Certification Program would not be subject to existing or new Act 250 permits or amendments, if they opt-in and remain in compliance with the requirements of the certification program.

In developing these recommendations, ANR’s guiding principle has been to develop an alternative oversight framework centered in quality and pragmatism: our recommendations reflect what we believe to be an optimal and balanced proposal – meaning one that is environmentally protective, practical to implement, and can be supported by a wide range of stakeholders and the Legislature.

Introduction

Over the past several years, the Department of Forests, Parks, and Recreation (FPR) has listened to trail organizations, especially nonprofits who manage public trails on private lands, tell us that Act 250 is a complicated process that does not fit the unique situation that their trail systems rely on, namely the generosity of private landowners. In an attempt to either clarify or simplify Act 250 for trail organizations, evaluate an alternative oversight framework specific to recreational trails or to explore the possibility of an exemption, FPR, the Natural Resources Board (NRB), and the Vermont Trails and Greenways Council (VTGC) met several times. In so doing, two main interests were discovered, and the complex nature of the problem emerged. Namely:

1. How to provide a path to Act 250 exemption to trail groups (especially nonprofit trail groups which manage trails on private lands as part of the Vermont Trail System (see Appendix C))
2. How to ensure and demonstrate environmental quality and consistency with recreation trail construction and maintenance activities

Over the years, trail organizations formed the Vermont Trails Alliance, an advocacy nonprofit, in order to more effectively pursue policy changes in the legislature and among stakeholders. The Forest Partnership emerged as the interest group representing the environmental concerns associated with exempting any trails from Act 250. These groups have worked with ANR and FPR staff for the past year,

and were successful in getting a bill to the Governor's desk, which while vetoed due to concerns about aspects of the legislation beyond recreational trails, resulted in Executive Order 04-20.

Executive Order Mandate

On October 5, 2020, Governor Scott issued Executive Order 04-20 – Promoting and Providing Regulatory Certainty for Recreational Trails. This executive order includes the following order regarding recommendations for future improvements to recreation trail oversight:

“On or before March 1, 2021, the Commissioner of Forests, Parks, and Recreation shall make recommendations for an alternative, best-management-practices-driven program for the oversight of planning, construction, use, and maintenance of recreational trails in the Vermont Trails System administered by the Agency of Natural Resources. These recommendations should also provide applicants clarity on how recreational trails can be constructed and operated in a manner that does not result in an undue or adverse impact to the human or natural environment where they are located. The report shall include recommendations for revisions to 10 V.S.A. chapter 20, including revisions to mapping, legislative authority to administer the program, potential funding sources, staffing needs, and whether to include other recreational trails. The recommendations should include any proposed changes to legislation to promote the construction and operation of trails in an environmentally protective manner. The Agency of Natural Resources shall consult with stakeholders including the Vermont Trails and Greenways Council in developing recommendations.”

Process and Stakeholders:

Upon issuance of EO 04-20, ANR convened a work group including ANR staff and representatives from the VTGC to compile and review existing Best Management Practices (BMPs) for the planning, construction, maintenance, and use of trails while considering applicable Act 250 criteria. ANR staff and the VTGC continued to meet and revise the framework document, propose recommendations for changes to statute, review BMPs, and explore what a modernized and strengthened VTS would need to support it. The VTGC reviewed and provided feedback along the way and specifically on a framework which outlined ANR's proposed recommendations. This feedback resulted in substantial changes to the framework, which was then used to inform discussions with additional ANR program staff, the Forest Partnership, the Backcountry Hunters and Anglers, and the Vermont Outdoor Business Alliance. A summary of the responses is provided below.

Recommendations

We recommend changes that would create an optional, additive Vermont Trail Certification Program. If trail organizations choose not to participate, they can still be a VTS member. Those trails which are enrolled in the Vermont Trail Certification Program will not be subject to existing or new Act 250 permits or amendments, if they remain in compliance with the requirements of the certification program.

The proposed Vermont Trail Certification Program statute language includes a clearer definition of trails as well as definitions which clarify what is meant by a trail organization which is eligible to participate. The responsibilities of participating trail organizations include:

- Identifying all trails under their control, operation, or ownership
- Engaging in a periodic planning process (for trail organizations with 25 or more miles of trail)

- Periodic inspection and reporting, and plans for bringing, to the extent practicable, all existing trails into compliance with BMPs
- Pre-construction notification for “major trail projects” (which are proposed to be defined as “...any new trail construction or the substantial improvement of an existing trail that involves more than 10 acres of land within a radius of five miles of any point on any involved land, within any continuous period of five years.”)
- Compliance with BMPs for all new trails constructed by the trail organization and, to the extent practicable, substantial improvements to existing trails

BMPs for the Vermont Trail Certification Program will be developed by ANR in consultation with stakeholders, from existing trail-based guidance, local expertise, and reference to Act 250 criteria. The BMPs will be established by ANR through rulemaking. See Appendix B for a description of the principles that would guide selection and development of BMPs during rulemaking. BMPs for the planning, construction, use, and maintenance of trails will ensure that trails certified under this program are constructed and operated in a manner that does not result in undue adverse impacts to the human or natural communities where they are located.

ANR proposes to establish such BMPs through a rulemaking process that builds on: (1) the many practices already successfully employed by Vermont trail organizations, and other similar organizations within and outside of Vermont, to reduce the environmental impacts of trails, and (2) the best available science that may be useful in understanding these impacts and how best to address them; and (3) the Agency’s and other stakeholders’ experience designing and permitting trails to meet a wide array of environmental criteria.

BMPs will apply to the planning, construction, use, and maintenance of Vermont Trail Certified trails and infrastructure that is needed for the operation of the trail, including restrooms, parking areas, picnic areas, kiosks, and interpretive and directional signage, and consider practices for avoiding, minimizing and mitigating impacts to the natural and human environment including, but not limited to:

- Water quality and aquatic habitat stemming from erosion, sedimentation, stormwater runoff, and modification of riparian vegetation
- Floodway and river corridor functions, including floodwater conveyance, floodwater storage, and natural channel forming processes
- Class I and II wetland functions and values
- Transportation facilities, including congestion and safety
- Municipal services, including emergency services and road maintenance
- Aesthetics of the surrounding area, including noise
- Sites, structures, districts or archeological landmarks in the National Register of Historic Places or State Register of Historic Places
- Significant Natural Communities, as designated by the Fish and Wildlife Department, and regional ecological landscape connectivity, including but not limited to those areas identified by Vermont Conservation Design
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- Rare, threatened, or endangered species, as designated by the Fish and Wildlife Department
- Necessary wildlife habitat, including but not limited to deer winter habitat,, habitat for pool-breeding amphibians, high elevation nesting habitat for Bicknell’s thrush and other high

elevation birds, black bear feeding habitat and travel corridors, and habitat for other species of wildlife (this list is intended to be illustrative, not exhaustive)

- Existing public facilities, including parks and natural areas, that may be burdened by trail and ancillary structure development
- Local and regional plan implementation

BMPs will also be developed for other related activities such as: public/stakeholder input, landowner relations, master or other public planning, municipal relations, corridor clearing, signage, emergency services coordination, addressing user conflicts, monitoring and trail assessment.

In addition to establishing a set of BMPs, ANR will be responsible for creating and implementing:

- A variance process for trail elements unable to comply with the standard BMPs
- Sensitive natural resource areas that new trail construction will avoid
- A pre-construction review process for new major trail projects
- An inspection and audit process for trails enrolled in the program
- Every 5 years, ANR staff will ensure that all trails have been inspected for compliance with the certification program
- A corrective action letter for noncompliance which includes steps that the trail organization is required to take and deadlines for completion of those actions
- A process for removing trail organizations from the program in instances of documented significant noncompliance

As envisioned, the program will be supported by up to three new ANR staff, including an FPR staff person dedicated specifically to support and management of the VTS and a position in DFW to review projects and ensure impacts to the natural environment are avoided or minimized. Recognizing that this program will require staff support and associated costs, options for covering these costs are being explored including mechanisms for adding funds to the Vermont Recreational Trails Fund (10 V.S.A. § 446) and/or fees.

ANR is recommending implementing statutory changes to create the Vermont Trail Certification Program: see Appendix A. These statutory changes are draft and still need further stakeholder and ANR staff input but reflect a robust BMP-based alternative to Act 250.

Changes to 10 V.S.A. § 6001 and § 6081

In addition to proposed changes needed to establish the Vermont Trail Certification Program, ANR is also recommending changes to 10 V.S.A. § 6001 and § 6081 (many of which were part of H.926), including:

- Aligning the definition of “Recreational trail” to the definition of “trail” in Sec. 1. 10 V.S.A. § 442
- Defining “Vermont trails system trails” as having a municipal, county or State purpose
- Adopting a temporary exemption for trails in the Vermont Trails System that clarifies many of the ambiguities in Act 250 and was a part of H. 926 from 2019, they include: Clarifying the definition of “development” for Vermont Trail System trails as the construction of improvements on a tract or tracts of land involving more than 10 acres and making it the

exclusive mechanism for determining jurisdiction of Act 250 over VTS trails development made on or after July 1, 2021.

- Defining “involved land” for VTS trail development as only the land that is physically altered, including any ground disturbance and clearing as well as infrastructure that is incidental (necessary) to the operation of the trail (like restrooms, parking areas, shelters, picnic areas, etc.)
- Clarifying that for VTS trails, Act 250 jurisdiction will only extend to the trail and incidental infrastructure and not to the rest of the parcel or parcels where the trail is located unless determined to be jurisdictional under another Act 250 provision

Changes to provisions related to Act 250 Permit Exemption:

- No permit or permit amendment shall be required for the construction of improvements on a tract of land that would provide access across a recreational trail, provided that the access is not related to the use of the permitted recreational trail and would not establish jurisdiction under Chapter 153 on its own.
- Proposing a pause on Act 250 permits for VTS trails until January 1, 2023: during this time, no permit would be required for a VTS trail which was in existence prior to July 1, 2021
- Proposing a January 1, 2023 date whereby no permit or amendment (Act 250) is required for a recreational trail that is enrolled in the Vermont Trail Certification Program unless that trail organization is removed from the program, at which point they will be subject to permitting if jurisdiction applies
- Finally, a proposed rulemaking process which requires ANR to consult with the Vermont Trails Alliance, the Forest Partnership and the Vermont Agency of Transportation, and requires ANR to file a proposed rule with the Interagency Committee on Administrative Rules on or before July 1, 2022. In addition, three positions are proposed to be authorized in ANR to support this program in fiscal year 2022.

Response

We have presented the overall concepts contained in Appendix A to the VTGC, the Vermont Outdoor Business Alliance (VOBA), the Forest Partnership (FP), and the Backcountry Hunters and Anglers (BHA). Overall, these organizations are supportive of ANR’s proposal, but not without caveats -- and based on limited understanding of its details.

The VTGC appreciates the opt-in aspect of our proposal, while still wishing to have less administrative burden and oversight associated with the certification program. In addition, VTGC is concerned that membership fees could be a barrier for some organizations who may wish to participate.

VOBA is generally supportive with an interest in seeing a system that supports our world-class trails and the economic impact they bring to communities in Vermont.

The Forest Partnership appreciates ANR’s interest in creating a robust, environmentally-founded program, and appreciates the level of effort that it has taken to arrive at these recommendations.

BHA is supportive of the concept of creating BMPs for trails and are particularly keen to see BMPs developed for the siting of new trails that guide organizations to leave some areas trailless to provide a more dispersed and remote outdoor recreation experience, at both the landscape and local scale.

Next Steps

In reviewing existing BMPs, ANR staff identified a number of BMPs which need to be developed.

One major gap which was identified is a BMP for siting new trails at a variety of scales. Staff are exploring available data, mapping and consensus on mitigating negative impacts from trails to wildlife: addressing these gaps will require additional resources to continue and implement. A recreation asset map which includes existing available trails, the amount of use they receive, visitor experiences, and conservation design elements such as significant natural communities and wildlife corridors would provide a landscape-level coarse filter analysis to determine siting of new trails (where building new trails would have the most negative impacts or the least). At a parcel or trail system level, guidance needs to be developed about siting new trails, re-routing existing trails and decommissioning trails which no longer serve the public.

ANR will also need to consult with VTrans and other state agencies in order to create or adopt BMPs for traffic/circulation, parking, and other non-ANR elements. Overall, the compiling, reviewing and adopting of BMPs will take a significant amount of staff time and additional resources: ANR recommends continuing and enhancing the BMP Work Group which was formed as part of our response to the Executive Order.

Finally, changes to the VTS must be accomplished in statute. In Appendix A, ANR outlines recommended changes to the statute which would support a robust, BMP-based Vermont Trail Certification Program predicated on public purpose and statewide, regional and local significance of these trails. ANR is also including recommended changes to Act 250 statute which would provide an exemption to Vermont Trail Certification Program members who demonstrate compliance with all applicable BMPs.

Appendices

Appendix A: Proposed Statute Language

Appendix B: Best Management Practice Principles for Proposed Vermont Trail Certification Program

Appendix C: The Vermont Trail System