

# VERMONT ENVIRONMENTAL REPORT

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## **Water Resources Board Grants Citizen Groups Appeal Status**

The Water Resources Board has agreed to allow two conservation organizations to appeal a decision by the Water Resources Department to grant a permit to the Highway Department to use about 80,000 tons of salt on state highways. The appeal is one of the first under amendments to Vermont's water laws enacted during the 1970 legislative session which give the board primarily quasi-judicial functions, including hearing appeals from persons "aggrieved" by a decision or act of the Water Resources Department. The Highway Department had moved to dismiss the appeal on the grounds that the Vermont Roadside Council and the Conservation Society of Southern Vermont were not "aggrieved" parties because they had not suffered a direct pecuniary loss by the granting of the permit and therefore had no standing to appeal. The Vermont Natural Resources Council participated as a friend of the court at the hearing on the motion and argued in favor of the position of VRC and CSSV. In denying the Highway Department's motion, the Board said that the conservation groups had demonstrated "sufficient interests to assure a legitimate dispute which will be presented in an adversary context and in a form capable of judicial resolution." The board's ruling relied on several Vermont Supreme Court cases which declare that "statutes giving and regulating the right of appeal are recognized as remedial in their nature and should receive a liberal construction in furtherance of the right of appeal." It also cited recent federal cases in which citizen groups have been allowed to participate in administrative proceedings such as the renewing of a television station's license and the granting of a power facility's license. The legal standing of citizen groups to protect the environment by intervening in agency proceedings or going to court is changing. A bill which would have made this right clear has been pending in the Vermont legislature but never got out of committee. A similar bill has been introduced in Congress. In its recent 4-3 decision on *Mineral King, California*, the Supreme Court held that a citizen group must claim some injury, not necessarily economic, in order to appeal. Mere interest in a problem is not enough to give standing, the majority opinion said.

## **For Ten Cents Plan**

"The people of Maine must feel free to submit personal interests to the common good." This is the moving philosophy behind "A Maine Manifest," published recently by the Allagash Group of Bath, an informal think-tank which has undertaken a privately financed state-wide land use planning study which bears more than an incidental relationship to the Act 250 planning process now taking place in Vermont. The document, which sells for a dime, is designed to advise how Maine residents "might control the state's future, which has slipped away from them." It recommends tax reform to discourage speculation and raise revenues for land acquisition and restoration; creation of a land bank to acquire holdings, by eminent domain if necessary "in the name of the people of Maine;" and community development corporations to create and control new local and regional business. The Manifest depicts Maine's dilemma as the necessity to benefit from inevitable economic development without despoiling the state's natural attributes. It points out that, as in most states, development in Maine has been disorderly, resulting in the unwise use of land and natural resources. Five thousand copies of the document have been sold and *Time Magazine* says it has won praise from both developers and environmentalists as "balanced" and "provocative."

*The Vermont Environmental Report is a monthly newsletter published by the Environmental Planning Information Center (EPIC), a project of the Vermont Natural Resources Council, 97 State Street, Montpelier, Vt., 05602.*

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## **AEC Says Vermont Yankee May Impair Salmon Plan**

The Atomic Energy Commission warns that operation of the Vermont Yankee nuclear power station could have several potentially harmful effects on the anadromous fish restoration program on the Connecticut River. In an environmental impact statement released recently, the Commission notes specifically that sea-migrating smolt may be killed by the plant's water intake, while heated water discharged by the plant may present a thermal obstacle to spawning salmon, especially since it could flow into a fish ladder planned for the Vernon Dam. Although the report discusses the relation of dissolved oxygen level and water temperature, it discounts this as a problem in Vernon pond. It was apparently the rapid increase in air temperature that caused a change in the temperature and amount of oxygen in the already warm water near the Connecticut Light and Power Company's Millstone Point nuclear plant and resulted in a massive fish kill May 1. The Commission is critical of Vermont Yankee's plan to monitor water temperature below the Vernon Dam. The monitoring must be done in the pond itself to ensure that the water temperature does not rise more than five degrees, an increase which should not substantially affect life in the pond. If the temperature rises as much as ten degrees, the type of life in the pond would change and it might be difficult for anadromous fish to pass through it. Besides careful monitoring within the pond to determine the exact effect of the thermal discharges, the Commission also recommends continuous monitoring of residual chlorine that could cause toxic effects in aquatic life. Chlorine will be used to reduce algae and other organisms in the cooling water for the plant. The Commission's statement of environmental considerations related to issuing Vermont Yankee's operating license was prepared under new procedures following a court decision last summer interpreting the National Environmental Policy Act to mean that the Commission must review nonradiological environmental impacts such as thermal effects of the nuclear plants it licenses. Among the other adverse affects of Vermont Yankee, the Commission lists the reduction of aesthetic value caused by transmission lines and the noise from the cooling towers, 70 decibels at the nearest homes. The report agrees with the company's estimate that the cooling towers will not cause much additional fogging,, perhaps an additional three and a half hours a year in Brattleboro and 32 hours on the Schell Highway Bridge.

## **EPIC Wins N.S.F. Grant**

The VNRC's EPIC project has received a \$132,000, 16 month grant from the National Science Foundation to develop an experimental citizen feedback system relating to Vermont's Act 250 planning process. The grant will be used to initiate a variety of informational programs and materials concerning the issues which will be explored during the next several months as the Land Use and Land Capability and Development plans are prepared. A detailed analysis of the effectiveness of these communications tools will then be assembled along with an evaluation of the influence that various interest groups are able to exert on the final version of the plans.

## **Task Force Meeting Schedule**

Here is the revised schedule for the remainder of the first round of public meetings called by the Environmental Board and the Governor's planning task forces to obtain citizen responses to concepts completed to date on the Land Use and Land Capability and Development plans.

**District #5 (Lamoille, Washington, Northwest Orange)  
Pavilion Auditorium, Montpelier, 8 p.m., May 18**

**District #6 (Franklin and Grand Isle)  
Bellows Free Academy, St. Albans, 8 p.m., May 23**

**District #4 (Chittenden and Addison)  
South Burlington High School, 8 p.m., May 24**

**District #3 (North Windsor and South Orange)  
Woodstock Union High School, 8 p.m., June 21**

**District #7 (Caledonia, Orleans, Essex)  
Not yet scheduled**

## **Who Owns (Fairfax) Vermont?**

While the outcry against out of state developers continues unabated, evidence is beginning to accumulate that land speculation isn't confined to non-Vermonters. A land conversion study in the town of Fairfax undertaken by a team from Johnson State College, suggests there are massive in-state developmental pressures originating from within the urban-suburban areas of St. Albans and ever sprawling Chittenden County. The study, conducted under the direction of Professor John Smith of the Environmental Research Unit, concludes that "whether the development is from Connecticut or Chittenden the effects are the same." Smith's analysis shows that the majority of developers in Fairfax are residents of St. Albans or Chittenden County and that there is only a nominal amount of out-of-state developmental activity. A few individuals in Fairfax and the St. Albans-Chittenden region are anxious "to cash in on Vermont's most valuable asset—its land," Smith says. The report goes on to state that as bank deposits in Burlington's lending institutions swell "development capabilities" expand. The large dairying towns of Franklin and Addison counties appear to be extremely susceptible to the suburban sprawl emanating from Chittenden County, Smith notes, and he further feels that areas such as Fairfax will eventually be absorbed and converted from farms into suburbs. The study details land transfers in Fairfax of over 20 acres since 1950. Purchases of Fairfax land by local residents have decreased while acquisitions from residents of neighboring areas have grown markedly with many of the lots being acquired expressly for developmental purposes.

The study also shows that the new residents of these developments often move in from Chittenden County. Smith concludes that the threatened suburbanization of Fairfax is almost exclusively the result of "forces located within Vermont" and that this kind of growth can readily occur without the assistance of the out-of-state speculator.

## **VNRC Member Wins Pulitzer**

Wallace Stegner of Greensboro, a member of the Vermont Natural Resources Council, is the 1972 Pulitzer Prize winner for fiction. His novel, "Angle of Repose," was cited for one of six cultural awards announced this month. Stegner directs the writing program at Stanford University.

## **New York High Court Upholds Town Efforts To Curb Growth**

The New York Court of Appeals this month upheld the right of suburban towns to freeze development by planning until a community is prepared to provide schools, sewers and other public services. In a 5-2 ruling which reversed a lower court finding, the judges held that the town of Ramapo's master plan, which attempts to restrict growth patterns by providing an 18 year sequence for capital improvement programs, was both constitutional and reasonable. "Ramapo," the majority opinion stated, "asks only that it be allowed to prevent the kind of deterioration that has transformed well-ordered and thriving residential communities into blighted ghettos with attendant hazards to health, security and social stability." Ramapo, in the Hudson River Valley, experienced rapid growth when it was drawn into the metropolitan New York commuting orbit by the opening of a thruway. The area's population grew by 130 percent between 1950 and 1966. The town plan declared that until sufficient public services are extended to vacant areas, developers should be barred from building subdivisions unless they supply service facilities on their own, thereby advancing an area's planned developmental schedule. Local developers and landowners had argued that the plan was unconstitutional and unreasonable.

## **Knox Joins VNRC Staff**

Gordon (Toby) Knox, Jr., of Princeton, N. J. is the newest member of the staff of the Vermont Natural Resources Council. Toby, who will work with Director Seward Weber on a variety of projects, recently moved to Montpelier with his wife. This is Toby's first full-time job in environmental work but he has been involved in the activities of several conservation organizations as a volunteer. In 1971 he served on the steering committee of the Sierra Club's 12th Biennial Wilderness Conference in Washington, D.C. Toby is a 1965 graduate of the University of Arizona. Before joining the Council he was an assistant to the New Jersey Commissioner of Labor and Industry. Prior to taking that position he had worked as a fund raiser for the Republican National Committee.

## **N. H. Yields To HUD Planning Pressures But Vermont Sticks To Present Districts**

New Hampshire has bowed to a carrot-stick coercion from the Department of Housing and Urban Development by reorganizing its regional planning districts under the threat of losing federal funding. But Vermont has refused to undertake a comparable reorganization, opting instead for a continuation of the presently constituted districts. And HUD capitulated. New Hampshire officials claim they yielded to the federal pressure to reduce the number of planning regions because the federal officials said this would be necessary to insure funds for sewer and water projects. But when the same pressure was applied in Vermont, state officials said reorganization would not be appropriate and that the existing planning regions would stand. Vermont won, largely because this state's regional planning program is partially underwritten by a legislative appropriation while New Hampshire relies solely on federal funds. Vermont thus had a bargaining position which, in effect, enabled the state to say that the present planning organization was more appropriate to Vermont's needs than that proposed by HUD.

## **Task Forces Unveil Planning Proposals**

Recommendations designed to manage future economic growth while maintaining Vermont's environmental quality underscore the preliminary reports of the two southern Vermont planning task forces which have been submitted to the State Planning Office. The findings and recommendations of the District I (Bennington-Rutland) and District II (Windham-South Windsor), were discussed earlier this month as the Task Force-Environmental Board public meetings got underway.

### **Bennington-Rutland**

This citizens group offered a series of positional statements which covered power sale and generation, public services, industrial development, population, taxation, education, agriculture and forestry and transportation. The committee emphasized that Vermont cannot afford to forego further industrial development because the alternative would be to allow the state "to become a playground and retirement home for the affluent." Development, the group said, must however not do violence to either the natural environment or the essentially rural character of Vermont life." The Task Force also suggested that all Vermont communities be required to enact local zoning which conforms to the state land use plan. It also recommended a "progressive land transfer tax" which would place "a larger share of social costs arising from large scale development upon the developer himself."

The group also favors the establishment of "regional service districts" for fire, police and health services as well as for sanitary land fill operations and suggests that a higher degree of cooperative planning be required between communities in the construction of sewer and water services. Recreation and tourism, the Task Force noted are dependent upon Vermont's natural environment without which "the tourist and sportsman would have little incentive to come here." Therefore, the report went on to say, "over-expansion of recreational and tourist oriented businesses must not be permitted if such expansion endangers the very natural features which bring the out-of-state tourist in the first place." While the members declared they were uncertain where such a point of over-expansion might occur "we share an intuitive feeling that Vermont may presently be very close to it." They further recommended that any marginal expansion of the recreational industry, particularly the ski industry, be restricted pending a study of the recreation-tourist business. "We take no issue with the desire of the businessman to earn additional profits," the Task Force report states, "but we believe that the possibility of gaining marginal profits from expansion must not be allowed to endanger the basic stability of an industry which is so important to the economy of Vermont." In discussing population, the Bennington-Rutland group declared that if the current pattern of one acre, grid style development is encouraged, or even allowed to continue, "we will not be able to accommodate much over an additional 30 percent population increase without destroying the open spaces and rural atmosphere which have contributed to Vermont's charm and uniqueness." They also suggest a cluster "bonus" to encourage maximizing people placement while minimizing land use. This would take the form of zoning regulations offering minimum acreage reductions for developers who construct quality, higher density units where this is geographically possible. The population segment also emphasizes that further growth "should be encouraged to take place around existing, smaller population centers." If population is allowed to become dispersed in a random manner, the report says, "the provision of public services will become a prohibitive burden on the majority of our towns," because, "residential property is seldom self supporting from a taxes paid-services rendered standpoint and the further from a population center the residence is located the more this tends to be true."

### Windham-South Windsor

This Task Force report consisted of nine essays or problem statements, most of which were followed by a list of recommendations. The topics covered were farming and its future in Vermont, the preservation of forest land, undeveloped land, flood plains, natural resources, economic development, business and industry, the recreation industry and property taxes and land use. Tax incentives for open space and forest land preservation are also favored by this task force which recommends imposition of a capital gains tax on transfers and state reimbursement for local revenues lost when land is held in a deferred status. It further suggests "wherever undeveloped land is highly scenic or of historical value, it should be zoned as such and taxed at a reduced rate because of the limitation on future use." The report also favors similar status for land which is unsuitable for development because of physical limitations. The Windham-Windsor group wants "strict regulations" on the management of flood plains and discusses conditional uses of such lands and tax incentives to retard flood plain encroachment. In discussing economic development, the Task Force opts for the position taken by the Governor's Economic Development Coordinating Committee in February, 1971 that the state will need 40,000 jobs in the next ten years. It goes on to say that this goal will not receive substantial help from the recreation industry "despite our desire to develop more in this area"—a position rather different from that taken by the Bennington-Rutland group. The Windham-Windsor task force also generally favored a more aggressive state industrial development posture than that adopted by its counterpart in Bennington-Rutland. The Windham-Windsor group also supports the addition of three new members to the Public Service Board with two of the proposed new positions being held by the Chairman of the Environmental Board and the Director of State Planning. Discussing the recreation business, the report states that "the individual ski area developer is no longer able to control the quality of the environs of his facility." This segment of the report, which was prepared by John M. Christie, general manager of the Mount Snow ski resort, goes on to say that these "other parties" should be the municipality and, in the absence of strong local controls, the state. Christie says it is the "second phase" type of development surrounding ski areas—restaurants, hotels, etc. which are primarily responsible for environmental deterioration. Christie also supports "marked improvements" in the existing highway system because the out-of-state visitor is contributing "millions of dollars in taxes and his travel should be as convenient and comfortable as possible." The Task Force report devotes its longest and most thorough segment to the discussion of property taxation and land use which outlines a variety of strategies for open space preservation and a redistribution of the property tax burden. It recommends a system of assessment which would include the identification of areas particularly susceptible to developmental pressures or otherwise necessary for proper environmental management. These would be zoned and reassessed with a roll back tax recapture system employed when they are converted to more intensive use.

### Forest Service Stalls Mount Snow Expansion

The U.S. Forest Service's moratorium on new construction at five Vermont ski areas on National Forest land pending preparation of long-range development plans has at least temporarily delayed the Mt. Snow Corporation's plan to extend its second gondola to the summit house. The Windham District Environmental Commission had approved Mt. Snow's application for the extension, which would start outside National Forest land, conditional on Forest Service authorization. However the Forest Service did not take action on the request because Mt. Snow representatives did not provide sufficient information in the necessary form at an early May meeting. In order to allow it to get an overall view of proposed developments at ski areas on National Forest land, the Forest Service last September asked the five operations affected to prepare plans of projected construction and improvements over the next five to ten years. The long-range plan is to be submitted by June 15 and to include a site plan, base area plan, future expansion plan, and narrative. These overall plans must get at least preliminary approval before the Forest Service will authorize any new lifts, trails, service buildings, or other construction or improvements on National Forest land. Then rather than making judgments on a piecemeal basis, the Forest Service will base its decisions on individual construction projects on a knowledge of the entire plan. It will be able to see, for instance, whether other factors such as an increased need for sewage disposal capacity are being taken into account when a new lift is proposed. The process of approving the long-range plans for the areas at least partly on National Forest land, which besides Mt. Snow are Bromley, Glen Ellen, Haystack, and Sugarbush, is expected to take at least a year. The new decision amplifies a policy statement of last September by Floyd J. Marita, supervisor of the Green Mountain National Forest who stated then:

"No special use permits will be granted for new ski areas . . . Also, as you are well aware, the general public is taking a much more critical look at . . . ski developments and their environmental impact. Earlier this month the Rutland-Bennington Environmental District Commission asked officials of the Killington ski area to produce long range growth plans for their resort, much of which lies on state-owned land. Killington President Preston L. Smith, a member of the Environmental Board, said he saw no necessity for Killington to develop such documents.

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### **Environmentalists Worry As Attacks on NEPA Grow**

The National Environmental Policy Act (NEPA), signed into law by President Nixon amidst considerable fanfare 28 months ago, is now under a subtle but potentially lethal attack in the Congress. NEPA was the centerpiece of the Nixon Administration's environmental legislative package. It requires all federal agencies to fully consider environmental and social costs of their activities and guarantees to citizens the opportunity to actively participate in governmental decisions influencing the environment. A national coalition is attempting to beat back what it calls "an alliance of vested interests, federal bureaucrats and Congressmen" conspiring to "kill off NEPA a little at a time by amending it to death behind closed doors." Last month, for example, Secretary of the Interior Rogers Morton accused environmentalists of being "arbitrary and capricious" after they successfully demanded that his agency thoroughly investigate the environmental impact of and alternatives to the Trans-Alaska Pipeline before Interior approved the project. The court, however, held that Morton was "arbitrary and capricious" in refusing to obtain sufficient facts before he (Morton) acted. NEPA is credited with achieving a dozen major environmental victories in the past two years ranging from the Florida barge canal controversy to the Calvert Cliffs' decision requiring nuclear power plants to install cooling towers. A dozen legislative proposals now are pending which, it is argued, are designed to subvert NEPA. These range from proposals allowing interim licenses for nuclear plants by altering the traditional hearing process to a scheme to set up regional commissions for administering public works development projects thereby undercutting the necessity for environmental impact statements as required by NEPA. The Vermont Environmental Report will attempt to obtain the positions of the state's Congressional Delegation on this controversy and will include them in the June issue.

### **Route 4 Planning Project Underway**

The Vermont State Highway Department is embarking on a planning project that may have far reaching impact on the future of highway development. On April 24, Commissioner of Highways, John Grey, Highway Board Executive Director Paul Guare and Highway Board member Robert S. Bigelow met in Woodstock with representatives of local communities to discuss the planning of improvements to Route 4 from Interstate 89 to the Mendon Town Line. The historic nature of the meeting lay in the fact that it was called to establish a mechanism to encourage all groups with a concern for the problem to participate in the planning of the highway improvements. The Ottauquechee Regional Planning and Development Commission will sponsor the planning committee which will include state highway officials and representatives of all the towns along Route 4 as well as major traffic generators and highway users in the region. Funds for the proposed reconstruction will not become available before 1980. Therefore, there will be time to develop the project and modify it as experience dictates. This pilot study holds interesting possibilities for the future of highway planning in Vermont and it will be watched carefully by those who believe that optimum citizen participation in the planning of public improvements will lead to the wiser investment of public funds.