



State of Vermont
Natural Resources Board
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TEMPORARY GUIDANCE ON ACT 250 RULE 71: JURISDICTION OVER TRAILS

February 16, 2021

1. Background

Act 250 Rule 71 applies to Act 250 jurisdiction over trails. It presently reads:

- (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.

On October 5, 2020, Vermont's Governor Phil B. Scott issued Executive Order [04-20](#), which directed the Vermont Natural Resources Board to clarify through guidance or rulemaking certain aspects of how jurisdiction under this operates.

The Board is issuing this temporary guidance in fulfillment of its obligations under this executive order. This temporary guidance will remain in effect until expressly repealed by the Board or until the Board amends Rule 71 through rulemaking, whichever occurs first. This temporary guidance does not itself amend Rule 71 or any other Act 250 Rules, which shall continue to dictate when trails are subject to Act 250 jurisdiction. Rather, this temporary guidance merely clarifies certain aspects of Rule 71.

2. Temporary Guidance

Pursuant to Act 250 Rule 71:



- a. Calculating Act 250 Jurisdiction over Vermont Trails System Trails: Jurisdiction over recreational trails that have been accepted into the Vermont Trails System pursuant to 10 V.S.A. Ch. 20 shall be determined under the definition of development for municipal, county, or State purposes set forth in 10 V.S.A. § 6001(3)(A)(iv). As of the date of this temporary guidance, the definition of development in Section 6001(3)(A)(iv) is:

The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county, or State purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

- b. Calculating Involved Land for Vermont Trails System Trails: The amount of land involved in the construction of improvements for recreational trails that have been accepted into the Vermont Trails System shall be determined pursuant to Act 250 Rule 2(C)(5)(b), which as of the date of this temporary guidance states that involved land includes:

Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. 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 a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.

- c. Calculating Act 250 Jurisdiction over Non-Vermont Trails System Trails: Jurisdiction over recreational trails that have not been accepted into the Vermont Trails System shall be determined under the remaining definitions of development in 10 V.S.A. § 6001(3)(A).

- d. Calculating Involved Land for Non-Vermont Trails System Trails: The amount of land involved in the construction of improvements for recreational trails that have not been accepted into the Vermont Trails System shall be determined pursuant to Act 250 rule 2(C)(5)(a), which as of the date of this temporary guidance states that involved land includes:

The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction.

- e. Extent of Act 250 Jurisdiction over any Vermont Trail: When jurisdiction over any trail (regardless of whether it has been accepted into the Vermont Trails System) has been established, 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 District Environmental Commission determines that circumstances warrant a wider or narrower corridor width.

Adopted by the Natural Resources Board on February 16, 2021.

Effective February 16, 2021