

Bulletin & Legislative Update

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DEVELOPMENT, HOUSING, AND CONSERVATION

Farmland, wild and working forests, compact communities, and unmatched natural resources have been the backbone of Vermont's economy and quality of life for generations. Unfortunately—and despite a handful of laws designed to avoid it—disorderly development is spreading farther and faster into Vermont's rural reaches, whittling away the characteristics that make Vermont unique.

A misguided proposal recently released to address “affordable housing” needs would worsen the problem. This fall, the Secretary of the Vermont Agency of Commerce and Community Affairs suggested a slate of new policy initiatives that would turn any concept of smart growth completely

on its head.

The plan suggests imposing a 5 percent tax on farmers or others who wish to conserve land, condemning conservation easements, allowing for development of conserved property including precious public land resources, and weakening review of environmental protection. Additionally, public money would be used to subsidize private developers. In other words,

Vermonters would be picking up part of the tab to promote rapidly accelerated development of rural and recreational resources, while concurrently providing disincentives to build in village and downtown locations.

Ironically, at the same time, a special legislative committee met throughout the fall to investigate opportunities for reinforcing and strengthening Vermont's stated goal of developing compact settlements surrounded by open working



2006 LEGISLATIVE UPDATE



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landscapes. That concept has been referred to as the "growth centers" concept. Growth centers are areas where future development would be encouraged so that natural resources could remain undeveloped and productive in other areas. More accurately, the concept is about development *and* conservation.

This year, VNRC is supporting legislation that would accommodate new development and cultivate affordable housing opportunities while simultaneously conserving important rural resources. Poor planning has been a root cause of the problem, and present statutes could be used to revitalize

Vermont's planning and development program.

The existing "Downtown Law" should form the nucleus of growth center legislation. The Vermont Downtown Development Board currently administers the village, downtown, and "new town center" designation process. The newly formed Natural Resources Board considers additional review for approval of downtowns. Expanding existing law to include a growth and conservation plan is a logical next step, since the objectives of defining and designating growth centers are very similar to those for the existing three categories.

Any growth center legislation that is adopted

should contain:

- A consistent definition of growth centers that recognizes that development should be focused in downtowns, villages, and new town centers as the core of a growth center;
- A process for designation;
- Incentives for development within the centers;
- Insurance that state infrastructure investment (e.g. sewer, water, roads, schools etc.) will support Vermont's growth centers and not lead to sprawl;
- Protections for valuable resource lands in the countryside.

The legislation that catalyzed the growth center investigation was a bill introduced last year to allow for mitigation when developing the prime agricultural land in Vermont. This issue is still being considered in the context of this year's growth and conservation legislation. If the Legislature considers options for protecting prime agricultural lands, it should be careful to ensure that:

- Act 250 criteria are not weakened;
- Protection for farmland is strengthened;
- Agricultural land mitigation (buying easements elsewhere to sacrifice prime farmland for development) is only used as a last resort;
- Innovative site planning continues to be required as a way to protect farmland;
- Agricultural lands planning be carried out, as required by current law.



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VERMONT'S DRINKING WATER IS LARGELY UNPROTECTED

Vermont has fallen far behind other states in the Northeast when it comes to protecting groundwater resources. Laws that require the mapping of Vermont's groundwater were passed in 1986 and again in 2002, but have been ignored. This neglect could have devastating consequences.

Groundwater recharges Vermont's streams, rivers, and lakes, helps maintain surface water quality, and provides drinking water for two-thirds of Vermont's population. Nevertheless, groundwater is perhaps Vermont's most overlooked, unprotected natural resource.

Because Vermont's groundwater resources have not been mapped or, for the most part, classified, they are vulnerable to impacts such as over-development, degradation from infiltration of pollutants into the ground (including chemicals and pathogens), and depletion from commercial bottled water operations.

Vermont may even be more vulnerable simply because we are an easy target. Neighboring states have already taken action to protect their groundwater resources.

New Hampshire designated groundwater as a public trust resource in 1998. The public trust designation recognizes that groundwater is a resource belonging to citizens of the state and cannot be used or sold as a commodity for profit without restrictions to ensure that the public interest is protected. In 1998, New Hampshire also established a comprehensive regulatory program for large groundwater withdrawals of more than 50,000 gallons per day. The

average home is assumed to use 100 gallons of water per person per day and therefore is not subject to New Hampshire's regulatory program.

Massachusetts and Connecticut have adopted similar regulatory programs. And currently Maine is considering adopting a tax on commercial water bottlers. In addition, New Hampshire, Maine, Connecticut and Massachusetts have all developed comprehensive groundwater maps.

Towns across Vermont, including Williston, Randolph, Dorset, Williamstown, Highgate, Marshfield, and others, have experienced problems where groundwater resources have been depleted, polluted, and exploited. Without sufficient knowledge of groundwater capacity, it is impossible for municipalities, businesses, and homeowners to know whether or not drinking water resources are under threat. Groundwater mapping could be funded, in part, by adopting modest permit fees for large withdrawals that directly affect groundwater supply and quality.

Vermont must address this growing problem before it's too late. Trade agreements into which the United States has entered may impair Vermont's ability to protect this life-sustaining resource. In order to claim exemptions from regulation in other states, some international companies have cited these trade agreements. Courts have been more receptive to the argument that state laws should be preempted when they are enacted after a company has already engaged in development activities.

It's long past due to protect Vermont's drinking water.

BIG BOX IMPACTS

Wal-Mart and other national "big box" chain retailers are knocking again on Vermont's door. Their large size and preference for building in the countryside threaten Vermont's small communities, downtowns, businesses and natural resources. Some communities have taken steps at the local level to control the spread of large-scale retail development.

Middlebury has developed an interim retail dimensional cap of 50,000 square feet. Bennington has adopted a "big box" community impact study requirement. Communities around the state need the tools to prepare for large-scale retail development,

and the Legislature can do a lot to help out.

First, the Legislature should impose a statewide square footage cap on retail development in addition to a requirement that big box developers provide funding for an independent community and regional impact study. Separately, an independent study of the fiscal and economic impacts of "big box" stores on the state and its communities should be commissioned. The

Communities around the state need the tools to prepare for large-scale retail development, and the Legislature can do a lot to help out.

Legislative Joint Fiscal Office and Legislative Council and appropriate state agencies, as needed, should assist in undertaking the study.

In addition, a tax surcharge should be imposed, applying to retail sales at big box stores located outside of community centers with the proceeds benefiting the Downtown and Village Center Programs. And to address the growing state burden on Medicaid and other assistance programs from underpaid, uninsured,

and/or under insured Wal-Mart workers, the Legislature should consider a progressive gross receipts tax on retail sales of consumer goods in excess of \$20 million at an individual location.

CONSERVATION AND PLANNING FUNDING

VNRC encourages the Legislature to fully support the Housing and Conservation Trust Fund (HCTF) and the Municipal and Regional Planning Fund (MRPF). The HCTF creates affordable housing and conserves valuable working farms and other resource lands, while the MRPF provides financial and



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technical support to Vermont communities and regional planning commissions through the Department of Housing and Community Affairs.

The HCTF and MRPF are allocated funding from the property transfer tax under a statutory formula. In recent years this formula has been short-circuited in order to divert money to the General Fund. This has weakened these two important programs. In order to fulfill the legislative intent, the funding to these two programs must be restored to the levels mandated by the formula in current law.

The Legislature could also explore ways to increase the property transfer tax on certain high-end sales as a way to provide additional funding to these programs.

NEXT CHAPTER ON ENERGY LEGISLATION

Last year, the Legislature worked diligently to produce a bill that promotes more investment in renewable energy and efficiency. And they're not done yet. Both the House and Senate Natural Resources Committees intend to make energy issues a priority again this year.

With the potential that two-thirds of Vermont's current electricity supply could be gone within the next 10 years, coupled with an inadequate state energy plan, the Legislature will look to fill in some of the gaps.

Issues likely to be discussed include climate change, greenhouse gas reduction, incentives to promote more efficient development and transportation options, and requirements for better land use planning.

Despite federal and state mandates dating back to the 1970s, Vermont has yet to adopt a single approved Basin Plan.

Language requiring efficiency standards for appliances was stripped out of last year's renewable energy legislation and will likely be

resurrected as a stand-alone bill.

There has also been significant interest in tackling greenhouse gas emissions,

and it is expected that the Legislature will investigate climate change. VNRC will continue to advocate for energy policies that advance a more efficient, reliable, affordable, and environmentally friendly energy future.

BASIN PLANNING

The federal Clean Water Act (CWA) requires every state to adopt Basin Plans for all of the watersheds within its boundaries every five years. These Basin Plans form the foundation for how all waters in Vermont's 17 watersheds are classified, protected, managed, and cleaned up. In Vermont, the process has been anything but smooth.

Despite federal and state mandates dating back to the 1970s, Vermont has yet to adopt a single approved Basin Plan. Recognizing the state's failure several years ago, the Vermont Legislature allocated Basin Planning funding for the Agency of Natural Resources (ANR) and required completion of all plans by 2006.

While VNRC is pleased that process is now underway, ANR's first effort—the White River Basin Plan—has been a disappointment. Key recommendations contained in the draft allow for some waters to be managed at inferior water quality targets than existing high quality conditions. The proposals run counter to ANR's own scientific data. And some of the classification schemes are arguably beyond the legal parameters allowed for by existing law.

VNRC and a coalition of groups expressed enough concern over the proposal that the White River Basin Plan was recently reconsidered and withdrawn. It is likely



Gustav Verderber

that some of the needed fixes will be addressed by the Legislature.

First and foremost, the Legislature will be asked to extend the 2006 deadline for completing all basin plans. Second, the Legislature needs to grant clear legal authority to create desired types of classifications and perhaps define what those mean. The road has been rough so far, but VNRC is committed to working through the regulatory and legislative processes to improve Basin Planning in Vermont.

ALL TERRAIN VEHICLES

Across Vermont, ATV use is on the rise, and it appears likely that legislation to address management issues will be considered this year. VNRC's Forest and Biodiversity Program Director, Jamey Fidel, served as an active member of the Governor's ATV Collaborative last year, and VNRC is hopeful that legislation will track at least some of the targeted recommendations

offered by the committee.

VNRC anticipates that priorities may include mandatory registration, enhanced safety requirements, education programs, and adequate resources directed at law enforcement. Current levels of enforcement funding are far below what is needed to manage and reduce illegal riding on both private and public land.

VNRC believes strongly that the Legislature should not entertain sweeping legislation aimed at opening

the state's public land to ATV trail construction. ATV enthusiasts should continue to focus on building regionally located trail systems by working cooperatively with willing private landowners. And considering the documented impact of recreational trail construction and use, VNRC believes that an important element of any legislation will be the requirement of environmental review that protects wildlife, water quality, soils, and other important resources.

INCENTIVES TO PROTECT VERMONT'S FOREST RESOURCES

Rising property taxes are impeding the ability of Vermont landowners to maintain ownership of large tracts of forestland. In addition, inefficient development patterns continue to whittle away at Vermont's rural resources such as working farm and forest land and wildlife habitat by fragmenting the landscape. While conservation easements and enrollment in the Use-Value Appraisal Program (Current Use) offer two effective reprieves from land taxes and poorly planned rural development, Vermont needs to do more to promote the viability of rural resources.

It would be prudent for the Legislature to commission a study that would quantify the land use impacts of rising property taxes and explore property tax relief to forestland owners.

The good news is these problems also present opportunities. VNRC will encourage the Legislature to investigate additional options for relieving rural development pressure that undermines the viability of working forests, wildlife habitat, recreational opportunities, and watershed protection.

There are a variety of policy options available. VNRC will encourage full funding for the Housing and Conservation Trust Fund and expects follow through on study committee recommendations to encourage development in appropriate growth areas.

There are many incentive-based policies that could be considered to help landowners and communities protect rural resources. One such option could include expanding the current use program to allow for broader categories of property tax relief for forestland owners, such as managing critical habitat for wildlife species. Another option is to improve incentives for local planning and/or subdivision review that rewards higher housing density when homes are clustered in a rural resource area.

At a minimum, it would be prudent for the Legislature to commission a study that would quantify the land use impacts of rising property taxes and explore the viability of policy options that provide property tax relief to forestland owners in Vermont.

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FUNDING FOR THE DEPARTMENT OF FISH AND WILDLIFE

Once again, budget shortfalls are plaguing the Department of Fish and Wildlife (DFW) and will need to be addressed by various committees in the Legislature. VNRC continues to support the stopgap measure of drawing money from the general fund, but it is clear that new and sustainable sources of revenue are needed to keep the DFW fiscally healthy.

VNRC encourages the Legislature to start a dialogue about a broad-based, sustainable long-term funding fix for the DFW. Other states have addressed similar problems and come up with workable solutions. For example, in Missouri and Arkansas, the general sales tax was raised by 1/8th of a cent to provide funding to the fish and wildlife agencies. A good first step would be for the Legislature to create a Fish and Wildlife Funding Study Committee to look at the various options in Vermont.



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VNRC can only continue to protect Vermont with your help. Join VNRC!

Please help our voice grow stronger as we call for the protection of Vermont's natural resources. Your donation of \$35 will work to keep our water clean, our forests healthy and our communities vibrant. Return this form with your check or join online at www.vnrc.org. Additional membership benefits include:

- Invitations to special events and meetings;
- VNRC publications, including two issues of the *Vermont Environmental Report* and two issues of the *Bulletin* annually;
- Access to environmental information and resources.

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CITIZEN ACTION DAY! — FEBRUARY 16, 2006

Once again, Vermont's leading environmental and public interest organizations are sponsoring Citizen Action Day at the Vermont State House. This February 16, 2006, don't miss an important, fun opportunity to join your friends and fellow Vermonters to call upon legislators to enact laws that will ensure that Vermont remains a healthy, beautiful place.

Please mark your calendars and plan to attend!

Why? Big Box stores continue to drive out local businesses and erode community character. Vermont's drinking water remains vulnerable to depletion and contamination. Our magnificent forests and wild spaces continue to be carved up, piece by piece, at an alarming rate. We struggle to map out an energy future based on clean, renewable, local supplies. And we continue to wrestle with embarrassing pollution problems in Lake Champlain — one of our freshwater crown jewels and economic mainstays.

Insist on a better way to live, grow, and prosper in the Green Mountain state!

No prior State House experience is needed. Just show up at 9 a.m. in Room 11 at the State House. At that time, organizers of the event will brief attendees on key issues and lobbying techniques prior to meeting with legislators.

Stay tuned for other important information by visiting the calendar of events on the Vermont Natural Resources Council's Web site at www.vnrc.org. Call or email Johanna Miller, VNRC's Outreach Director, at 802-223-2328 x112 or jmiller@vnrc.org.

We hope you can join us on February 16!

