



# Trail Projects & ACT 250

VMBA has been working closely with Vermont Forests Parks and Recreation to determine and define our shared path forward relative to Act 250. The primary purpose of this document is to provide a clear overview of Act 250 and its relationship to mountain bike trail building, helping to educate both Chapters and landowners. The secondary purpose of this document is to ensure all Chapters are operating under the same paradigm while building trails and communicating with landowners.

Please consider this to be general guidance and not the final word. The single most important thing to remember is that one should always check with the local Act 250 District Coordinator for a jurisdictional ruling before any work begins. District Coordinators have the authority to decide whether a project requires a permit. Each trail project is unique, and there are a number of factors that will influence a District Coordinator's jurisdictional determination. To find your local District and staff, go to:

<https://nrb.vermont.gov/act250-program/district-staff-and-commissions>

## **What is Act 250?**

Act 250, enacted in 1970 in response to heightened development and environmental pressure, is administered by the Natural Resources Board (NRB) and governs land use and development in Vermont. Act 250 jurisdiction covers everything from large industrial construction to oil and gas exploration to residential housing units. Critically, Act 250 can cover trail projects in Vermont as part of its jurisdiction over commercial construction on land tracts of a certain size, depending on subdivision and zoning bylaws.

If a trail project is believed to meet any of the Act 250 jurisdictional criteria (described below), the case is first reviewed by a District Coordinator, who issues a Jurisdictional opinion (JO) as to whether an Act 250 permit is indeed required. If so, Act 250 is "triggered" and the project goes into a permitting process in which the applicant must catalogue impacts across 10 Criteria; air and water quality, water supplies, traffic, local schools and services, municipal costs, historic and natural resources, including scenic beauty, impacts of growth, and municipal and regional plans.

Many trail projects can avoid triggering Act 250 altogether, saving considerable time and resources. Landowners, too, will often only support trail building on their property if they can be assured an Act 250 permit will not be required.

## **What triggers Act 250 for a trail project?**

There are four major factors that come into play when evaluating whether or not a trail project is likely to be subject to Act 250; construction of improvements, whether the trail is private or public, area (either that of the parcel(s) or that physically disturbed), and whether or not there is an existing Act 250 permit on the property.

## **Construction of improvements**

Act 250 only requires a permit for construction of improvements, not maintenance. While an important distinction, the difference between the two, however, can be fuzzy and may require direction from the District Coordinator. For example, the rerouting of a trail in some cases can be considered “maintenance.” The balance of this document assumes that a trail project has been determined to be construction rather than maintenance.

## **Private vs. public trails**

All trail projects in Vermont are considered either “private” or “public.” On *public lands*, Act 250 jurisdiction is triggered when the construction of the trail and its related infrastructure (such as parking lots) will *physically disturb ten acres or more*. This is the rough equivalent of 20+ miles of handbuilt trail or 10+ miles of machine-built trail.

For trails on *private land*, Act 250 states that a permit may be required if the project is on a tract or tracts of land over ten acres in size, or if it “involves” a tract or tracts of land which, when combined, are over ten acres in a town with municipal zoning and subdivision regulations. If the town lacks such regulations, the threshold area that triggers Act 250 is just 1 acre. *As a default for private land, the length of the trail is not a factor in determining Act 250 jurisdiction; it is the size of the land on which the trail will run that controls the question of jurisdiction. If, however, the trail is designated a part of the Vermont Trail System*, the project is considered “public” and the jurisdictional trigger becomes the same as that for a trail on public land - 10 or more acres must be physically disturbed. This is very good news for avoiding Act 250 permitting on private land.

## **The Vermont Trails System**

The Vermont Trails System (VTS), established by statute, is made up of trail networks designated by the Secretary of Natural Resources upon recommendation by the Vermont Trails and Greenways Council. The VTS designation acknowledges these trails as public assets, and they are therefore treated as public projects – meaning that 10 or more acres must be physically disturbed before triggering Act 250, as noted above. In order to be considered part of the VTS, Chapters must have a signed agreement with the landowner in advance of construction. A shape file of the completed trail must also be submitted, which is retained by the State of Vermont and can be made available upon request. VTS designation does not, however, require landowners or Chapters to provide maps, either physical or digital, of their trails.

## **Trails on property with an existing Act 250 permit**

If there has been a previous Act 250 permit issued for a project on the land where a trail is proposed, an amendment to that permit may be required for any projects on that land. This is due to the fact that Act 250 has “continuing jurisdiction” over land once a permit has been issued, with some District Coordinators arguing that there is no statute of limitations on such permits. The question of whether or not a trail project meets any of the Act 250 permit criteria listed above is also entirely up to the discretion of the District Coordinator. It is no wonder many landowners are keen to avoid triggering Act 250. To acquire an amendment, chapters, trail builders or landowners should contact their District Coordinator.

## **Trails that connect public and private lands**

As a general rule, where proposed trails pass through both state and private lands, Act 250 jurisdiction on the state land is triggered if there are ten or more acres of disturbance (see above), and Act 250 jurisdiction is triggered on the private land if the parcel meets the acreage (one or ten acres) threshold. Trails passing through municipal and private land are treated as private projects – unless the project is designated part of the VTS as described above.