

VNRC

Vermont

Environmental Report

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**Threats Are Mounting
on the Horizon...**

Fall
2010

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**... But We Have a Plan
for a Bright Future**





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VNRC would like to thank the Education Foundation of America and the Lintilhac Foundation for support of our permit restructuring work.

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21ST CENTURY CHALLENGES DEMAND FRESH IDEAS

BY ELIZABETH COURTNEY, EXECUTIVE DIRECTOR



We need a strong, forward-looking Act 250 and good local and regional plans to provide the roadmaps for energy conservation and efficiency, increased transportation options for Vermonters, affordable housing, smarter land use patterns that concentrate growth in town centers and leave working landscapes for the production of food and fuel.

Today, there are several big, threatening economic and environmental concerns on the horizon, around the world and here at home in Vermont. VNRC is working to take those threatening storm clouds and turn them into a new dawn for the Green Mountain State.

With every problem comes opportunity.

This issue of the *Vermont Environmental Report* addresses the 21st Century needs of a shaky economy, a difficult housing market, the challenges of living with the impacts of climate change and securing our renewable energy future. In large measure Vermont's planning and regulatory system is where these issues are addressed, and where good public policy can guide economic growth while protecting our natural resources.

VNRC has two broad areas of concern with the regulatory system in Vermont today.

The first has to do with the process. Simply put, today we are moving toward a more redundant, litigious permitting system, requiring legal assistance, stamina and capital, which shuts many Vermonters out of the process. We believe there are inefficiencies, issues of fairness and access, and unnecessary time and expense to participants in the permitting process. These issues need to be addressed to help make the system work better for developers and other parties, cost less and better protect our natural resources and communities.

The second need for change has to do with substance. Vermont's landmark development law, Act 250, was established in 1970, followed soon after with the enactment of most of our other environmental regulations and planning laws. This time of intense legislative action marked an era when the issues of rampant growth and pollution were of serious concern. Climate change and energy security were hardly on the radar and were barely part of our vocabulary until the 1990s.

Today, we have a very different set of concerns that arise from the effects of climate change and the transition into a new energy future. We need a strong, forward-looking Act 250 and good local and regional plans to provide the roadmaps for energy conservation and efficiency, increased

transportation options for Vermonters, affordable housing, smarter land use patterns that concentrate growth in town centers and leave working landscapes for the production of food and fuel.

With the 2010 gubernatorial and legislative races ushering in a new governor and several new legislators in 2011, the platforms of the major political parties contain planks related to permit reform. VNRC has worked with a broad cross-section of lawmakers, interested groups and individuals over the past year to build consensus on an approach to permit reform that is comprehensive and addresses the needs of a changing Vermont. In this issue VNRC outlines that comprehensive plan.

The basic concept of the proposal calls for a consolidation of the permitting functions of three state agencies—the Vermont Environmental Court, the Vermont Natural Resources Board and the permitting functions of the Department of Environmental Conservation at the Agency of Natural Resources. This new entity would be called the Department of Environmental Quality (DEQ). Envisioned within the DEQ is a three to five-member, professional board to hear appeals from Act 250 land use and local zoning decisions. The proposal also integrates the Growth Center program into the DEQ and proposes several modifications to the criteria of Act 250.

With the grave needs resulting from the threats of climate change and energy insecurity, economic contraction and a shortage of affordable housing, Vermont needs to rethink its permitting infrastructure and criteria. This proposal will save Vermonters money and better protect our invaluable natural resources. It will create incentives to develop and redevelop our town centers, streamline cumbersome elements of the process and result in better outcomes.

VNRC is poised to take the lead to help Vermont turn a critical page in our history.

We'll need the support of Vermonters and leaders who understand the needs and opportunities for good planning and policies.

We hope you'll join us, and let us know what you think!





THE EVOLUTION OF ACT 250

BY PAUL GILLIES, ESQ.



While still respected, Act 250 has begun to show its age.

Forty years ago, the world was tilting in new directions, and there was a crisis in Vermont. Fourteen hundred second homes were planned for Stratton, and Stratton had no subdivision regulations, nor for that matter did Vermont. If all 19 of the vacation home subdivisions planned for Dover in 1969 were built, its weekend population would have increased from 370 to 16,000.

Governor Deane Davis took a tour of southern Vermont in the spring of 1969. What he saw infuriated him. Jim Jeffords, who was Vermont's attorney general at the time, wrote that Davis saw raw sewage "bubbling out of the ground next to some quick-built ski chalets," and that was enough for him.

The charismatic Governor single-handedly stopped the Stratton development by calling up the president of the International Paper Company and asking him to abandon the project, which he did. The Governor held a conference and appointed a commission, headed by Arthur Gibb, a retired banker. The Gibb Commission issued two reports, which formed the template for the legislation that ensued. The Legislature passed Act 250 that spring.

The story of how Act 250 came to be, and what happened to it in the 40 years that followed, engages the entire modern history of Vermont. Leading up to its passage were changes that presaged a greater state role in regulating development, including the building of the interstates, reapportionment of the Legislature, and the early environmental initiatives, including the billboard law (1968), the bottle return law (1953-1955, 1972), and Section 248 reviews of new utility lines (1969), among others.

Act 250 has served as the arena where major battles were fought over residential subdivisions, the growth of ski areas, the expansion or reopening of gravel pits, bear habitats, deeryards, cell towers, big box retail establishments, and agricultural soils. While the crisis began in the southern counties, in the mountains, the battle lines soon moved north to Burlington, Williston, and eventually St. Albans, where recently the

Environmental Court's hearings on a proposed Wal-Mart store recently ended.

Over the last four decades, Act 250 has endured in spite of its setbacks, which included the loss of the state land use plan, the judicial voiding of a few of its administrative rules, accusations of its toxic effect on economic development, the refusal to confirm the reappointments of an Environmental Board chair (Elizabeth Courtney, the current Executive Director of the Vermont Natural Resources Council) and two members in 1994, at least two major permit reform initiatives, the abolishment of the board and transfer of its appeal review responsibility to the Environmental Court, and efforts to promote land use, economic and social policies by the creation of new exemptions.

Every year there are demands to make the process easier, faster and more predictable. The history of Act 250 is best told by looking at what was done with it, legislatively, judicially, and administratively, over its time. Each branch has had its impact in shaping Act 250.

Looking back, no one can deny the audacity of the enactment of Act 250.

Vermont's Act 250 was the crown jewel when it was first adopted, the crystallization of an environmental consciousness and conscience. It put us in the front rank of the environmental movement, unique among other states. Forty years later, it has lost its dewy innocence. Attacked at first as unworkable and in every decade as inefficient, it has survived more close calls than any comparable law.

While still respected, it has begun to show its age. Some environmentalists rue where it has headed. Perhaps that is the reason the story of the birth of Act 250 is so often retold.

That is our creation myth. Repeating how Vermont turned back a wave of unwelcome, unplanned subdivision development just in time allows us to revive our inspiration.

Today, Act 250 has become a tool for social and economic policy in never-intended ways. Like the tax code, its exemptions have multiplied. Relief from Act 250 has become a tool to

promote affordable housing, downtown development and other political causes.

Vermont is very different now than it was in 1970. Towns are far more sophisticated and planning has become professional, and smart. Vermonters have learned to use Act 250 in those decades. The process of applying for and opposing permits for large development has become systematized, efficient and in some cases preordained.

Certainly the law has improved the quality of development in Vermont. What has it cost? There are no good measures for such an analysis. The defenders of the law are right in saying most applications are granted. In 2008, 439 applications were

filed and considered by the district commissions and two were denied, according to the Natural Resources Board website. More than 22,000 permits later, Act 250 survives, somewhat battered, peppered with holes, but very much together, disciplined, functioning. 

Paul Gillies is an attorney with Tarrant, Gillies, Merriman and Richardson in Montpelier. He is a former Vermont Deputy Secretary of State and is a writer and historian. A version of this article appeared earlier in the Vermont Property Owners Report in Montpelier.



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SUSTAINABLE COMMUNITIES UPDATE



VNRC's Sustainable Communities program continues to focus on guiding development toward our downtowns and village centers and maintaining the long-term viability of our agriculture and forested landscape.

One strategy to achieve this is to ensure that the Vermont growth centers law, passed in 2006, works as it was intended. Despite early missteps on the part of the Douglas administration, the implementation of this important law appears to be on the right track. Recently the town of Hartland adjusted the size and shape of its proposed "growth center" partly because of VNRC's advocacy. In the future, growth centers will need to meet the improved standards that were revised by the Vermont Legislature earlier this year at the urging of VNRC and our partners in the Vermont Smart Growth Collaborative.

VNRC is also pushing for an efficient transportation system that emphasizes convenient and smart transportation options for all Vermonters, including pedestrians and bicyclists.

VNRC is also part of a coalition of groups pushing

a less wasteful alternative to the big, outdated Chittenden County Circumferential Highway. The full build out of the "Circ" has been under consideration for many years. A recent federal Environmental Impact Statement proposed construction of a new four lane divided highway. However, improvements to VT 2A would cost less, have fewer environmental impacts, would

not subsidize polluting and wasteful sprawl development, and would alleviate traffic congestion.

"Rather than pouring tens of millions of dollars into a single highway project with negligible transportation benefits, VNRC supports more strategic investments that will reduce Vermonters' reliance on single occupancy vehicles and provide options for the growing segment of the state's population that lacks mobility," explained Brian Shupe, the director of VNRC's Sustainable Communities Program. "We're working closely with AARP Vermont and the partner organizations that have signed on to their "Transporting the Public" initiative to build

a transportation system that maximizes mobility in an era of climate change and peak oil."

VNRC continues to fight the long, drawn-out battle against a Wal-Mart proposed for a corn field far outside of St. Albans City. On behalf of farmers and other residents of St. Albans and surrounding communities who fear that the store would drain economic vitality from downtown and lead to sprawl elsewhere. VNRC recently filed an appeal to the Vermont Supreme Court in the case.

"On multiple fronts, VNRC is advocating for smart development patterns and the protection of what remains of Vermont's working landscape," said Shupe.

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WATER UPDATE



Protection of Vermont's groundwater continues to be a big part of the water work at VNRC. This fall VNRC filed legal paperwork arguing that Entergy, the owners of the Vermont Yankee nuclear power plant, and OMYA, an international company with a quarry in Florence, Vermont have both violated Vermont's groundwater public trust law that was enacted, with the strong support of VNRC, in 2008. In both cases VNRC is arguing that contamination – tritium in the case of Vermont Yankee and iron, manganese, arsenic, and aminoethylene in the case of OMYA – amounts to a violation of the public trust protections that groundwater now enjoys in the Green Mountain State. Stay tuned for more information about these two potentially precedent-setting legal actions.

Also related to groundwater, VNRC has been working as a sub-committee member with the Agency of Natural Resources and others to develop protective rules to implement the groundwater law. Those rules are expected to go out for public comment this fall.

At the community level, VNRC has been helping citizens in the towns of East Montpelier and Dorset protect groundwater from large withdrawals by examining a rewrite of their town plans. VNRC is expecting to work with other towns in the future that want to safeguard their water through their town plan.

The 2008 groundwater law states that large withdrawals must conform to town plans.

Our water work has also focused on Vermont's wetlands. These wet landscapes – that filter water, help alleviate floods, and provide wildlife habitat, among other values – will enjoy much-improved protections under

a rule that was finalized in mid-September. In part due to VNRC's tenacious support and advocacy, the Agency of Natural Resources has finalized strong rules that assure the many wetlands that are not currently on official wetlands maps actually get on those maps, thus protecting the wetlands from development. The adoption of this rule ends a several years-long process during which VNRC, as the only environmental group at the table, worked with developers, Realtors, the state transportation agency, and other parties to come up with conservation-oriented rules.

Finally, VNRC plans to

weigh in during the coming months before the Public Service Board over the amount of incentives that large hydropower systems would enjoy under Vermont law. The legislature last year, despite VNRC's opposition, declared large hydropower operations, like Hydro-Quebec, to be classified as "renewable." VNRC believes large hydropower is ecologically damaging, and not "green" and while we expect Vermont to buy power from Hydro-Quebec for a long time, we oppose giving large hydropower systems special economic incentives for purporting to be "green."



Blake Gardner

ENERGY AND CLIMATE ACTION UPDATE

VNRC continues to focus much of its energy-related work on helping the growing number of town energy committees across Vermont implement programs to reduce energy consumption and transition to cleaner, homegrown supplies.

As coordinator for the Vermont Energy and Climate Action Network — the umbrella of community energy groups and similarly-focused organizations across the state — VNRC is working hard to support local clean energy. One way VNRC is doing this is has been to help communities explore the promising clean energy financing tool we helped enact into law in 2009 — the ‘clean energy assessment district’ or ‘property assessed clean energy program.’ Most often referred to as PACE, this program has sparked the interest of dozens of communities in Vermont who want to help homeowners get the capital they need to invest in comprehensive energy efficiency retrofits, solar electric systems, solar hot water and more. PACE is a fairly new program that allows municipalities to use their bonding authority to make money available to participating property owners for approved clean energy investments. The homeowners who participate — and only those who participate — then pay that money back over the course of 15-20 years as an assessment on their property taxes. About 40 Vermont communities have taken steps to move PACE forward, many

starting first by participating in the “Quick Start” program offered by the Vermont Energy Investment Corporation.

VNRC has been working closely with VEIC to help organize a coordinated response to PACE, most recently by helping communities sign on to ‘Quick Start.’ This program will allow communities to explore if PACE will work for them by offering technical, financial and other resources to make their decisions. You can find out much more information about PACE, ‘Quick Start’ and what such a program could mean for Vermont communities at www.veic.org/ResourceLibrary/PACE.aspx.

“With Congress’ ongoing inability to do anything meaningful on energy and climate change, it is increasingly clear that local initiatives across Vermont and the country are critical in cutting energy use and moving us toward a clean energy future,” said Johanna Miller, VNRC’s Energy Program Co-director. “We are lucky to have such committed people in Vermont working tirelessly to tighten up leaky homes, transition to renewable power and realign the way we use and create energy.”

VNRC is also working in partnership with the Vermont League of Cities and Towns to draft an Energy Planning & Implementation Guidebook for Vermont communities. The guidebook, scheduled to be released this fall, updates a similar publication prepared by the Vermont Department

of Public Service in 1993, and will heavily emphasize successful efforts of Vermont communities to implement local plans through real and compelling examples of energy innovation underway across the state.

Also on the energy front, VNRC teamed up this summer with several other organizations including the Biomass Energy Resource Center, Sierra Club, the Vermont Sustainable Jobs Fund, the National Wildlife Federation and regional planning commissions to hold forums, or listening sessions, around the state to hear Vermonters’ hopes for and concerns about the potential for increased use of forest biomass as a heating and electric power source in Vermont. Hundreds of people attended the forums that took place in Montpelier, Middlebury and White River Junction. The forums were intended to launch a constructive conversation about the issue, and the hosts intend to share the information and feedback garnered at the forums with key stakeholders to inform their discussions

and shape policies on forest biomass.

One key stakeholder group, upon which VNRC’s Forest Program Director Jamey Fidel serves, is the Biomass Energy Working Group, also known as the Bio-E group. The charge of this legislatively appointed committee is to make recommendations to the Legislature in January on how Vermont can both encourage the growth of woody biomass energy in Vermont while at the same time assuring forest health. As part of this work, VNRC has been helping to develop voluntary guidelines for biomass wood harvesting to ensure the long-term health of our forests. In addition, the BioE Group will be looking at recommendations to address efficiency, sustainability, and economic development policies. VNRC’s goal on the Bio-E group and in general on biomass in Vermont is to ensure the state explores all of the issues surrounding this potentially promising renewable resource but does so in a way that balances forest health, public health, efficiency and sustainability issues.



Will Lindner

FOREST AND BIODIVERSITY UPDATE



A principal focus of the VNRC forest program is our strong support for the Current Use Program, the property tax law that helps keep farms and forestland intact and economically and ecologically viable in Vermont. After a challenging legislative year for Current Use, where budget trimming was on the front burner, supporters of the program – including VNRC – are re-constituting the Current Use Tax Coalition to educate and inform the legislature, the public, and policy making bodies with facts and supported reasoning for maintaining Current Use in a fair and equitable manner. The coalition, which had broad representation from supporters of the program, is currently examining education and policy initiatives to prepare for the 2011 legislative session.

On another front, the forest program has been developing several initiatives aimed at keeping forests intact in Vermont. Several of these initiatives are exciting new programs funded in part through grants awarded by the Northeastern Area State and Private Forestry, U.S. Forest Service. The first initiative is an effort to work with members of the VNRC-convened Forest Roundtable to organize a landowner summit to educate property owners on ways to keep forestland intact as it is handed down from generation to generation.

The second initiative is a broad effort to reduce forest

fragmentation in the Winooski watershed, Vermont's most threatened watershed due to projected development pressure on private forests. As part of this endeavor, and with support from the National Forest Foundation, VNRC will be working in the Mad River Valley and other regions to

assist with land use planning, promote non-regulatory programs, and hold workshops with Realtors and engineers to suggest ways to reduce the fragmentation of land when parcels are subdivided. Furthermore, this fall, VNRC will publish a report and web page documenting subdivision trends over the last decade in Vermont as part of a Northeastern States Research Cooperative grant.

VNRC has also been busy helping communities plan for wildlife conservation. As part of the Critical Paths Project, VNRC has been working with

partners to identify important wildlife crossings along the Green Mountains and address conservation planning to make these roads passable by wildlife species. In Northern Vermont, VNRC has been helping municipalities in the Cold Hollow to Canada region plan for wildlife conservation, and this fall, VNRC will be publishing a comprehensive report analyzing the progress made over the past decade at the municipal level to address wildlife conservation. The report promises to include some interesting trends.



Blake Gardner





ACT 250 AND THE 21ST CENTURY

*Bent and Battered,
It's Still Our Best Bet*

BY WILL LINDNER

The legend of Vermont's Act 250 and its creation 40 years ago bears resemblance to the ancient myths of King Arthur and the Knights of the Round Table. In the Vermont version, Gov. Deane Davis, the state's chief executive from 1969 to 1973, is cast in the role of the wise king, with the knights, brave and true, played by Weybridge State Rep. Arthur Gibb and his partners on the Gibb Commission, who saved the kingdom by heeding their king and crafting a visionary concept for development control, which the Legislature passed into law in 1970. That law, Act 250, might be thought of as the magic sword embedded in stone; freed and wielded by the forces of good, it smote the polluters across the land.



It's not a bad analogy. As Vermonters know, Davis became alarmed about an explosion of ill-planned vacation-housing development related to the expanding ski industry in southern Vermont, and hurriedly assembled The Governor's Commission on Environmental Control, chaired by Gibb, to impose order and restraint on developers fairly drunk with ambition.

But the myth implies that Act 250 came to the rescue at Stratton Mountain. The truth is that a year elapsed between Davis's tour of southern Vermont in the spring of 1969 and Act 250's passage in 1970. So what of the rampant development that in 1969 had already caused such insults to the earth and its inhabitants as raw sewage "bubbling out of the ground next to some quick-built ski chalets" (as then-Vermont Attorney General James Jeffords described it)?

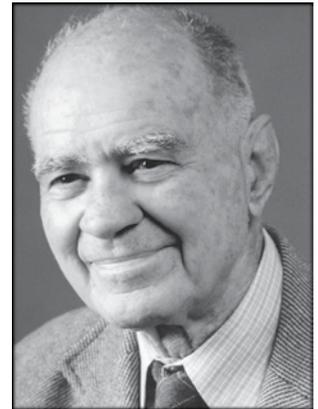
Montpelier attorney and historian Paul Gillies explained what happened in a "Special Report" titled "The Evolution of Act 250," (published in the June/July 2010 *Vermont Property Owners Report* and reprinted in part in this VER on page 4.)

"The charismatic governor single-handedly stopped the Stratton development by calling up the president of the International Paper Company and asking him to abandon the project, which he did," Gillies wrote. "In 1969 a little gubernatorial persuasion was enough. But everyone saw this as a close call."

Act 250 was conceived as a law, yes – but truly something grander: as an organizing vehicle enabling Vermonters to come together as peers and decide whether a development proposal satisfied or violated the norms of our closely knit state. These included principles of not diminishing the value of our neighbors' property, nor their

enjoyment of it, merely for our own benefit; of preserving what has always sustained Vermont – its working landscape, productive soils and forests, clean waters and air, its scenery and recreational resources, wildlife habitat, villages and schools, and commercial and

urban centers. These were the values that the Legislature sought to capture in the act's 10 criteria for approval. Its structure — empowering district commissions to hold hearings, gather evidence, and adjudicate the law — was rooted in Vermont's tradition of local self-government.



Art Gibb

Private enterprise, also no small part of Vermont's and America's success story, was protected: if developers could prove that their plan satisfied Act 250's requirements they could win a permit whether local people liked it or not. And, for parties on both sides, the new law provided an appeals process that could reach all the way to the state Supreme Court if necessary, to ensure against maladministration or misinterpretation of the act's many components.

Unnerved by the "close call" in Stratton, Vermont's leadership created Act 250 to prevent further brushes with destruction and dissolution. Now, 40 years later, we contemplate Act 250 with two questions in mind:

1. *Has it protected the state from inappropriate development (and — a related question — has it influenced applicants to amend their proposals and thus spurred development that makes sense for Vermont)?*
2. *Can Act 250 fend off close calls from the vastly different environmental threats that confront us in the 21st century?*

Regarding the first question, Will Patten, the outgoing executive director of Vermont Businesses for Social Responsibility (VBSR), has no doubt.

"As a business organization we look at taxes and regulations not as a burden, but we judge them on what they deliver," says Patten. "We look at Act 250 in light of the current housing bubble [and its destructive economic impacts] and say, 'Wow, did it ever deliver!' Vermont didn't suffer from the housing and commercial-building bubble that the rest of the country did."

Many share Patten's view — among them,

Gov. Deane Davis



VNRC Executive Director Elizabeth Courtney.

“Because we’ve had tools like Act 250, Vermont bankers have stated on several occasions that the state has withstood the recession better than a lot of places,” she says. “Reasonable land use regulations, including Act 250, have helped the state modify the boom and bust cycles that have plagued areas of the country where local economies were overly reliant on overbuilding and suburban sprawl.”

Act 250 remains far more progressive than development-control laws (where they even exist) in most of the rest of the country. Yet its effectiveness was undercut from the start by the Legislature’s failure to enact the planning component originally conceived as a fundamental part of the act. Furthermore, over its lifetime the

law has suffered a barrage of attempts to “reform” it, some of which its defenders have rebuffed while others have hit the mark and undercut vital principles like the ability of Vermont citizens to compete against lawyers and expert witnesses representing well-resourced developers (a claim refuted by many in the development community).

“Governor Davis hailed this piece of legislation as a law that could be adjudicated on the front porch of the general store,” says Courtney. “He wanted it to be totally citizen-friendly, and it was for many years. With the advent of so-called ‘permit reform’ in 2004 — moving directly to the court system for appeals — it became much harder for citizens to participate, and virtually impossible for them to take an appeal *pro se* [without representation by an attorney].”

One Role for Act 250 in Vermont’s Energy Future

“Act 250 has always been about healthy water, healthy air and beautiful scenery as well as our agricultural heritage. And, as we move toward a renewable energy future, Act 250 can be key in assuring that land is not only valued for agriculture, but also for producing renewable biofuels for the future.”

— Jessie-Ruth Corkins,
co-founder of the Vermont
Sustainable Heating Initiative



Johanna Miller/VNRC

mixed-biomass pellets and cordwood. Act 250 will be a critical instrument to help us successfully move toward a more home-grown heating fuel future.

Why It Matters

When the authors of Act 250 crafted the landmark law more than 40 years ago, their commitment to protecting prime agricultural soils helped ensure that Vermont’s rich farmlands would, far into the future, drive our economy and feed Vermonters. The authors may not have thought about biofuels then, but it turns out that Act 250 can play a key role in helping assure that land is available for this critical need today and in the years to come.

By the Numbers

In 2003, approximately \$260 million was spent on petroleum-based heating fuels for Vermont homes, approximately 85 percent of which leaves the Vermont economy.

Prairie grasses yield 5-15 tons of pellets per acre per year sustainably.

Vermont has an estimated 100,000 acres plus of underutilized marginal land.

What Do We Do?

We have to view the use of our land resources long term. Strengthening Act 250 and other land use policies to keep our working landscape open and steer development into town and village centers as much as possible — so that we preserve the capacity elsewhere to grow fuel to heat our homes and businesses — can help us begin to move toward a more secure, sustainable and stable energy future.

— Jake Brown

What’s at Stake

Simply put, staying warm during Vermont winters is what’s at stake. Because nearly 60 percent of Vermonters rely on fuel oil as their primary heat source, lots of people are at the mercy of looming fuel oil price increases as supplies of cheap oil begin to dwindle in the coming years. This is why we need to begin moving toward a local, and renewable heating economy, where more of our fuel is produced in our own backyard.

For the past two and half years the Vermont Sustainable Heating Initiative (VSHI) has been working toward this goal. Consisting of energetic high school and college students as well as Vermont educators, VSHI has been researching and advocating for the use of solid biofuels, like woodchips,



Prior to 2004, appeals of permit decisions made by district environmental commissions went first to the Environmental Board. Courtney served as chair of that board from 1990 to 1994.

“At the time the board was created, its composition appropriately reflected the makeup of the regulated community,” says Courtney. “There were business people, farmers, former legislators, and teachers, among others, and they used the collaborative process of decision-making that is simply gone now, because we had one judge in a single court to adjudicate these very complicated decisions. There should be well-thought-out conditions that run with permits, or thoughtful findings that conclude with the rejection of an application. We’ve gotten away from that with the court system.”

In other ways, too, advocates concur that Act 250 isn’t “the be-all and end-all” of environmental regulation. It hasn’t stopped sprawl from creeping outward from our major population centers. It hasn’t preserved Vermont’s rural landscape as effectively as its designers envisioned.

Citing federal statistics, VNRC Sustainable Communities Program Director Brian Shupe says, “Vermont is losing its unique character and cultural heritage. In the past 20 years more than 165,000 acres of active farmland – 11 percent of the total farmland available — have been converted to other uses, typically development. In recent decades the rate of land development in the state has been more than double the rate of population growth, indicating that we are consuming land at an unprecedented rate.”

Further, Vermont’s overall permit process needs a tune-up; it has become disjointed and redundant — a problem caused not so much by Act 250 as by multiple levels of local and state agency review. Unfortunately, in the public’s mind Act 250 is the permit process, even though only 40 percent of the development proposals brought forth in Vermont come under its purview (only the larger development projects, and those above 2,500 feet in elevation, must obtain an Act 250 permit).

And now comes the 21st century, and a raft

Act 250: Reforming Transportation for the Long Haul

Of Act 250’s 10 criteria for measuring the environmental impact of a proposed development project, Criterion 5 is the only one under which an application cannot be denied. When we get around to reforming and strengthening Act 250, doing away with that restriction would be a good place to start.

Criterion 5 stipulates that a proposed “development or subdivision will not cause unreasonably dangerous or congested conditions with respect to highways or other means of transportation.” Being the only criterion directly addressing transportation, that language reveals its shortcomings: there is no mention of reducing traffic, or of stimulating the use of public transportation, or ensuring access for bicyclists or pedestrians. If Act 250’s purpose is to temper our effect upon the environment, those considerations must become both central and enforceable.

VNRC has been developing partnerships with other Vermont organizations, exploring common concerns and seeking ways to address them through Act 250. An example of this collaboration is VNRC’s

emergent relationship with AARP Vermont – and the issue that connects them is transportation. It is, primarily, a safety and quality-of-life issue for AARP’s membership (131,000 in Vermont), reflecting that people need options and alternatives to the private automobile as they grow older. For VNRC it is also an environmental and land-use issue.

Both organizations favor reforms increasing the availability of public transportation and decreasing Vermonters’ dependency on the single-occupancy vehicle.

“For a lot of people, this is not a matter of choice,” says AARP Vermont Associate State Director Jennifer Wallace-Brodeur. “They can no longer drive. The diminishment of quality-of-life that goes along with that is really challenging, and I would say unnecessary to a large extent.”

AARP, VNRC and others are advancing “Complete Streets” legislation (H.741 in the Vermont House), with VNRC’s enthusiastic support. Complete Streets – a concept being widely advanced in the U.S. – are streets for everyone, with bike lanes, well-maintained sidewalks, sheltered bus stops and pullover areas for safely discharging passengers, curb

Blake Gardner



of quite frankly frightening environmental threats that were not on the radar screen (much less part of the vernacular) of the Gibb Commission, the governor, or the Legislature in 1970. Climate change, oil depletion, sprawl, the increasingly critical importance of meeting our food needs locally... These are related issues, and Act 250 is virtually silent on them. Criterion 5 addresses traffic, but with yesterday's priority of channeling development-related traffic so as not to inconvenience other drivers. On a per capita basis, Vermonters leave a carbon footprint out of all proportion to their otherwise relatively modest lifestyles, and the primary culprit is the single-occupancy vehicle. Criterion 5 does nothing to discourage its use.

So... what to do? Craft a new law for these issues and allow those who are discommoded by Act 250 to continue chipping away at it? Or take the lessons we have learned from 40 years of experience, renew the act's commitment to citizen participation, and make it the vehicle for addressing emerging 21st-century climate and

"Vermont's overall permit process needs a tune-up..."

environmental issues?

There is an alternative. It begins with governmental restructuring that would consolidate and integrate now-disparate permit programs under a new Department of Environmental Quality (DEQ), headed by an environmental council that would, among other duties, replace the Environmental Court as the appeals venue for decisions by Act 250 district commissions.

"Our regulations are not as efficient as they should be, and in a state as small as Vermont that's a crime," says VBSR's Patten. "To that end, we support the work VNRC is doing; any kind of redundancy in the permitting process that can be removed without diluting the outcomes of permit decisions should be done."

ramps at intersections, clearly marked crosswalks, and longer-lasting "Walk" signals at intersections timed to enable older pedestrians to make the journey.

And there's a need to make public transportation – bus routes, ride-sharing networks, etc. – more available and better-connected in Vermont. "Everybody talks about the problem of the SOV [single-occupancy vehicle]," says Wallace-Brodeur. "Realistically, people are more likely to get out of their cars if they have a readily available option, which tend not to be so available outside of urban environments. That's our challenge in Vermont."

In testimony before the Legislature Wallace-Brodeur made the connection between Complete Streets and environmental policy, including Act 250's inadequate Criterion 5.

"The issue that Criterion 5 addresses is, if a development increases traffic, how will it be managed," she says. "What we need to be concerned with is how people can get someplace without getting in their cars. At what point is there a requirement, an incentive, or a disincentive, for ensuring that development is connected to the community of people who don't drive, or choose not to drive because they're making choices about global warming or would like to exercise? Act 250 doesn't ask those questions."

Bill Bittinger would. Bittinger, whose background combines urban planning, construction, and development, heads up Bill Bittinger & Associates, of Hanover, New Hampshire. He has some experience promoting development, including affordable housing, in Vermont, and negotiating the Act 250 process.

"I have felt for years that if we're going to get serious about

addressing sprawl we ought to be promoting transit-based development as opposed to transit-oriented development," says Bittinger, differentiating between development where transit opportunities exist within the local infrastructure, and development that is virtually inaccessible except by private automobile. "If we're going to successfully revitalize the older urban areas such as White River Junction, and avoid the high cost of sprawl in terms of environmental degradation and poor use of fertile land, we need better synchronization between our transit systems and our developed environment."

Bittinger is direct on how to achieve that, and the price we pay by failing to do so.

"In my opinion, any application for a new building, with the exception of a single-family house, should not be permitted without a transit link close by. That's not hard to do. It's being done in the majority of places [he mentions Europe]. The cost of ignoring the need for this kind of a policy is, in my opinion, unreasonable for society."

It is well-established that Vermonters love their cars, and the independence they provide. It is also well-established that we're polluting our air and adding millions of tons of carbon to the atmosphere by driving so much. Would Vermonters accept a remedy as strong as what Bittinger prescribes?

Maybe not, right now. Maybe someday we won't have a choice.

— Will Lindner



“We support the work VNRC is doing; any kind of redundancy in the permitting process that can be removed without diluting the outcomes of permit decisions should be done.”

— Will Patten, Outgoing Executive Director of VBSR

Once the tension around the permit and appeals processes has been alleviated, the stakeholders – which includes everyone who lives in this fragile environment – could look anew at Act 250, and work toward incremental improvements that would align its criteria with the more-radical threats ahead of us.

“We don’t think Act 250 is broken,” Patten insists. “But there is no question that the world has changed over the last 40 years.”

One hand tied behind its back

The “Original Sin” in Act 250’s creation was that the Legislature enacted only a portion of the law that its designers envisioned. There was intended to be companion legislation to create a comprehensive land-use plan for the state. Alas, the Legislature was unable to pass such a bill.

“This turned out to be an important omission,” says Shupe of VNRC, “because Act 250 criteria related to such issues as a project’s impact on existing settlements [Criterion 9(A)], or the costs of scattered development [Criterion 9(H)], they have not been effective tools for encouraging smart growth and avoiding sprawl.”

In 1988 the Legislature passed Act 200 to rectify the lack of statewide planning. It created a bottom-up planning structure intended to project local concerns into broader regional and statewide visions. But Act 200 did not require municipalities to plan, and it was only partially successful.

“Towns, to varying degrees, generated their own plans,” says Elizabeth Courtney. “Some are excellent, some nearly nonexistent. Without a strong master plan you end up having piecemeal development that is not coordinated, incrementally impacting the resources of the state.

“And that,” she points out, “is for the 40 percent of the development that goes through Act 250. There’s nothing for the other 60 percent.”

Shupe, a planner by profession, has observed an alarming trend.

“Towns’ conformance with regional and statewide planning goals has largely been ignored,” he says, “and this has led to some communities actually promoting strip development, scattered subdivisions in farm fields, and predatory zoning where one town encourages sprawl that bleeds the economic life out of the historic downtown in an adjacent municipality.”

The problem of disharmonious planning recently played itself out in a development proposal south of the village of Bradford on Route 5. In early 2007 a Vermont developer announced plans to build a 47,000-square-foot shopping plaza called Bradford Square. Because of its size it had to obtain permits both from the town and the District 3 Environmental Commission. The Two Rivers-Ottawaquechee Regional Planning Commission, based in Woodstock, was a statutory party.

“A subcommittee of my board reviewed the application in the context of its conformance with our regional plan, and we determined that because of its location along a state highway far from the downtown that it did not conform,” says Executive Director Peter Gregory. “Our plan mirrors the state’s land-use policy, which calls for compact settlement separated by rural countryside. Local plans should follow those goals, and regional plans must follow those goals. The scale and the location of this project led to its incompatibility.”

The Regional Planning Commission lost its argument before the district commission, and appealed to the Environmental Court. Unfortunately, the court focused on a procedural question (coincidentally, at the time the application was submitted the commission had revised and strengthened its regional plan, and a legal issue arose over which plan was in effect); it ruled against the Two Rivers-Ottawaquechee Regional Planning Commission on that technicality.

The whole affair, Gregory says, was unpleasant. “Some individuals, in all of our towns, are not comfortable with a regional body being able to play such an active role in the development process, and we don’t do it often.” The regional commission has sought to draw lessons from it, such as trying to work more closely with towns when they are crafting their local plans.

More broadly, though, Gregory remains concerned about the lack of a coordinated vision of development in Vermont. While the Act 250 review process might improve on a developer’s

To Stop the March of Sprawl, We Need an Act 250 Tune-up

“Rutland ... (is) ... an example of the ineffectiveness of Act 250 as it is currently utilized. Act 250 is inadequate. The development patterns that currently occur are aesthetically unsightly and economically inefficient. The current Act 250 failed in its mission of stated goals.”

— Chris Louras,
Mayor of Rutland City



Blake Gardner

threatened the economic vitality of one of Vermont’s larger downtowns allowed to occur without adequate mitigation to address those impacts? The answer lies in a beefed up Act 250 review process that is equipped to deal with piecemeal, sprawling development as well as the impacts to our downtowns of that sprawl.

By the Numbers

Broadly, over the past 10 years, Rutland Town strip-type development seems to have pulled economic activity out of Rutland City. Yet the number of jobs in Rutland Town has not increased as a result; in fact there has been a small decrease in jobs there and wages have actually fallen in Rutland Town, too. In short, the Rutland City/Rutland Town case demonstrates that paving Vermont’s farmland and pushing retail away from our established downtowns is not a good economic development strategy.

Between 1988 and 2008, in Rutland Town the number of retail establishments increased from 32 to 68, a 113 percent jump. During the same period in Rutland City, the number of retail stores dropped by 213 to 151, a decline of nearly 30 percent.

Also between 1998 and 2008, the total number of private sector jobs in Rutland town declined by just about three percent (after excluding the sharp drop of jobs associated with the closure of the GE plant in 2007) and the average wage declined by 20 percent in real dollars.

What Do We Do?

Because 60 percent of Vermont development does not fall under Act 250 review, the law must be tuned up to take into account the leap-frogging, low-density, strip development that threatens to suck the vitality out of Vermont’s downtowns.

— Brian Shupe

What’s at Stake

Vermonters are proud of the working farm and forest landscape that defines the state. We are proud of our picturesque villages and town centers. But this unique landscape, and the economic vitality of the villages and town centers that help define it, are constantly at risk. It is critical, if Vermont is to maintain a resilient, enduring and diverse economy that we preserve the delicate balance of compact town centers surrounded by a rural, working landscape.

Value

Anyone who has driven the length of Route 7, which stretches the length of the state west of the Green Mountains, has seen the best and worst of Vermont: historic villages and downtowns, stunning views of Lake Champlain and the state’s tallest mountains, a working landscape that boasts the Champlain Valley’s best farmland and the rich forests of the Green Mountain and Taconic ranges.

It also takes you through some of the most homogenous “Anywhere U.S.A” sprawl and strip-development that can be found in Vermont. The Rutland area is perhaps the most egregious example.

This stark contrast between Vermont’s well-marketed landscape of compact villages surrounded by rural countryside and the congested sprawl in Rutland Town (surrounding Rutland City) raises many questions. How, for example, did a typical scenic road through the countryside turn into a blighted, congested commercial strip? Why, after 40 years of Act 250, is the situation continuing to get worse before our eyes? And why was development that so clearly





“My understanding was that I was never empowered to do what I could to protect Mother Earth... My signature did not signal, ‘This is the greatest!’ It signified that we concluded it was legal.”

— Sen. Dick McCormack

original plan, in the end, he says, “We have these well-designed, aesthetically pleasing, clustered nodes of sprawl being located anywhere and everywhere, to the detriment of the public and private investments we’re all making in our downtowns. It doesn’t make sense even when governments are awash in cash, and makes less sense when local and state governments are struggling fiscally. It’s one of the great failings of Act 250.”

State Sen. Dick McCormack’s view is that the objections people raise about projects during Act 250 hearings often amount to de facto attempts at planning, but they fail for lack of authority under the criteria.

“When the objection is raised that [a project] will cause traffic problems, the real feeling being expressed is that this just doesn’t belong here,” says the Windsor County Democrat, who chaired

a district environmental commission for several years. “The attitude that we just don’t want this mall out here is a perfectly legitimate one that ought to have expression in Act 250.”

But it doesn’t. And partly for that reason, McCormack, during his tenure on the district commission, signed off on many a project he found abhorrent – a circumstance, interestingly, that he considers part of the conceptual beauty of Act 250.

“My understanding was that I was never empowered to do what I could to protect Mother Earth,” he says. “I was empowered to lead a proceeding by which we as a community could make a rational determination as to whether a proposal was legal or not. A large number of my official signatures are on projects I absolutely despised. My signature did not signal, ‘This is the greatest!’ It signified that we concluded it was legal.”

The permit quagmire, and the DEQ

Something that is not beautiful, conceptually or otherwise, according to some practitioners of development in Vermont, is the process of pursuing an Act 250 permit. Ernie Pomerleau of Pomerleau Real Estate in Burlington, one of Vermont’s most experienced and successful developers, finds the necessity to receive local (frequently zoning) permits and Act 250 permits separately to be unnecessarily redundant.

“Kill me once,” he quips (although actually he is proud of the fact that he has never been rejected for an Act 250 permit). The act was passed at a time when local planning and zoning were uncommon in Vermont, especially in smaller towns; since then, municipalities with local land use regulations have become more numerous.

Pomerleau describes an arduous process of obtaining approvals, using a Milton project as an example. “Going before Act 250 is not the problem,” he says. “I was in Act 250 for an hour and a half. The problem is the 25 letters you have to get to file a complete document for Act 250.”

He rattles them off, by subject matter: view corridors; storm-water removal; impact on schools, fire, and police departments; local power, water, and sewer departments; historic preservation; brownfields; air quality; traffic impacts; streams; wetlands (“Am I up to 30 now?”); sightlines; signage; rare species....

“I have to get these letters, because I can’t get into Act 250 without them. They’re not called permits, but guess what? They’re permits. Sometimes they don’t want to give you a letter until you get another type of letter, so you’re



Blake Gardner



Sen. Dick McCormack

that if there's a really long, involved Act 250 procedure something went wrong. I think it's an indication that something went right."

However, nearly everyone agrees that the appeals process for district commission rulings is grindingly slow. In 2004 the Douglas Administration succeeded in altering that process, dismantling the Environmental Board and adding Act 250 appeals to the existing workload of the state Environmental Court.

"What I'm hearing," says McCormack, "is that it has overloaded the court."

When the change was made the Environmental Court had only one judge; the addition of a second judge has not had the desired effect. Says Karen Horn, government affairs director for the Vermont League of Cities and Towns, "Our issue, in a nutshell, is that it takes a very long time to get things accomplished. And we're in a down time economically, so there are not as many cases coming to them as there are in a good economy."

Courtney says an even more serious problem resulted from the 2004 legislation.

"What had been a substance-driven permitting system is becoming a much more process-driven, litigious system that requires capital, legal assistance, and stamina," she says. "All of those resources are in short supply for average citizens, who thus become locked out of the process."

Nor did those reforms achieve their reputed goals. According to research undertaken by VNRC, Courtney says, "there has been no discernable reduction in the amount of time it takes to get a decision than before the 2004 permit reform was passed, while the cost and difficulty of participating in the appeals process, whether you're a concerned citizen or a developer, has gone up exponentially.

"Maybe this would be worthwhile if we were getting better decisions," she continues, "but more and more cases are being decided on procedural technicalities, not substantive issues associated with environmental protection and community development. When that happens, citizens, developers, and the environment all lose."

How can this problem be solved? The answer, says Shupe, lies in restructuring all of the state's permitting authorities — which is exactly what

caught in a loop.

"I've never been turned down in an Act 250 review. Never," he insists. "That's not my problem. My problem is surviving the minutiae. It took me almost three years to go through the Milton project."

Pomerleau has another complaint he considers important: "If I go into an agency for letter X, that department is only concerned about topic X. Maybe there's an overarching good provided by a project that can transcend some of these issues. But there are lines in the sand. Nobody sees all the issues together and makes any decision from the top. Everyone is on the ground."

That lack of coordination between state agencies is a legitimate concern, according to VNRC's Brian Shupe. "Act 250 is actually pretty efficient and could function as the one-stop shop for large development projects that developers have called for," he says. "But that would require that we re-think how the state regulatory entities are organized, which, frankly, is a good idea."

For his part, McCormack tends not to be persuaded by complaints about process, which he considers misleading. "Most applicants get their permits, and most applicants get their permits in a reasonable amount of time," he says. (According to data from the Natural Resources Board, in 2009, 63 percent of applications received permits within 60 days.)

"Furthermore, my experience is that when I'm confronted with a three-year-long process, when I've looked into them what took two-and-a-half years was the developer's losing the battle against Act 250's jurisdiction." (McCormack acknowledged that he was not referring to Pomerleau and his projects.)

The senator concludes, "The assumption is



VNRC supports doing.

“We have reached out to a variety of stakeholders, including business and development interests, to see if there is a way to address everyone’s concerns, including better-integrating local planning with the Act 250 process. I’m not sure we’re there yet, but we’re getting close.”

That proposal, developed with State Sen. Ginny Lyons and State Rep. Tony Klein, the respective chairs of the Senate and House committees on natural resources and energy, would consolidate existing permitting and appeals bodies into a single entity, resulting in greater efficiencies and opportunities for

Act 250: A Safeguard for Vermont’s Local Food Supply

“The local food movement, driven by increasing numbers of consumers concerned by the serious flaws in America’s centralized, industrial food system, is creating opportunities to reinvent the way Vermont grows and distributes our food. Vermont is an agricultural state built on family farms and homesteaders, along with a commitment to quality products. It is also leading the nation in its interest and commitment to proving that it can, in part, feed itself, and that for a host of economic, social, and environmental reasons, it will be redefining its farm economy in the near future.

“This new food movement is also adding a new dimension to the environmental movement. It is addressing the larger environmental issues stemming from industrial agriculture: habitat destruction resulting from large-scale mechanized production; pest and invasive species migration; water pollution that destroys aquatic life; loss of biodiversity; and chemical uses which pose a threat to human and animal health. A close-to-home food system will help to preserve open space and agricultural land in the Northeast, which is especially vulnerable to development, and reduce the carbon footprint of transporting food from afar. It will support small and diverse farms in an era of increasing consolidated farms and feedlots, and it will encourage new generations to become engaged in the production of their food.”

— Monty Fischer, Executive Director for the Center for an Agricultural Economy, Hardwick



Jake Brown/VNRC

What’s at Stake

Vermont is blessed with extremely productive agricultural soils, but they have been and continue to be threatened by development. Once these soils are paved over and have buildings on them, they are lost forever. By paving over our most productive soils, we cut off future food options for Vermonters.

Value

Growing and distributing food locally has numerous benefits. It creates jobs for Vermonters not only in farming itself but also in a range of related industries. Other benefits include closer control over the quality of our food, the preservation of Vermont’s famed landscape and the improved stewardship of our “natural capital” including agricultural soils and our water resources. Local agriculture reduces transportation pollution and fossil fuel use and further promotes an understanding of Vermont’s land-based economy.

By the Numbers

- Three thousand acres of farmland in the United States is lost to development every day.
- In Vermont, the number of Vermont farms is increasing. In 1992 there were 5,436 farms in Vermont; in 2007 that number jumped to 6,984. That’s because Vermont farms are getting smaller overall. In 1992 the average size of a Vermont farm was 235 acres. In 2007 it was 177 acres.
- Total farm acreage in Vermont is decreasing. In 1992 we had 1.279 million acres; in 2007 we had 1.233 million acres.
- The number of farmers’ markets has grown dramatically in Vermont. In 1986 there were 19. Today there are about 80.

What Do We Do?

Strengthen Act 250 criteria that deal with agricultural soils; support any policy that discourages the wasteful destruction of important agricultural soils by buildings, roads, parking lots and other development.

— Jake Brown

One, Good System: Now Is the Time

VNRC believes it's time that Vermont's environmental permitting system undergoes a comprehensive restructuring. There is a better way.

better integration of state permitting with local planning. (See *"One, Good System: Now is The Time,"* at right.)

Reforming, retooling, and re-energizing Vermont's environmental-permitting process must be a central part of any plan to improve Act 250 and restore the enthusiasm Vermonters had for this innovative law when it was adopted. No less critical is that we examine Act 250 in light of 21st-century environmental concerns. Shupe reminds us that the law was created during a distinctly different period, even though it was a mere 40 years ago.

"Energy sources at that time were presumed to be abundant," he says. "Climate change was an obscure scientific theory; little attention was paid to non-point sources of pollution such as storm-water runoff; and the scale of commercial development was a fraction of today's big-box phenomenon. Act 250's 10 review criteria and numerous sub-criteria are not addressing the full range of pressures that now challenge Vermont."

Crunch time

Choose your 21st-century environmental issue – today's gnawing concern looming as tomorrow's crisis: a cultural battle over the single-occupancy automobile; preserving fertile soils so that we can feed ourselves when the trucks stop rolling; implementing the highest energy-efficiency standards for housing and commercial spaces; designating growth centers to conserve rather than squander public investments; developing renewable-energy sources to minimize Vermont's reliance on imported fossil-fuel or nuclear power. Up and down the list you find the applicable Act 250 criteria silent or ineffectual.

Is it time to junk this signature legislation from an earlier era?

Hardly. Time has revealed Act 250's flaws; lobbyists and their political allies have worn away its effectiveness under the guise of reform. But Vermont's popular environmental values of the late 20th century remain our common values today; they are reflected in those 10 sweeping criteria, and in a structure still capable of empowering citizens, in concert and through negotiation, to define the future of their state.

Tomorrow's challenges are already upon us today. Act 250, given a tune-up and an overhaul, could be the bus that carries us to the other side. All aboard. 

What is the plan? VNRC's permit restructuring proposal would create a new, consolidated environmental permitting entity that combines the Vermont Environmental Court, the Vermont Natural Resources Board and the environmental permitting functions of the Department of Environmental Conservation. The new office would be known as the Vermont Department of Environmental Quality or DEQ. The DEQ would be administered by a three- or five-person professional board called the Environmental Council.

What would this entity do? It would issue permits as DEC does today and it would manage Act 250 District Commissions. The Environmental Council would hear permit appeals, including technical environmental permitting decisions, District Commission Act 250 decisions, municipal zoning decisions, growth center and village neighborhood designation decisions and determinations of municipal and regional plan conformance with state statutes.

How would this entity be created? VNRC is urging the 2011-2012 Legislature to pass legislation that has been drafted by both the House and Senate. The reform would take place in phases. In the first phase, the legislature would consolidate the three entities and create the DEQ and the Environmental Council. It would streamline the appeals, improve citizen participation, improve the transparency and efficiency of state permitting functions and create a one-stop state permitting option administered by District Commissions.

In a second phase, DEQ staff would be directed to find more efficiencies in permitting, establish a way to defer to cities and towns certain types of Act 250 review, and update Act 250's 10 criteria to deal with today's environmental threats, including scattered sprawl and strip development, transportation, energy and greenhouse gas emissions.

What are the benefits of this new approach? Broadly, the reform would make environmental permitting in the state more efficient, consistent, protective of the environment, and more citizen-friendly. This proposal could also save the state money.



Tim Newcomb



MEMBER PROFILE

NED COFFIN: LAND ETHIC, INDUSTRY, KEY TO VERMONT'S FUTURE

To say that Ned Coffin has had a varied background is an understatement. He's got a Harvard MBA, spent time selling Jeeps around the world, and has helped start a variety of businesses, gravitating toward agriculture and energy. He launched a poultry farm in Nigeria and was an early wind-energy entrepreneur, starting one of the earliest small-scale windmill manufacturing firms in Vermont, Enertech, in the early 1980s. Enertech turbines at the time were groundbreaking: they did not require batteries to store power. Coffin also helped start Free Flow Stoves, a Vermont-based woodstove firm and was very active politically while his late wife Vi Coffin, was the chair of the Vermont Democratic State Committee.

Coffin sat down with VNRC recently on the back porch of his Strafford home and reflected on the state of conservation in Vermont.

What sorts of threats do you see facing Vermont now that you did not see facing the state 10, 20, 30 years ago?

Ned Coffin

Jake Brown



In some ways I think Vermont is threatened by becoming a post-card, a theme park. I want the land to remain open, and I think Act 250 has been very important in doing that. It certainly has discouraged the worst kind of commercialization. Most Vermonters, I believe, think of themselves as custodians of the land as well as owners. They combine a strong sense of property rights with a strong land ethic.

But Vermont has to be economically sound as well. We need industry and commerce and today that means cell phone and Internet access throughout the state, including towers.

What concerns you about Vermont?

I'm worried about the heavy hand of government and mission creep. The environmental community – both inside and outside state government – sometimes acts as if a picture-perfect pattern of land use was both desirable and possible, and more laws and regulations would achieve it. I'm particularly concerned about government bureaucrats whose instinct is to say “no.” Instead, we should be actively helping individuals and businesses find ways of achieving their goals while still protecting the environment.

I want the rest of the country to view Vermont as an environmental and, yes, a social model. Not a silly, left-wingers' dream but a model that is widely adaptable and politically possible.

How has citizen participation in local and state affairs in Vermont changed if at all, over the period you have observed it?

In Strafford, 40 years ago, there were three broad groupings of people: the old-timers or “natives” whose families had been here for generations; the summer people, and the back-to-the-land people. They all had in common a love of the land, but lived rather separate lives, interacting mainly at community or church suppers. Then the back-to-the-landers settled in and found real jobs and the summer people became year-rounders and brought their friends. These people (we, the “flatlanders”) were not reluctant to stand up and speak in public; many had experience interpreting government-speak regulations and documents, and gradually, perhaps inevitably, they tended to take over, and the long-term residents reduced their role in local government.

And with so many women “working,” the number of church and community suppers has

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NEWS & NOTES



Maude Barlow Moves The Crowd

Water activist and author Maude Barlow packed the house in a Burlington theater this summer, where she warned more than 200 Vermonters of the coming global water crisis and urged them to become active.

Barlow, a recent U.N. Special Advisor on Water, painted a worrisome picture of shortages of clean, fresh water for the world's population, of human suffering, of water

refugees and water privatization. She also celebrated the days-old, historic U.N. declaration that access to clean water and sanitation is a human right. The event was sponsored by VNRC, the Peace and Justice Center, and the Lake Champlain Community Sailing Center.

Several years ago Ms. Barlow – and her book *Blue Gold* – helped put the pressing issues of water scarcity, water quality and water depletion in the center of policy and practical discussions, including in Vermont, where it became abundantly clear that even here, there was a big gap in Vermont's water protection laws. After a multi-year, broad-based effort, driven largely by



Maude Barlow

VNRC, the Legislature passed a law to protect groundwater, declaring groundwater to be a public trust resource and setting up a rigorous permitting system for large groundwater withdrawals.

These measures are essential as more than two-thirds of Vermonters rely on groundwater for drinking water; farmers rely on groundwater for irrigation and drinking water for animals; businesses rely on groundwater for their operations; and water bodies like Lake Champlain and the lake's tributaries are fed and replenished by it.

In her remarks in Burlington, Barlow praised the work of VNRC and the citizens in various Vermont communities who have been working hard to protect this invaluable resource. In closing, she urged them to press on, noting that the world water crisis will likely be the defining human and environmental challenge of this century.

Protecting the Water, One Community at a Time

This past summer VNRC worked with citizens in East Montpelier and Plainfield to help protect a well-loved, community swimming hole. The

Nina Otter Joins VNRC Staff

VNRC is pleased to welcome Nina Otter of Montpelier to our staff.

Nina will serve as VNRC's Membership Coordinator. She will be managing our database of members and activists and will be helping get the word out about VNRC's good work in its sustainable communities, forestry, energy and water programs. She will be working closely with VNRC's development and outreach staff to grow VNRC's membership to connect more people – especially younger Vermonters – with VNRC's work.

“VNRC is an inspiring team of staff, activists and members,” she said. “I am excited to bring more folks on board with VNRC's mission to protect Vermont's natural resources heritage and create an environmentally and economically vibrant future.”

Nina has a BA in Environmental Studies with a concentration in Environmental Education from Warren Wilson College in North Carolina.

Nina was VNRC's Legislative Intern during the 2009-2010 legislative year and became well-versed in several of VNRC's areas of work, including energy, land use, and environmental permitting.

“We are extremely lucky to have Nina join our team,” said Elizabeth Courtney VNRC's executive director. “Her experience and energy will be key as VNRC continues to build our membership.”



Nina Otter

Vermont transportation agency, or VTTrans, had proposed filing the East Montpelier pond to compensate for impacts associated with road construction on Route 2 between Cabot and Danville. Thanks to the tenacity of the citizens group and VNRC's legal expertise, VTTrans will not fill in the swimming hole after all.

In mid-September, the parties reached an agreement allowing VTTrans to proceed with work on Route 2 between Cabot and Danville while ensuring that the agency would not use the swimming hole – which is an old, abandoned quarry next to the Winooski

River – or its shoreline for wetland compensation.

Citizens gathered in August to raise money to fund the effort to save the swimming hole. Local musicians, including Coco Kallis and Lafe Dutton, Susannah Blachly and George White, and Colin McCaffrey offered up the tunes.

While we have made headway toward covering mediation and other costs of effort, we aren't there yet. Please contact VNRC at 223-2328 or at info@vnrc.org if you are interested in contributing toward this effort to save this popular community asset.

Ned Coffin

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dropped and the opportunities for communication between the groups have diminished. I think all of this is a real loss.

For me the sense of community is one of Vermont's greatest assets. We need to work hard to keep it.

What are three places in Vermont that for you are most important, personally?

In Strafford: the Lower Village, the Upper Village, and the open space in between. I think this type of settlement pattern of villages surrounded by open spaces is a good model for Vermont.

What gives you hope about Vermont?

My wife and I came to Vermont over 30 years ago because of the combination of beauty, the sense of community in these small towns, and the people's respect and love for the land. Despite the state's growth since then, these values still seem strong and healthy, far more important than the emphasis on material wealth that dominates the rest of the country. I hope that emphasis elsewhere will change over time, and that Vermont will be there as an attractive example for the rest of the country. It sure would be nice if VNRC could set up branches around the country! 🐾



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Save the Dates!

October 28 Wild and Scenic Environmental Film Festival

5:30 p.m. (reception) — 7 p.m. (films)
Support VNRC while watching a fantastic series of short films highlighting the importance of environmental protection through powerful stories, images and adventures. The event takes place at Main Street Landing in Burlington and includes a stellar silent auction, tasty treats from Skinny Pancake and more.

November 13 Environmental Action 2010 Conference 8:30 to 5 p.m. at Vermont Technical College in Randolph

Join friends and fellow Vermonters for a day of useful workshops, inspiration, skill building and networking to help create healthy, sustainable Vermont communities. We have also invited the new Governor to attend and lay out his agenda on 'energy and the environment.' Find out much more and register at www.vtenvironmentalaction.org.

For more information about these events, contact Johanna Miller at 802-223-2328 or jmiller@vnrc.org. Please come, spread the word and help build an engaged, empowered network of Vermonters to create a clean, green, healthy Vermont.

December 4 Community Energy and Climate Action Conference 8:30 – 4 p.m. at Lake Morey Resort in Fairlee

This daylong event is tailored to energy-interested folks who want to network and learn energy-innovating tips and strategies to employ locally and beyond. Find out much more at www.regonline.com/VTEnergy.



JOIN VNRC!