

# Vermont Environmental Report

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## Public Interest Groups To Press For New Gains In 1978 General Assembly

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*The 1978 Session of the General Assembly opens on Wednesday, January 4, and environmental groups are readying themselves for what many observers see as a tough session.*

*What distinguishes the 1978 session from others in recent years is the existence of a sizeable General and Highway Fund budget surplus, estimated by Bruce Mosher of the Joint Fiscal Committee as of June 30, 1977, to be in the neighborhood of \$21 million.*

*The \$21 million surplus combined with the fact that legislators will be facing the voters in November, 1978, suggests that this could be a lively, hard-fought session.*

*In what follows, the VER talked to representatives of the major environmental groups who will have an active lobbying presence at the State House. These representatives discussed their legislative objectives and revealed their sense of the major issues that would come before the 1978 session.*

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### (1) Vermont Natural Resources Council, (Seward Weber)

VNRC's Executive Director, Seward Weber, will be the Council's lobbyist at the State House in the 1978 session.

High on Weber's list of legislative priorities will be the task of defending Act 250 from legislation that would weaken the Act. At the same time, proposed developments like Pyramid Mall, have demonstrated the need for putting forward legislative measures that would strengthen Act 250. VNRC is interested in the idea of strengthening the role of regional plans and regional planning commissions in reviewing large developments like Pyramid Mall.

VNRC has a list of other legislative concerns.

Weber said, "I wouldn't call the Fragile Areas Bill a big issue, but I would like to see it pass the Senate in this session." The Council will also be working with the Fair Tax and Equal Education Coalition in pushing for property tax reform and a new approach to state aid to education. Weber was unwilling to make predictions about the session, but he did feel that the Act 250 issue will be one of the major questions before the Legislature, and it will be a number one priority for VNRC.

### (2) Fair Tax & Equal Education Coalition (Benjamin Huffman)

Public Affairs Consultant Ben Huffman will be working for the Fair Tax & Equal Education Coalition as he did in the 1977 session.

## Session cont...

"We are going to try to get H.361 passed," says Huffman about his legislative objectives. He thinks there is a good chance for this in the 1978 session.

At the heart of H.361 is a provision that would value farm and timber land at its "use value" instead of its "fair market" value. A companion bill is being developed by the House Education Committee to alter the state aid to education formula. This new formula would measure the "wealth" of a given town by the income of its residents and the taxable value of "non-homestead" property.

Huffman praises the hard work of House Education Committee members who have been developing a new state aid formula throughout the summer and fall. He sees a lot of haggling over the present surplus, who gets it, and he says the chances of adopting a new state aid formula are about 50-50 at the moment.

### (3) Lake Champlain Committee (Anne Riegelmann)

The Lake Champlain Committee took an active role in the initial formulation of Act 250. The Committee is interested in issues of planned growth, land use development and water quality, and will be providing active support on Act 250 issues as they develop in the 1978 session.

### (4) Vermont Public Interest Research Group (Leigh Seddon)

VPIRG Assistant Director, Leigh Seddon, outlined a long list of VPIRG legislative concerns in the 1978 Session.

At the head of the list is VPIRG's desire to see amendments to Vermont's Container Deposit Law.

"I consider (these amendments) a major priority in the 1978 session," said Seddon, "because our bottle law has not been working properly."

"It's a question of \$1.5 million," Seddon add-

ed. He was referring to an estimated \$1.5 million that Vermonters could save at the marketplace in reduced costs of beer and other beverages if the brewers who now use throwaway containers were forced to switch to refillables.

The future of Act 250, the State's major land use and development planning law, will be another high-priority VPIRG legislative concern. Seddon went as far as saying that he felt the environmental focus of the 1978 session would be the State's role in planning for its future. VPIRG will oppose amendments that would weaken Act 250. At the same time VPIRG will be supporting legislative proposals to strengthen Act 250 in the wake of the Pyramid Mall development.

VPIRG estimates that the effects of road salting, particularly its resultant corrosive damage to motor vehicles, costs Vermonters over \$50 million a year. VPIRG wants a bill to reduce the use of salt on Vermont's roads.

VPIRG will be working on a wide variety of energy-related measures. Some of these are energy conservation bills such as a sliding registration fee for motor vehicles based on vehicle weight, tax incentives and low-interest loans for alternative sources of energy, and a measure to exclude energy conservation improvements from property assessments.

In other energy matters, VPIRG is asking the Legislature to consider a bill to put aside sufficient money for the decommissioning of nuclear power plants after their working life is spent. And VPIRG wants the Legislature to require Vermont utility companies to allocate low-cost "Power Authority of New York" (PASNY) power to residential customers as their first 300 kilowatts of electrical energy.

### (5) Vermont Tomorrow, (Stuart Meacham)

"We will definitely have a lobbying presence on the Hill and it will be a full-time commitment," says newly-appointed Vermont Tomorrow Director, Stuart Meacham.

Meacham believes that citizens should take a more decisive role in the legislative process.

## Session...

"We need to change the style of the way that legislative work is done," Meacham declares. In most organizations there is a paid staff lobbyist who represents citizens and follows a number of legislative bills. Meacham wants to turn that situation around. "It needs to be done by the people themselves," insists Meacham. "We (Vermont Tomorrow) want to act as staff for the people of Vermont to do their own lobbying."

The Vermont Tomorrow legislative program will be precisely defined by a Committee from the Vermont Tomorrow Board. Meacham says, "We will undoubtedly focus on one or two pieces of energy legislation."

Meacham explains the survival of Vermont Tomorrow this way. First is the membership of the organization, whom he characterizes as more interested in the future of Vermont than what they can get out of Vermont today for themselves. And second are the issues that won't go away. Meacham names a few of them, "The Pyramid Mall rip-off, paving Bennington County for a new Route 7, the outrageous hold-up of the public by a 27 percent Central Vermont Public Service Company rate increase, or Gov. Snelling's proposal to develop the bank accounts of certain Geneva (Switzerland) businessmen in the guise of developing Vermont."

## Would You Like To Be A Test Reader?

Michele Frome, Director of VNRC's "Workbook on Sewage Treatment Alternatives" project, is looking for a handful of people to assist her as "test readers."

Michele Frome came to VNRC last May. Since then, she has been conducting research and writing two books on sewage treatment planning and sewage treatment alternatives. Frome is working under a grant from the Vermont "208" Water Quality Planning Program.

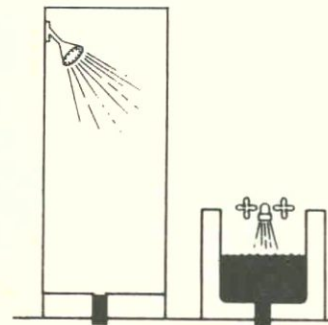
Book 1 in the two-book series is entitled, "Tools of the Trade." It supplies background information on sewage treatment and sewage treatment laws in Vermont, and describes the full range of sewage treatment methods available to both communities and the individual homeowner.

Book 2, entitled, "A Planning Guide," will provide community leaders and interested citizens with a step-by-step explanation of how to study sewage treatment problems and how to arrive at appropriate solutions.

Frome will be asking test readers to help her in the following ways: (1) by reading one or both books; (2) by applying the books to a current sewage treatment problem in the reader's community; (3) by indicating in what ways the books are helpful and in what ways they are not; and (4) by suggesting additions or changes to the text.

Test readers might be municipal officials, regional planning commission officials, health officers, or members of local civic groups. Test readers might be individual citizens with a wide variety of possible concerns: the construction of a sewage treatment system versus on-site systems; the expansion of an existing sewage system; or the allocation of "reserve capacity." Test readers might simply be individuals concerned about their own private sewage systems.

If you are interested in devoting some time to the "Workbook Project" as a volunteer test reader, or if you know someone whom you think we might contact, please write Michele Frome at VNRC, 26 State Street, Montpelier, VT., 05602, or call (802) 223-2328.



(NOTE) Copies of the draft of Book 1 are now available for review. The completed two-volume "Workbook" series will be ready for general distribution in the summer of 1978. VNRC invites you to add your name to the list of persons who will be notified when copies of the completed Workbook are available.

## The Bobcat: Is It An Endangered Species?

At two separate hearings over the past three months, Vermont hunters and the State Fish & Game Board have clashed over the Board's recent proposal to close the bobcat season for one year beginning in October, 1978. At the heart of this disagreement between hunters and the Board is the question of the size of the Vermont bobcat population.

Questions about the size of the bobcat population are being raised in other quarters as well. In January, 1977, the Defenders of Wildlife, a preservation group in Washington, D.C., petitioned the Fish & Wildlife Service of the U.S. Department of the Interior to place the bobcat on the Endangered Species List. The Defenders of Wildlife fear that increased hunting pressure may have depleted the bobcat population to an endangered level.

This is how suspicions that bobcat numbers may have declined dramatically can be explained.

First, the bobcat is an easy animal to trap. Second, the bobcat has an unprotected status in most states and can be hunted without restriction. Third, bobcat fur has come into vogue in the past few years. (Over 100,000 bobcat pelts were exported to Europe in 1976. Bobcat pelts sold for as much as \$300 apiece. Coats made of bobcat fur are selling for as much as \$8,500 at retail prices.) And fourth, the bobcat kill throughout the nation has shown a drop from 9,000 animals in 1970 to 1,700 in 1976.

The National Wildlife Federation (NWF) has also become involved in the bobcat issue. In 1976, NWF conducted a survey of the 48 contiguous states to determine the bobcat's population size. Only 15 of the 48 states could give any estimate of their bobcat populations.

Now the U.S. Fish & Wildlife Service has jumped into the controversy. In response to the petition from the Defenders of Wildlife, the Service has requested all states to determine what their bobcat populations are. This request has prompted many states to modify their bobcat seasons or to set "bag limits" on the number of animals taken.



A November 30, 1977 action that emphasizes the growing fear over the decline of the bobcat is the export ban imposed on bobcat fur by the federal Endangered Species Scientific Authority (ESSA). ESSA is an independent government agency that reviews applications to import or export certain species of wildlife.

Vermont is one of many states that does not have sufficient data to accurately determine the size of the bobcat population. For the past 115 years, Vermonters have considered the bobcat to be a pest, a varmint. Acting on this sentiment, the Vermont Legislature put a bounty on the animal to control its population. This bounty provided a monetary incentive for the hunter and continued until 1971 when it was lifted. From 1971 on, hunters could still pursue the bobcat, but there was no bounty and no requirement to report on how many animals were taken.

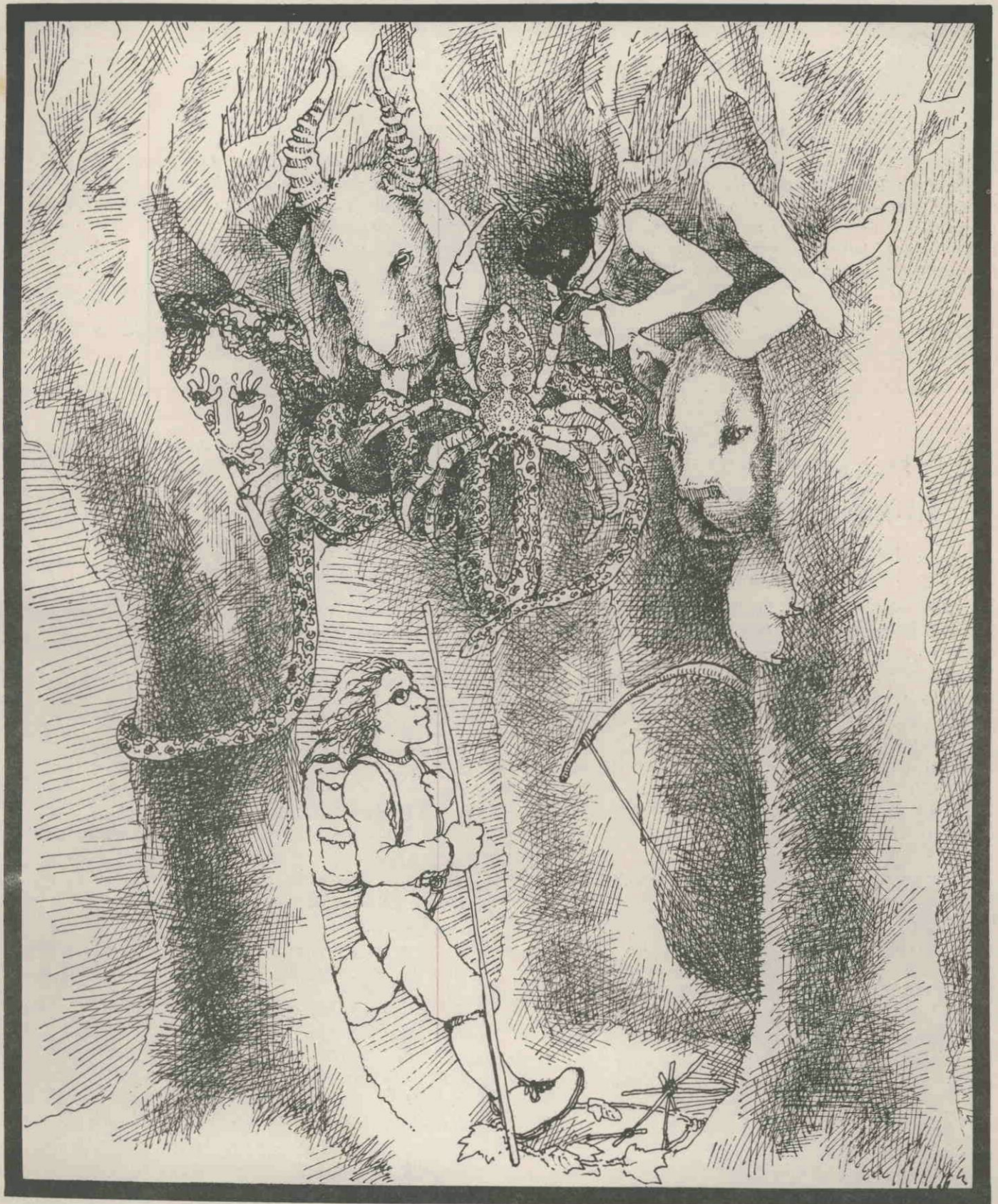
Finally in 1976 a major policy change occurred. A bobcat season was introduced. This was the first time in Vermont history that the bobcat had received any protection. In addition, the Fish & Game Board required mandatory reporting of bobcats taken.

"Is the bobcat an endangered species in Vermont?"

Charles Willey, a state wildlife biologist and leader of the Vermont Furbearer Project, has strong doubts.

In a letter to the office of the Fish & Wildlife

VNRC's ENVIRONMENTAL LAW SERVICE:



THE FIRST YEAR'S ACHIEVEMENTS

A little over one year ago the Council inaugurated a new program called the VNRC Environmental Law Service (ELS). The objective of the ELS was to make the services of VNRC's staff lawyer available to citizens and organizations in Vermont on issues of environmental law. The Environmental Law Service got its initial boost from a \$5,000 grant from the Conservation Law Foundation of New England, a public interest law firm located in Boston which has been active in projects in all six New England states. In the first year of its life, the ELS has been sustained through a combination of individual contributions, foundation grants, and government contracts.

The purpose of this report by VNRC's attorney Darby Bradley is to relate the activities and accomplishments of the ELS. Issues involving land conservation dominated its first year. The major work in this area is described in this report.

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## (1) Ottauquechee Regional Land Trust

Almost simultaneously with the announcement of the Law Service, the Ottauquechee Regional Planning Commission in Woodstock requested VNRC's help in setting up a regional land trust to protect forest and open space land in the Ottauquechee region. While the idea of a "land trust" is not new in Vermont, the Ottauquechee Trust is the first to emphasize the acquisition of conservation restrictions (development rights) instead of acquisition. The Ottauquechee Regional Land Trust is also the first such trust in Vermont to seek federal tax-exempt status in order to achieve its objectives.

The Ottauquechee Regional Land Trust was formally incorporated in May 1977. In September, the Trust was notified by the Internal Revenue Service (IRS) that it did indeed meet the requirements of a 501(c)(3) organization. This determination was crucial to the success of the Trust. It meant that any contribution of land or conservation restrictions would be tax-deductible. In November, the Trust acquired its first parcel of land, a six-acre tract in Hartland, from the Connecticut River Watershed Council. A brochure about the Trust is currently available, and negotiations are underway with a number of landowners.

There are still many issues to resolve about how a land trust operates. The IRS recently advised

the Trust that conservation of land for production of forest and agricultural products is NOT a "charitable" activity and could not be undertaken by the Trust. The IRS did indicate, however, that protection of watershed areas, wildlife habitat and scenic views -- values normally associated with forest and agricultural land -- IS a permissible activity. We are seeking further clarification on this point.

## (2) Champlain Islands Trust

The establishment of the Ottauquechee Trust has spurred interest in land conservation in other parts of Vermont. A new project to raise public concern about the future of undeveloped Lake Champlain islands got underway this fall. With sales prices soaring and with many islands now on the market or available if the price is right, members of the Green Mountain Audubon Society sought advice from the ELS on possible methods of protecting this significant resource.

After months of discussions, the Audubon Society, the Lake Champlain Committee and VNRC, working with the New England River Basins Commission and other governmental agencies, have launched a two-part protection effort. First, a Champlain Islands Trust will be established to acquire conservation restrictions or fee title in the islands. Second, there will be a public education effort. A major element of this effort will be a slide-tape presentation that will explain the current threat to the islands and dramatize the need for action.

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As of this writing, it can be reported that a steering committee has been formed and that the planning necessary to launch the Trust is underway.

### (3) Legislation

One problem that has bedeviled private land conservation efforts over the years has been Vermont's property tax laws. These laws require that all property be taxed at "fair market value," even in cases where land is being held by conservation organizations or is subject to conservation restrictions. Several years ago, the Council was instrumental in organizing owners and users of open space into a coalition in an effort to seek property tax reform. With the assistance of the Law Service, the "Fair Tax & Equal Education Coalition" drafted H.361, a comprehensive bill that would permit "use value taxation" on productive forest and agricultural land and on land subject to long-term conservation restrictions. H.361 was introduced in the 1977 General Assembly by Rep. Norris Hoyt of Norwich. The prospects for passage of H.361 in the 1978 Session are encouraging.

### (4) Act 250 Evaluation

Under contract with the Lake Champlain (Level B) Basin Study, the ELS, together with consulting engineer Richard Mixer, undertook a six-month study to evaluate the effectiveness of Act 250 in controlling erosion. The study involved a review of Act 250's administrative procedures and a field survey of 29 projects subject to the Act. During the course of the study, it was discovered that while the amount of sediment from major developments was insignificant (only enough to cover a football field in silt to a depth of 1 and 1/2 feet), the total soil loss from all land-related activities was substantial, and may be having adverse impacts on certain smaller watersheds. The final report on this subject, which is scheduled for completion in December, makes a number of recommendations for improving the review and enforcement process of Act 250.

### (5) Liability Study

In another study prepared for the Vermont Agency of Environmental Conservation, the ELS reviewed the laws governing the liability of landowners to hunters, hikers and other recreational users who might suffer an injury while crossing private property. This subject has generated considerable public interest in the wake of a \$1.5 million award to a skier injured at Stratton Mountain last winter.

The ELS study revealed that most landowners who do not charge a fee for the use of their land have little to worry about. Current liability laws afford these landowners nearly complete protection. Furthermore, most of these owners will find that they have good protection against suits under their "Homeowners' Insurance" policies. These policies generally cover all land held by the policyholder, even though such land may be in a different part of the state. The ELS advises individual landowners to take the precaution of consulting their insurance agents and attorneys to make sure they are adequately covered.

The ELS will release a 12-page booklet about landowner liability in December. A full technical report covering the subjects of State and municipal liability, the liability of public officials, and public recreation rights in Vermont's waters is also scheduled for publication at the same time.

### (6) Pyramid Mall

The Environmental Law Service has been active in reviewing the application of the Pyramid Company for a proposed 494,000 square foot regional shopping mall in Williston. The role of the Service in the Act 250 process was described in the October issue of the **Vermont Environmental Report**. Since then, the District Environmental Commission has granted the citizens' organizations standing on Criterion No. 10 (conformance with local and regional plans). The Commission also raised the possibility that these organiza-

tions may be able to gain standing on other criteria. This is an important development, for it allows citizen groups like VNRC to participate directly in the Act 250 process by presenting evidence and legal arguments.

In a separate but related proceeding, VNRC has appealed the decision of the Agency of Environmental Conservation to issue a stormwater discharge permit to Pyramid. The appeal is based in part upon the fact that the company submitted, and the Agency required, no information on the nature of the pollutants contained in parking lot runoff. Research undertaken in other parts of the country indicate that such runoff is a significant source of water pollution. Hearings on this appeal are expected to be scheduled in January, 1978.

## (7) Other Services

The Environmental Law Service continues to make its services available to citizens and organizations. The VNRC Environmental Law Manual and updating service, and booklets on liability and the tax consequences of charitable gifts of land, are just some of the publications that are available. Anyone who would like more information about any of the projects described here, or who would like to raise some other issue on environmental law, is encouraged to do so. The purpose of the Law Service is to respond to such calls for assistance, and it is hoped that people will make full use of this resource.

Darby Bradley, Director  
VNRC Environmental Law Service

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## PROFILE: DARBY BRADLEY

Darby Bradley came to VNRC in the summer of 1974. He is a graduate of Dartmouth College and the University of Washington Law School in Seattle. After leaving Dartmouth in 1967 he spent two years as a "jack-of-all-trades" Legislative Assistant in the Washington D.C. office of New Hampshire Congressman James Cleveland.

Then he went out West, took a law degree and began general practice with a small Seattle law firm. He found time to do some "pro bono" legal work. He became involved in a classic environmental stand-off, a fight that had been brewing for more than ten years, the proposed construction of a massive flood control dam on the Snoqualmie River in western Washington State.

Bradley's approach to this problem was as imaginative as the case itself was resistant to solution. Working with the several parties to the dispute, -- farmers, town officials, environmentalists, and developers -- , Bradley helped to persuade these factions to try what was then the first experiment in the country of a technique called "environmental mediation."

Bradley left Washington State for New England before the Snoqualmie case was resolved. But it was resolved, not through litigation, but through environmental mediation. What Bradley learned from this experience informs his approach to law and its creative possibilities. Says Bradley, "After ten years of having all these groups shouting at

Bradley launched the VNRC Environmental Law Service in the fall of 1976. Over the years VNRC has sponsored a wide range of legal activities and a Law Service seemed the logical next step. The Council has organized well-attended conferences on municipal law and Act 250. VNRC has published an **Environmental Law Manual**. The Council played a key role in drafting a Land Capability & Development Plan. And Bradley himself was deeply engaged in a number of legal efforts including a project in the Town of Hartland to develop proposals for open space protection.

Looking ahead, Bradley will be teaching a course in Environmental Law at UVM in January, 1978 in association with the UVM Environmental Studies Program. He is already working with law students from the Vermont Law School in South Royalton. Bradley sees an even closer relationship with the Vermont Law School, particularly when the Law School formally opens its own Environmental Law Center in the near future. When this happens Bradley will be able to guide future attorneys in the practical application of the law to specific Vermont environmental problems.

(N.F.)



## bobcat...

Service in Concord, New Hampshire, Willey states his reservations this way.

It is highly unlikely that bobcat populations are as low as they were in the 1930's and 1940's (which marked an all-time low). It appears more likely that bobcat populations are at midrange level, but may be continuing their presumed subtle decline.

Willey continues.

Vermont is concerned about its bobcat population as well as its other wildlife populations, but to suggest that Vermont's bobcat is an endangered species is a gross overstatement devoid of fact. Bobcat populations are as stable as many of our other wildlife populations, but being dynamic, are subject to upward and downward trends.

Willey concludes his remarks by raising the question of credibility.

Such a move (placing the bobcat on the Endangered Species List) could not only affect the integrity and the credibility of the Fish & Wildlife Service's Endangered Species Program, but seriously undermine conscientious efforts to establish credible endangered species lists within individual

states as well. The public needs assurance that species places on endangered species lists are indeed endangered if such a program is ever to achieve its objectives.

Now the question of whether or not the bobcat needs the further protection of a closed season in Vermont has moved to center stage in Montpelier. Twice the Fish & Game Board has met the hunting public at heavily-attended hearings. Twice the Board's proposal for closing the season next year has been hotly contested. Even Fish & Game wildlife specialists are inclined to take a less extreme position on closing the season than the Fish & Game Board. They argue that in order to study the bobcat population (in the absence of research funds for live trapping, an expensive undertaking) they have to have carcasses from hunters. These carcasses supply information from which the biologists can determine the age, sex and health of the animals.

The Fish & Game Board will meet on December 22, 1977, to vote on closing the season next year. Meanwhile, the Board seems increasingly isolated, both from professionals in the Department and from the hunting public.

Jeannette T. Stebbins

## "Sun Day" Set For May 3rd

A broad coalition of environmentalists, consumer advocates and other activists have announced plans for the observance of "Sun Day" on Wednesday, May 3, in communities throughout the nation.

Sun Day's Board Chairman, Washington, D.C. researcher, Denis Hayes, explained the meaning of the event by saying, "Solar energy is technically feasible and economically sound right now. To begin the transition to a solar era we need only an educated market and an organized political constituency. Sun Day will help provide both."

In a related development here in Vermont, the Woodstock Inn has become one of 51 motels

and hotels located in 28 states and the Virgin Islands to receive grants of up to 50 percent of the costs of installing a solar hot water heating system. The Woodstock Inn will receive one of the largest awards, \$138,195, from the federal Department of Energy in Washington, D.C. The grant money will pay for 50 percent of the costs of installing a 5,292 square foot flat plate (liquid system) solar collector.

In explaining the purpose of the government awards, Donald A. Beattie of the Department of Energy said, "The use of solar energy to heat water for household purposes is considered to be at, or near the cost-effective point, in comparison with other fuels, and especially in comparison with electricity."