

VERMONT ENVIRONMENTAL REPORT

Published monthly by The Vermont Natural Resources Council, a non-profit citizens' conservation organization supported by membership dues and contributions. 26 State Street, Montpelier, Vermont 05602 (802) 223-2328 Chairman, Jonathan Brownell, Executive Director, Seward Weber, Editor, Arthur Williams

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COURT DECISIONS APPEAR UNFAVORABLE

VNRC got some bad news in two separate court tests last month. The decisions involved Forest Highway #3, a highway project in the Town of Peru, and the Route 2 interchange on I-91 in St. Johnsbury.

In the Forest Highway #3 case, VNRC and the Agency of Environmental Conservation had obtained a declaratory judgment from the Vermont Environmental Board that Peru must obtain an Act 250 permit before it could proceed with a highway improvement project. The Vermont Supreme Court threw out the decision on a legal technicality, ruling that the Environmental Board could not properly decide this issue in a declaratory judgment proceeding.

The attorney for VNRC, Harvey Carter, feels that while the Court's decision is a blow, the case has still not been decided "on the merits." His opinion is that the issue of whether the project is subject to Act 250 can still be litigated, should the town decide to go ahead with construction.

In the Route 2 case, VNRC was seeking to enjoin construction of the Sleepers River interchange and its connecting spur in St. Johnsbury. It was felt that the interchange was both environmentally destructive and unnecessary, and that it may be the beginning of a four-lane highway between St. Johnsbury and Montpelier. No attempt was made to stop construction of I-91.

VNRC's case rested principally on a violation of the National Environmental Policy Act (NEPA). Although the lower court found that there had been in fact a violation of NEPA, it refused to enjoin the project. VNRC then obtained an injunction pending an appeal.

On September 18, the appeal was argued before the Second Circuit Court of Appeals. Because many of the issues were similar, the appeal in the Route 7 case brought by the Conservation Society of Southern Vermont was argued at the same time.

In mid-October, Court of Appeals suddenly lifted the injunction which had prevented the rechannelization of the Sleepers River. The reasons for this action are not clear, because the court did not issue an opinion at the time. However, the withdrawal of the injunction probably means that the final decision will be unfavorable, at least as far as Route 2 or the interchange is concerned.

There is no indication of a decision in the Route 7 case.

ENVIRONMENTAL LEAFLET SERIES

Included in this issue of the VER is VNRC's latest environmental leaflet entitled "The Importance of Wetlands." It is the second of a series of leaflets planned by the Council. The first one, "Scenic Road Preservation," was released in August.

VNRC hopes to produce leaflets on a variety of environmental subjects. Future topics will include lake eutrophication, streambank stabilization, floodplains, sanitary landfills and junk automobiles.

The cost of writing, printing and distributing 3,000 copies of each leaflet is approximately \$300.00. If any VNRC member would like to sponsor a leaflet the Council would be most appreciative.

Additional copies of the Wetlands leaflet, as well as the Scenic Road Preservation leaflet, are available upon request.

VNRC BENEFIT FILM AND PARTY

Central Vermont members will be interested in the VNRC benefit film and wine and cheese party to be held on Friday, December 13 at the Edison Studio Theatre in Waitsfield starting at 7:30 p.m. This will be a first run feature length movie. Please mark your calendars and call or write the COUNCIL for tickets both for yourself and your friends — tickets are \$6.00.

LAND USE COMMITTEE WRAPS UP PLAN

With State Planning Director Arthur Ristau confirming reports that the Governor has asked his office to draft a stronger plan, the Land Use Study Committee put the final wraps on the proposal they will submit to the 1975 Legislature.

Final sessions brought forth new proposals to tie in land use taxation with the enactment of the plan into law. However, mandatory land use taxation was defeated in favor of a proposal to recommend a change in taxation after the enactment of the plan. A number of committee members who advocate a stronger plan are resigned to the fact that the version approved is probably the only one that will have a fighting chance in the General Assembly.

The proposed legislation, while endorsing the principle of protection for state wildland and productive farmlands, offers little threat to towns that refuse to do so. Instead of dividing the state into definitive areas of greater or lesser potential, as did the old plan, the current version offers communities guidelines for land use planning. Municipalities have two years to modify state designated rural reserve areas and four years to adjust agricultural areas. If a town fails to certify a plan within the prescribed time limits, state jurisdiction would be asserted on all developments in conservation, rural reserve and agricultural areas. The only areas firmly spelled out for state control are lands above 2500 feet in elevation — about three percent of the entire state.

Although the plan has been criticized for not going far enough to protect the land resources of the state, experienced legislators on the committee feel their efforts were better spent on drawing up a document that might have a chance in the next legislature than an idealistic proposal that would be certain to meet the same fate as the one presented in 1974.

HEARINGS ON TRANSPORTATION PLAN SET

The Transportation Advisory Board (TAB) has scheduled a second round of public hearings on its Ten Year State Transportation Plan. The TAB is continuing its work in preparing the plan. A final draft will be sent

to the Governor by December 1, for his recommendations before being submitted to the 1975 General Assembly.

Last month the TAB held public hearings around Vermont to assess public reaction to the preliminary draft of the plan. VNRC testified at the hearing in Berlin. Copies of that testimony are available upon request.

During the hearings, the TAB was widely praised for many of its policy recommendations. Among other proposals, the preliminary plan recommended the creation of an agency of transportation, the protection of scenic roads, and the upgrading of facilities within existing transportation corridors, rather than building new corridors. The preliminary plan also stated that "the state, and its citizens, must revise their expectations of what we need and can afford."

However, the TAB did hear frequent criticism for its failure to consider the highway department's proposed seven-year construction plan prior to the last round of public hearings. The 1974 legislation which created the TAB directed that the construction plan be submitted to the Board for consideration, and that the Board act upon it as an integral portion of the ten-year transportation plan. Critics felt that while the TAB's general policy statements were a step in the right direction, the heart of the issue lay in what the TAB would recommend "on the ground."

In response to that criticism, the TAB has undergone a series of meetings to decide what highway projects should be built in the next ten years, and what projects should be deferred or dropped. As of this writing, no final report had been issued but one should be ready by the time you read this. We urge our members to obtain a copy and then express their views at the public hearings. The hearing schedule is as follows:

Monday, Nov. 18, 7:30 p.m.: BARTON — Lake Region High School; SPRINGFIELD — Riverside Jr. High School.

Tuesday, Nov. 19, 7:30 p.m.: MANCHESTER CENTER — Manchester High School; BURLINGTON — Memorial Lounge, Waterman Building, UVM.

Wednesday, Nov. 20, 7:30 p.m.: MONTPELIER — Pavilion Auditorium, State Street.

ANOTHER LOOK AT LAND USE TAXATION

by Arthur Ristau

William Jennings Bryan, that Populist stem-winder with the flair for the over-dramatic, placed the predicament of agriculture in compelling perspective 75 years ago.

"Burn down your cities and leave our farms," Bryan harangued, "and your cities will spring up again as if by magic; but destroy our farms, and the grass will grow in the streets of every city in the country."

At the turn of the century, when farming played a much larger role in the economic life of the nation, Bryan's exaggerated claim had considerable validity. But it retains yet a kernel of contemporary truth which Americans can ill afford to ignore in a time of growing food scarcities, sharply rising prices and relentless urban encroachment on farms, forests and other essential open spaces.

Bryan's stridency is matched in Vermont these days by adherents of "land use taxation." Only by easing the tax burden on farm and forest, these disciples argue, can Vermont retain its open spaces and guarantee the vitality of the agriculture and wood products industries. There is no disagreement here concerning these admirable and universally accepted goals. But they are clearly not attainable through a simple system of deferral, or forgiveness, of a certain segment of one's property tax obligations.

Variations on the theme of land use taxation are the subjects of experiments in several states. The list of abuses, maladministration and incredible complexities is discouraging. In Connecticut, William H. Whyte, who is generally credited with current use assessment paternity there, now concedes the system is nothing more or less than a subsidy for developers who are handsomely enriched by tax deferrals.

The fundamental fallacy in most land use taxation schemes with which I'm familiar is the transfer in burden from land to improvements. A use value system, as opposed to the current fair market value system, would tend to freeze or reduce assessments on land dedicated to farm or forest and dictate a concomitant increase in the valuation of buildings to compensate for the resultant revenue

loss to the community. It was vigorously argued in these pages recently, for example, that if New Jersey can utilize a system of land use taxation, then, for God's sake, why can't Vermont?

The reason is simple. New Jersey is the nation's most densely settled state. A burden shift from land to improvements is readily attainable there because there is relatively so little land and so many improvements. In Vermont the reverse is true — 90 percent of the state is unsettled — and such a strategy would tend to impoverish the town dweller to the benefit of his rural neighbor.

Selective, and sometimes successful, burden shifts have been accomplished in Vermont in communities where relative affluence (Stowe) or a stable industrial base (Springfield) have made such transferences feasible. In Stowe the program seems to be working well. The ten-year-old Springfield experience was recently dissected by Ben Rosko, a farmer's son from Middletown Springs, who found that tax stabilization was helpful, but not pivotal, in sustaining agriculture. "Springfield's property tax stabilization program cannot be credited with significantly changing the rate of farm sales," Rosko concludes. Nor did it ameliorate the pace of farmland conversion.

Proponents of a land use tax seem to be arguing that the shift from land to improvements should be accomplished statewide as a matter of public policy. The assumption here is that the Vermont taxpayers would willingly and collectively absorb the millions of dollars necessary to effectuate such a strategy. Even in a period of prosperity this would not be feasible. In the current climate of fiscal rectitude it is impossible.

There are solutions to the problem of an inequitable property tax rate system but they should be addressed in the context of the reprehensible nature of the property tax itself, the state's dependence on this form of revenue for the local financing of education and the endemic competition between towns which grand list enhancement precipitates.

The first inequity is the system of assessment. Vermont (and 40 other states) does not have laws requiring that assessors

meet certain standards. This fact alone asserts, or at least argues for, the myriad of administrative difficulties one associates with land use taxation. Who makes the assessment? Who declares the "use?" Is there a requirement that assessors be trained or certified or that they not be the brother-in-law of the town's largest landowner? The answers to these questions aren't encouraging.

But more importantly, the proponents of land use taxation seem to disregard just why it is that admittedly intolerable burdens are now being placed upon open, eminently subdividable land in our state. These burdens simply reflect the fact that educational costs are increasing faster than the tax revenues necessary to defray them.

Recently, two alternatives to fair market value taxation have been offered which warrant more extensive discussion. One of these is the creation of a system of agricultural districts, a proposal put forth by Senator Arthur Gibb, R-Addison, which is modeled on the New York farm tax stabilization arrangement. The latter seems to be working well and might be worth experimentation, perhaps within a single county in Vermont.

The second approach is more direct and would tie a current use assessment scheme to an increase in the property tax transfer tax to diminish property tax liability for owners of undeveloped land.

The latter was offered in the 1973 legislative session by Representative Joe Steventon, R-Rochester and, like the Gibb proposal put forth in the same year, was not subject to sufficient scrutiny.

The Gibb strategy is enabling. If a town wished to grant tax stabilization to an agricultural district, residents outside that district would be required to absorb increases in local governmental costs for a period of several years. It is a splendid manifestation both of local control and local responsibility.

In the more comprehensive Steventon scheme, revenues from the expanded property transfer tax would be employed to defer additional expenses to towns arising from the inevitable increase in the costs of public services. Steventon's approach is actually

a rural tax stabilization program hinged to a graduated transfer tax based on land use. Advocates of a state land use plan argue that instituting such a system might have the effect of stimulating planning decisions in anticipation of the tax relief which might be derived after use differentiations are established.

There is a third approach, however, that is also worth considering. This would be a modification in the Miller Formula for state educational aid which now considers "wealth" as a factor only as it reflects the current fair market value system of property assessment.

Simply stated, it would revise the formula for the distribution of state educational assistance to include personal wealth as well as property valuation in the town's aid entitlement. Incorporating personal income with property assessment seems to have the dual virtue of equity and administrative feasibility.

A town therefore which had a preponderance of farmers and woodlot managers who were of modest income would obtain more state aid for example than a town significantly populated by large land owners who also happen to be affluent. Several Vermont communities come readily to mind in both instances.

This system acknowledges the fundamental problem of the use of the property tax to finance the most significant cost of government — education. It is a burden Vermont lands are simply unable to bear but one that might be partially shifted not to buildings but to incomes.

Let us concede that it is not the property tax itself, but the utilization of that tax which occasions our most pressing difficulties. It is neither an equitable nor a socially desirable method for funding education and neither public policy nor education is well served as long as it is employed primarily for this purpose.

But if we are married to a system — The Miller Formula — which is working reasonably well (and it is), then our most apparent alternative is to make it work

better. And to do this would require only minimal adjustments factoring personal income, as well as fair market value, into the equation which determines a town's "wealth."

The net effect of such a modification would be to achieve relief for our financially harassed farmers and woodlot managers who are performing a significant public service while transferring the major burden of such relief to the more affluent in our society — those most able to bear it.

* * * * *

Arthur Ristau is Director of State Planning and former editor of the VERMONT ENVIRONMENTAL REPORT.

AMENDMENTS PROPOSED TO VNRC BYLAWS

A number of proposed amendments to VNRC's bylaws will be voted upon at the annual meeting on December 7 in Middlebury. Most simply clarify existing bylaws or formalize established procedures.

The amendments would establish an Executive Committee of seven directors, who could act in behalf of the board of directors between its regular meetings. Nominations of directors would have to be made at least thirty (30) days before the annual meeting, instead of the present fifteen (15) days. This would allow greater advanced notice to the membership of the nominations.

A member organization could not nominate a member for one of the six (6) director's seats held by organization members, if that organization was already represented by a board member whose term is not expiring. However, any VNRC member could nominate a director for an at-large seat.

Directors could not serve more than two consecutive terms, or a total of seven years. All directors must be members in good standing of VNRC in order to retain their seats.

The board of directors approved the proposed amendments at its October 2 meeting, and recommended that they be adopted by the membership at the annual meeting. Copies of the complete changes will be distributed at the annual meeting.

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Instead of publishing a December issue this year, we have expanded our November VER to cover both months.

ENVIRONMENTAL HIGHLIGHTS

Randolph - Vermont Tomorrow is co-sponsoring a "Food Forum" to be held at the Randolph Union High School on Saturday, November 23. The central question to be discussed is: "How can we become more self-sufficient in food production?" Demonstrations and workshops will be held on a variety of topics including; food co-ops, farmer's markets, community gardens, and neighborhood root cellars. Interested persons are urged to contact Vermont Tomorrow, 5 State Street, Montpelier, Vermont.

Montpelier - The State Planning Office has issued an illustrated booklet on Vermont's Land Capability based on the Land Capability and Development Plan approved by the 1973 Legislature. An educational introduction to land use, the report considers four primary factors in making such decisions: Existing Limitations, Development Limitations, Resource Opportunities, and Significant Environments in the state.

Waterbury - In a written decision, with one member dissenting, the District 5 Environmental Commission has upheld its earlier oral decision banning two environmental organizations from participation in hearings on a Berlin Corners shopping center. The commission's ruling states that it denied the petitioners' contentions the project would place an increased burden on Berlin and damage surrounding cities for several reasons. It stated: The project conforms with a Berlin Town Plan and Zoning Ordinance; no regional plan exists which would have opposed the development; representatives from neither Barre nor Montpelier had attempted to testify on the development's adverse impact on their communities.

Montpelier - Washington County Court indicated that it will give the State of Vermont the right of eminent domain to take over land at 135 State Street owned by promoters of a Holiday Inn. The land is considered, by the State Building Board, to be vital to the state's interests. The property was formally owned by National Life Insurance Company. On the final day of the 1974 legislative session the General Assembly empowered the state to take the land by eminent domain. Before the case went to court, the state offered nearly \$200,000 for the land which was rejected by the promoters.

Montpelier - The Vermont Environmental Board recently voted to deny an Act 250 permit to the promoter of the proposed Wildlife Wonderland development in the towns of Mt. Holly and Weston. The project was conceived as a game farm where tourists could view wild animals in pens. It was estimated that Wildlife Wonderland would draw as many as 200,000 persons annually.

The decision of the Environmental Board was based on evidence that the development would create substantial soil erosion and air and water pollution, as well as cause a public financial burden for the Mt. Holly and Weston areas. Testimony before the Board also indicated that there was a possibility that exotic diseases could be spread from captive to native wild animals.

Wildlife Wonderland has appealed the decision to the Vermont Supreme Court. Several other projects involving the importation of wildlife into Vermont are reportedly planned and their future will depend on what happens in the Wildlife Wonderland case.

NOMINATIONS TO VNRC BOARD OF DIRECTORS

The VNRC annual meeting, December 7, will elect six (6) at-large directors to the board and three (3) directors representing member organizations. Individuals nominated to date are listed below with brief identifying information. Any VNRC member may be nominated for membership on the board provided he is willing to serve and provided his name is received by the Secretary of the Council fifteen (15) days prior to the annual meeting. (November 22, 1974)

At-large nominees: (as proposed by the nominating committee)

Amory Bradford (Manchester Center) - Retired business executive, former vice-president and general manager of The New York Times Company, recently consultant to the commissioner of the Connecticut Department of Environmental Conservation. AB Yale.

William Cowles (Shelburne) - Member of VNRC board of directors. Co-chairman, Lake Champlain Committee. Architect and former Secretary of Agency of Human Services and State Environmental Board.

A. John Holden, Jr. (East Montpelier) - Member of VNRC board of directors. Vermont school teacher, Superintendent of Schools and Commissioner of Education for Vermont for sixteen years. Graduate of Harvard College, taught at Middlebury, served as acting president of Lyndon State College and now teaches "Man and Nature in Vermont History" at Johnson State College. Chairman of Environmental District Commission No. 5.

Marilyn Leimenstoll (Shelburne) - Member, Vermont Chapter of The Nature Conservancy, helped organize Burlington Farmer's Market and Shelburne Spinners.

Carl Reidel (Burlington) - Member of VNRC board of directors. Director, UVM Environmental Program and Professor of Forestry, member of Conservation Society of Southern Vermont board of trustees, Director, American Forestry Association, AB and PhD from the University of Minnesota.

Peter Smith (Belmont) - Member VNRC board of directors, Member of Council of Vermont Sierra Club Group, PhD, UVM, cheese manufacturer, member of Wilderness Committee of New England, Sierra Club.

Nominees of member organizations

Ann Baker (Charlotte) - Nominee of Lake Champlain Committee. Has lived in Vermont 22 years. Formerly executive secretary of Lake Champlain Committee and administrative assistant of Garden Way, member of Vermont Water Resources Board.

George D. Carlisle (Monroe, NH) - Nominee of Vermont Timberland Owner's Association. Division Forester and Recreation manager for New England Power Company. BS in Forestry from University of New Hampshire, Director of Vermont Timberland Owner's Association, member of Vermont and New Hampshire Tree Farm Associations.

Gregory Prince (Thetford) - Nominee of Vermont Institute of Natural Science. Assistant Dean of the Faculty and Assistant Professor of American Studies, Dartmouth College. PhD from Yale University, member of VINS board of directors.

ANNUAL MEETING DETAILS SET

The highlight of the 1974 VNRC annual meeting will have senior state administrative officials facing the Council's membership in a question and answer session on the condition of the environment in Vermont, the impact of their agencies' programs have on the environment and the future of environmental conservation in Vermont in the years immediately ahead. Invited are: Kimberly Cheney, Attorney General; John Gray, Commissioner of Vermont Highway Department; Schuyler Jackson, Chairman of Environmental Board; Martin Johnson, Secretary of the Agency of Environmental Conservation; Ed Kehoe, Commissioner of Fish & Game Department; Gordon Pyper, Commissioner of Water Resources; Arthur Ristau, Director of State Planning; and James Wilkinson, Director of Forests & Parks.

The morning session beginning at 9:30 with registration will feature a business meeting at which new members of the board of directors will be elected and bylaw changes will be voted. A review of 1974 Council activities will be given and prospects for 1975 will be discussed.

Registrations should be made using the coupon below. No other invitation will be mailed to members. We hope that members will attend and bring friends who are interested in environmental conservation. Information on nominees to the board of directors appears elsewhere in this issue as do proposals for bylaw changes.

The program is as follows:

9:30 a.m.	Registration
10:00 a.m.	Business Meeting
	Report of Officers
	Summary of Activities
	Election of Directors
	Bylaw Changes
	Discussion of 1975
	Program
	Other Business
12:00 noon	LUNCH
1:30 p.m.	Question and Answer Panel
2:30 p.m.	Adjournment

LAND REGULATION CONFERENCE

The Vermont Natural Resources Council, with assistance from the Conservation Law Foundation of New England has scheduled a Land Regulation Conference to be held Friday and Saturday, December 13 and 14 at the Pavilion Auditorium, Montpelier.

The purpose of the conference is to educate lawyers and others in land regulation and development with the Vermont laws relating to those activities.

BYPASSING THE PEOPLE

The Vermont Public Interest Research Group has released a report entitled, Bypassing the People: The Story of the Chester Bypass, and can be obtained by writing to them at 26 State Street.

VNRC ANNUAL MEETING REGISTRATION FORM

() I (we) will attend the annual meeting
() My check, payable to VNRC, for _____
luncheons @ \$5.00 each is enclosed.

Tickets will be held for you at the reservation table. PLEASE SEND PAYMENT WITH THIS FORM AS LUNCHEON GUARANTEE MUST BE MADE.

Name: _____

Address: _____

Zip _____

MEMBERSHIP RENEWAL FORM

Enclosed are my dues for \$_____ for 1975 VNRC membership.

Enclosed is my additional contribution of \$_____ to support VNRC program.

Student	\$ 5.00	Non-profit Org.	\$15.00
Individual	7.50	Associate	25.00
Family	10.00	Business	50.00

Name: _____

Address: _____

Zip _____

IRS THREATENS VNRC TAX STATUS

On September 30, the VNRC received notification from the Internal Revenue Service of its intention to revise the Council's tax deductible status, based on an examiner's report made over the past year. At issue is the activities of Project EPIC (Environmental Planning Information Center) to encourage public participation in planning during 1972, when the Land Capability and Development Plan was being drafted by the Environmental Board. The IRS examiner contends that a "substantial" part of VNRC's activities during this period consisted of "advocating the enactment of legislation," and that therefore VNRC's deductible status should be revised.

The Council is challenging this proposed action on the grounds that the examiner's facts are incorrect and that the law does not support change in status under the actual facts. A 36-page rebuttal has been sent to IRS, with a point-by-point denial of each of the examiner's allegations. VNRC has also requested an administrative hearing before IRS in Washington. The VNRC maintains that in 1972 all of the EPIC activities were educational in nature and, furthermore, the Land Capability and Development Plan was not "legislation" until after the General Assembly convened in January 1973, before which time EPIC's public education program had ceased.

Under the Internal Revenue Code and Regulations, the status of a 501(c)(3) organi-

zation and the deductibility of gifts to it does not change until after all appeal proceedings have been completed and a formal notice of change issued and members notified; accordingly, we are advised that all amounts given to VNRC continue to be deductible by members on their personal income tax returns.

Further information concerning this case will be available at the Council's annual meeting on December 7 in Middlebury. A report will be given on the conference with IRS if it has been held by that time.

CANADIANS AND AMERICANS DEADLOCK ON CHAMPLAIN LAKE LEVEL CONTROL

Splitting on national lines, the International Joint Commission's Engineering Review Board has reached a deadlock on recommendations to the Commission on dredging and damming in the Richelieu River. American members would not yield to pressure from their Canadian counterparts and refused to retreat from their position that no work should be done on any scheme to change the Richelieu's flow until the effects on the Lake's ecology are fully explored and evaluated.

The Vermont Natural Resources Council has joined the Lake Champlain Committee in opposing any proposal to regulate Lake Champlain until a thorough environmental impact study of the Lake can be completed.

**VERMONT NATURAL RESOURCES COUNCIL
26 STATE STREET
MONTPELIER, VT. 05602**

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****ANNUAL MEETING RESERVATION FORM****

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