

## LAMOILLE VALLEY RAIL TRAIL

### Frequently Asked Questions (FAQ) regarding the State of Vermont's settlement with the Vermont Association of Snow Travelers September 26, 2017

#### *Procedural History*

The Vermont Association of Snow Travelers (VAST) sued the State of Vermont at the Surface Transportation Board (STB), a division of the federal Agency of Transportation. In its *Petition for Declaratory Order*, VAST argued that federal law, specifically the National Rail Systems Act and the Interstate Commerce Commission Termination Act, preempts Vermont's Act 250 (10 V.S.A., Ch. 151).

VAST is a private, non-profit organization that operates the Lamoille Valley Rail Trail (LRVT or the Trail) on land that it leases from the Vermont Agency of Transportation (VTrans). The Trail is subject to Act 250 Land Use Permit #7C1321.

After discussion, the State and VAST agreed to a Settlement that would amend the trail lease between VAST and VTrans to incorporate substantive conditions from the Act 250 Permit.

#### *The Settlement*

The Settlement between the State and VAST calls for an amendment of the trail lease between VAST and VTrans to incorporate substantive conditions from the Act 250 Permit, including: conditions relating to hours of operation, limitations on use of all-terrain vehicles (ATVs), noise, mitigation and trail reroutes.

The conditions of the lease protect the surrounding communities and allow the trail to be developed into a recreational path that all Vermonters and visitors can enjoy. The State agrees to not enforce the Act 250 permit absent a material breach of the VTrans lease, and VAST will drop its challenge to the Act 250 permit before the Surface Transportation Board.

As a part of the settlement process, the Parties agreed to allow for 30 days of public comment on the settlement. The following FAQ represent the State's response to questions derived from the comments received.

## *Questions & Answers*

**Q: Is the Act 250 permit being dissolved?**

**A: No.**

The Settlement between the State and the VAST calls for an amendment of the trail lease between VAST and the Vermont Agency of Transportation (VTTrans) to incorporate substantive conditions from the Act 250 permit, including conditions relating to: hours of operation, limitations on use of all-terrain vehicles (ATVs), noise, mitigation and trail reroutes. The conditions of the lease protect the surrounding communities and allow the trail to be developed into a recreational path that all Vermonters and visitors can enjoy.

In the Settlement, the State agrees to not enforce the Act 250 permit absent a material breach of the lease. In the event of a material breach of the lease, VAST will have an opportunity to cure (fix) the breach in a reasonable time. If VAST fails to do so, then the Natural Resources Board may initiate enforcement of the Act 250 permit.

**Q: Has the State agreed that federal law preempts Act 250 jurisdiction on the trail?**

**A: No.**

The State has not agreed that federal law preempts Act 250 jurisdiction on the trail. The preemption challenge that VAST filed before the Surface Transportation Board will be dismissed, and the Settlement does not address or decide the question of preemption.

**Q: Is this Settlement a sign that the State is not willing to vigorously enforce Act 250?**

**A: No.**

The State and the Natural Resources Board remain as committed as ever to Act 250.

The State believes that the trail presents a unique circumstance. In this Settlement, the State recognizes the important role that the trail plays for recreation, tourism and education in Vermont. Through this Settlement, the State seeks to encourage the use of the trail and the important, specific conditions contained in the Act 250 permit. By incorporating the certain conditions of the Act 250 permit into the lease, the State believes it reached that balance.

**Q: Does the Settlement create a bad precedent?**

**A: No.**

By its terms, the Settlement is not admissible as evidence in any future legal proceeding, including any proceeding brought under Act 250, unless the proceeding involves a Third Party attempting to enforce the Act 250 permit.

**Q: Who do I contact if I have a concern that one of the conditions has been violated?**

**A:**

If you believe that there has been a violation of the lease or any of its conditions, please contact VTrans at:

**Dan Delabruere, Rail Program Director**  
**Phone: (802) 828-1331**  
[daniel.delabruere@vermont.gov](mailto:daniel.delabruere@vermont.gov)

**Q: What will VTrans do with a complaint that there has been a violation of the lease?**

**A:**

VTrans will consider the complaint and take any necessary steps to investigate the alleged violation, including consulting with the Natural Resources Board and the Vermont Agency of Natural Resources as necessary. If there is a suspected material breach of the lease and its conditions, VTrans will provide written notice of the suspected material breach to VAST and provide VAST with the opportunity to cure within a reasonable time. A copy of the written notice shall also go to the Natural Resources Board.

Generally speaking, the lease is enforceable by VTrans as a contract, but if there is a material breach that is not corrected, then the NRB may also pursue enforcement under the Act 250 permit.

**Q: What if VAST wants to amend the lease?**

**A:**

Under the settlement, if VAST seeks an amendment that might affect the Act 250 conditions incorporated into the lease, VTrans will notify the NRB. The NRB will then have the opportunity to provide its view to VTrans via written comment on whether the amendment should be allowed.

**Q: How is the lease with VTrans renewed and when?**

**A:**

The lease is currently in its first 10-year renewal term, which runs from March 1, 2017 through February 28, 2027. At the end of that period, VAST may seek to renew the lease for a second 10-year renewal term, which would extend from March 1, 2027 through February 28, 2037.

**Q: I was a party in the prior Act 250 case, why was I not a part of the Settlement?**

**A:**

The Settlement resolves a matter separate from the prior Act 250 case. This Settlement resolves a federal case brought by VAST against the State before the United States Surface Transportation Board. Because the Settlement affects the Act 250 permit, the Parties agreed to post the Settlement for 30 days to allow for public comment and input. An effort was made by the Natural Resources Board to communicate (via e-mail) to the parties from the Act 250 case when the public comment period opened and let them know of the Settlement.

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