

# Bulletin & Legislative Update

Published by the Vermont Natural Resources Council, Inc.

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## ENERGY

### BUILDING ON PAST EFFORTS

Vermont seems lost in the dark, trying to find a path towards a coherent, responsible energy future.

How will Vermont replace power from Hydro-Quebec and Vermont Yankee — about 70 percent of Vermont's current energy portfolio — when both sources go off line within the next decade? How much power can Vermont feasibly tap from renewable energy sources? Where is it appropriate to site large wind power installations?

One would think that the state would shed a little light to help us find our way. But one would be wrong.

Under the Douglas Administration, the Vermont Department of Public Service (DPS) has taken three shots at

crafting a comprehensive 20 year electric plan, and missed the mark each time. No iteration of the draft energy plan has provided meaningful guidance, foresight, or planning for that matter. If the DPS proposal stands as Vermont's only vision for a responsible energy future, we're going to need some help.

The 2005 General Assembly may hold the key to filling the leadership void.

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The Vermont Natural Resources Council, Inc., is a nonprofit environmental organization founded in 1963 to protect Vermont's natural resources and environment through research, education, and advocacy.

VNRC is the Vermont affiliate of the National Wildlife Federation.

VNRC membership includes a subscription to the *Bulletin* and the *Vermont Environmental Report* (both published bi-annually). For an individual membership, send \$35.00 to VNRC.

The *Bulletin* is printed on recycled paper with soy-based ink. However, please recycle this issue by sharing it with your family and friends!

## ATV USE IN VERMONT

At the beginning of the year, Governor Douglas convened an ATV Collaborative to address the growing problems with ATVs. VNRC actively participated in the Collaborative, advocating recommendations to help protect natural resources.

Overall, VNRC supports many of the draft recommendations and believes that the Governor and Legislature should strive to change the current, untenable situation regarding illegal ATV activity in Vermont. VNRC supports recommendations that call for mandatory registration of ATVs (with a minimal fee for farming and forestry uses), higher penalties for violations, and increased funding for law enforcement.

VNRC also recognizes there is a demand for increased riding opportunities for ATV clubs and riders. VNRC believes increased trail funding should be used to promote regionally based, high quality trails on private lands with willing landowners after completing environmental review through Act 250. VNRC strongly supports the recommendation that Act 250 jurisdiction should not be relaxed for ATV trail development.

VNRC issued a dissenting opinion regarding the opening of public lands to ATV use. VNRC agrees with a significant majority of the public comment submitted to the Collaborative that public lands should not be opened for ATV use. VNRC also supports the Agency of Natural Resource's ATV Committee, which found that "it would be prudent to not legislatively or administratively relax existing public lands regulations on ATV use until there is a sufficient knowledge base to assess whether Vermont's public land base can accommodate environmental protection demands and existing non-motorized and snowmobile usage before accommodating more."

VNRC also believes that a landowner reparation fund or illegal trespass fund is needed to help compensate all landowners whose property has been damaged from illegal ATV activity. The Legislature should study options for appropriate administrative bodies to oversee this fund in an objective manner.

Finally, VNRC supports an annual review process by the Legislature as part of any comprehensive ATV program. Increased funding for trail construction must be correlated with success in curbing landowner harassment, landowner and municipal property damage, and ongoing resource damage to public lands.



### Vermont Needs to Be Careful:

- Access to public land is not the appropriate solution for ATV use. The solution is to focus ATV trail development on private land with willing landowners.
- ATVs can levy significant environmental damage, so environmental review must be required under Act 250.
- Funds collected to reimburse landowners for ATV damage should also be used for lands that are not part of the VASA network.
- New trail development should be planned with a commitment that illegal ATV use will be curtailed.
- Enforcement measures and penalties must be adequate to discourage illegal riding, including higher penalties for flagrant violations.
- A review mechanism must be established to determine whether or not ATV policies are working.



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There are many discrete provisions that have been part of the legislative dialogue over the past few years. VNRC will encourage the Legislature to build on that momentum by supporting the following:

- **A Renewable Portfolio Standard** requiring a percentage of Vermont's electricity to be generated from renewable resources.
- **Performance Based Regulation** which rewards utilities for customer service and reliability.
- **Appliance Efficiency Standards** which set minimum efficiency standards for certain appliances.

## THE BIG PICTURE

VNRC will also encourage the Legislature to work on a complimentary strategy to look at the big picture by answering some tough questions and addressing

global climate change. How can Vermont reduce its contribution to greenhouse gas emissions? How is Vermont going to replace lost power with affordable, reliable, and environmentally responsible energy?

VNRC recommends the creation of an Energy Commission comprised of representatives from businesses, the environmental community, utilities, low-income advocacy groups, efficiency and conservation programs, the transportation sector, and energy consulting firms. The Commission would be charged with charting a course for a reliable, affordable, and environmentally friendly energy future by investigating viable options for greenhouse gas reduction, power generation, and distribution. The Commission would report its findings and recommend alternatives to the Legislature in 2006.

## CONSERVATION THROUGH MARKET-DRIVEN INCENTIVES

Some problems defy the traditional regulatory cure. We have learned after more than three decades that command-and-control strategies are not the only solution for cleaning up our environment or strengthening our economy. Our fish still contain mercury that harms unborn children. Each year more farmland is lost to sprawl development that also threatens the vitality of our downtowns. Vermont's air quality suffers from increased vehicle usage and over reliance on fossil fuels, while alternative sources of clean, renewable energy sit right at our fingertips. And, our economic policies emphasize the number, not the quality or impact, of the jobs we create.

Isn't it time to look seriously at other ways to

solve these pressing problems?

Why not complement regulation by harnessing taxes and other market-based incentives that allow businesses and communities to find the best solution for problems facing the environment and the economy?

Today only about 10 percent of Vermont's state revenue is derived from what

might be considered environmentally friendly taxes and fees.

Is it possible to shift our policies to target taxes at sources of air and water pollution, waste, and urban sprawl and

eliminate subsidies that harm the environment, while reducing taxes and providing market-based incentives to support high quality employment and clean energy sources? Here are some modest steps that can be taken to steer Vermont in the right direction:



## GROWTH AND DEVELOPMENT

Last year the Legislature passed the so-called “permit reform” bill. Time will tell if the law, Act 115, will have any positive effect on the permitting process. The major changes — eliminating the Environmental Board, transferring Act 250 appeal authority from the Board to Environmental Court, and overhauling the local planning and zoning law — have yet to take full effect.

In Act 115, the Legislature and the Douglas Administration chose to focus on the “back end” of the planning and development process, permit appeals. Unfortunately, the “front end” of the process, including planning, development review, and permit issuance, were never addressed.

The 2005 Legislature should attend to the unfinished business.

A good place to start is the examination of several elements of a bill that stalled in 2004. This bill, S.286, was passed by the Senate Natural Resources and Energy Committee, but was tabled in deference to the “permit reform” bill. Provisions in the bill would have addressed:

**Growth Centers** — For the past 20 years, Vermont has wrestled with the concept of “growth centers,” which are areas where future development could be encouraged, thereby relieving pressure to build in outlying areas. A committee appointed by the Governor is close to making recommendations that would set growth center policy. At the very least, the Legislature should take the work of that committee and develop legislation that adopts a consistent definition of growth centers, a process for designation, and incentives for development within the centers.

• **Investment in Growth Centers** — The permit process runs smoothly when effective, up-front planning is dovetailed with state investments in water, sewer and transportation. To ensure wise use of taxpayer dollars, and to help target infrastructure and state funding where it makes the most sense, the Legislature should direct state

agencies to allocate public investments where they support Vermont’s growth centers.

- **Prime Agricultural Land and Wetland Mitigation** — One of the major development issues in Vermont is the conflict between concentration of development in growth centers and protection of natural resources within those centers. The Legislature should adopt thoughtful offsite mitigation opportunities for prime agricultural lands and wetlands in designated growth centers.
- **Act 250 Criteria** — Over its 34 years of jurisdiction, Act 250 has not been successful in curtailing sprawl. Tafts Corner is a prime example of this failure. Several criteria which deal with the impacts of sprawl are ineffective and need to be revised. This includes 9(H) Costs of Scattered Development, 9(A) Impact of Growth, and 9(L) Rural Growth Areas. In addition, Criterion 5 (Traffic) should be amended to consider all modes of transportation and to allow District Commissions to deny projects if Criterion 5 is not met.

S. 286 also included a number of provisions to improve planning in Vermont by:

- **Re-establishing the Vermont Office of State Planning** — Currently, Vermont has no state planning office, unlike New Hampshire (45 staff), Maine (54 staff), and many other states. The Office of State Planning, which used to be attached the Governor’s office, should be reinstated, coordinated with relevant agencies and departments, and guided by smart growth principles.
- **Strengthening Regional and State Agency Planning** — Legislation that provides for coordination of regional and state agency planning with local plans is still on the books, but has fallen into disuse. The Douglas Administration must take action to coordinate review of local, regional, and state-level land use planning. Planning consistency

- Modify the motor vehicle purchase and use fees for vehicle registration by offering savings to fuel-efficient gas-sippers and increasing fees for gas-guzzlers.
- Expand the scope of the “bottle bill” to include wine and all non-alcoholic carbonated and non-carbonated drinks, except for unflavored rice milk

- and soymilk, milk and dairy-derived products. Increase the minimum container deposit from 5 cents to 10 cents.
- Fully support the Municipal and Regional Planning Fund which provides financial and technical support to Vermont communities and regional planning commissions through the

- Department of Housing and Community Affairs.
- Enhance the Downtown and Village Center Programs by increasing the Rehabilitation Tax Credits and the Downtown Transportation Fund and restoring the funding to the Downtown Improvement Fund.
  - Impose a tax surcharge on

- big-box retailers located outside of community centers to benefit downtown and village center programs.
- Following up on the recommendations of the 2002 Downtown Task Force Report and the Joint Fiscal Office/Legislative Council Study, the Legislature should enact

facilitates permitting predictability and improved land use decisions.

- **Strengthening the Development Cabinet** – Legislation creating the Development Cabinet was passed a few years ago, but many of the tasks have not been performed. Like the Office of State Planning, the Development Cabinet should be guided by smart growth principles.
- **Reviewing Cumulative Impacts** – Currently, Act 250 reviews large-scale, complex development projects in a piecemeal, project-by-project fashion. The legislature should require Act 250 to conduct comprehensive reviews of the long-term cumulative impacts of complex development projects on natural resources, the economy, and infrastructure.
- **Creating Town Master Plan Permits** – Towns should be allowed to apply for a master plan permit for a designated areas. Master permitting provides greater predictability in the regulatory process by outlining more clearly in the planning process where development should occur. The permit would minimize Act 250 and other state review processing time for the individual applicant.
- **Requiring Project Master Plans in Act 250** – Project master plans for large developments are currently voluntary in Act 250. Master plans should be required for large-scale, multi-year, phased development projects.



Blake Gardner

One important addition to the smart growth bill should be a cap on the size of “big-box” stores. Wal-Mart and other national big-box chain retailers are pushing hard to take over Vermont’s retail sector. Their large size and penchant for catalyzing sprawl by developing in the countryside threaten Vermont’s small communities, downtowns, businesses, and natural resources. Some communities like Bennington and St. Albans have taken steps at the local level to control the spread of “big boxes.” Bennington has developed interim retail dimensional caps of 75,000 and 50,000 square feet for different areas of town. St. Albans has adopted an interim 50,000 square foot cap. The Legislature should amend Chapter 117 to adopt a statewide square footage cap on retail development.

legislation that would allow cities and towns with designated downtowns to increase taxes on land values outside downtown centers while decreasing taxes on downtown building values if they choose.

- Extend the use value appraisal (“current use”) program to other open

space lands including land used for protecting threatened and endangered species, important natural communities, and wildlife habitat. The current use program should be examined to determine if it is adequately curtailing the fragmentation of farm and forestland in Vermont.

- Broaden and increase the land gains tax so that the

tax rate for land most threatened by sprawl could increase.

## ACT 250 AND TRAIL DEVELOPMENT

Two years ago, Act 250 oversight was stripped from the construction and improvements of recreational trail development in Vermont,

including snowmobile trail construction. As a result of this decision, any activity conducted as part of the statewide trail system, excluding motorized recreational vehicles other than snowmobiles, was given the green light to cruise past any environmental review.

By statute, this exemption will be repealed on July 1, 2005. The Legislature should

ensure that the impacts from trail development are reviewed on a level playing field with other types of development that trigger Act 250 jurisdiction. Act 250 not only ensures that natural resources are protected, but that adjoining landowners have a say in development that may impact the use and enjoyment of their property.

VNRC encourages a streamlined process to ensure that comprehensive trail planning can be reviewed in an efficient manner. However, exempting snowmobile and other recreational trails from Act 250 is a misguided policy for facilitating trail development.

## FUNDING FOR THE DEPARTMENT OF FISH AND WILDLIFE

Budget woes are likely to continue at the Department of Fish and Wildlife (DFW) until additional funding sources can be identified and implemented. Last year, VNRC, in coordination with groups such as Vermont Federation of Sportsmen Clubs, was supportive of a general fund appropriation to the DFW, and will continue to support that revenue stream if needed.

However, VNRC believes new, sustainable sources of money need to be developed to keep the DFW fiscally healthy. VNRC will work with various stakeholders to promote a variety of new funding mechanisms to fill the widening gap between revenue streams and budget needs. Many Vermonters benefit from the good work of the DFW, and it is time to ensure a sustainable future for their vital work.



## GROUNDWATER PROTECTION

Groundwater is one of Vermont's most important natural resources. According to government reports, 66 percent of Vermont's population depends on groundwater for their drinking water supply. Groundwater is also essential to recharge Vermont's streams, rivers, and lakes in order to maintain surface water quality and support habitat for fish and other aquatic species.

Despite the importance of groundwater to human health and the environment, Vermont knows very little about it. For example, there is no comprehensive, statewide map of groundwater resources in Vermont, and the Vermont Agency of Natural Resources (ANR) has failed to classify groundwater resources

as required by state law.

Because Vermont's groundwater has not been sufficiently mapped or classified, it is impossible to know if it is adequately protected. As a result, Vermont's groundwater resources are vulnerable to impacts such as over-development, the infiltration of pollutants (including chemicals and pathogens), and degradation from commercial bottling operations.

Leaving groundwater unprotected can be devastating. Several neighborhoods in Williston are experiencing severe water shortages because there is simply insufficient groundwater to meet the demands expanding housing developments. Without sufficient knowledge of groundwater capacity, it is impossible for municipalities and homeowners to know

whether their developments are sustainable.

What would happen if a large commercial water extraction and bottling operation wanted to set up shop in your community? How can impacts of such a proposal be properly evaluated without understanding the status of our groundwater resources?

VNRC believes it is time for Vermont to get serious about groundwater protection. VNRC will work with legislators to elevate the importance of groundwater protection and advocate for appropriate funding for groundwater mapping. Impact fees may be the most suitable revenue source. It is simply not acceptable to ignore impacts to a resource as fundamental as Vermont's water supply.

## LOTS OF WORK TO DO

The Legislature will likely be facing a number of issues this year. VNRC has been working with other environmental groups to introduce a bill that would ban certain types of products that contain **mercury**, a toxin that poses a significant threat to public health and the environment. VNRC also supports efforts to pass legislation to make seed manufacturers liable for the impacts from **genetically modified organisms** (GMOs). Efforts that stalled last year to ban **phosphorous** containing dishwashing detergent will likely be introduced again this year, and VNRC supports such efforts to curtail algae blooms in Lake Champlain.

## BENEFIT FOR A LOCAL FARMER AND VERMONT'S WATER QUALITY!

Join VNRC for a performance to benefit a local farmer and Vermont's water quality! For over a decade, Old Tavern Farm in Worcester has been trying to raise money to properly manage the cow manure from 80 dairy cows. The North Branch River runs past the barn and into the Winooski, which then feeds into Lake Champlain. With a price tag of tens of thousands of dollars, and the future of Lake Champlain at stake, VNRC is asking community members to support a local farmer and help keep our water clean. Join us for a special showing of *The Magic of Shakespeare*, starring Sam Lloyd on January 22nd at 7 p.m. at the Lost Nation Theater in Montpelier. Proceeds will directly benefit Old Tavern Farm. For details, please visit our website [www.vnrc.org](http://www.vnrc.org).

## BOBCAT TRACKING SNOWSHOE TOUR

Join VNRC and Susan Morse of Keeping Track for a snowshoe tour and wildlife tracking workshop. Susan has 30 years of experience tracking and interpreting wildlife. Spend the day with VNRC on snowshoes, traversing the woods at Wolfrun, identifying and interpreting the tracks and signs of bear, bobcat, and more. A bonfire and hot drinks will be provided. Snowshoe rentals are available. The two events are on Saturday, February 5, 2005, from 8:30 a.m. to 4:30 p.m. Thursday, February 17, 2005, from 10 a.m. to 3 p.m. at Wolfrun in Jericho, Vermont.

For additional information or to register, please visit our website [www.vnrc.org](http://www.vnrc.org) or contact Jimmy at VNRC 802.223.2328, ext.110 or [jfordham@vnrc.org](mailto:jfordham@vnrc.org).



Sue Morse



**VNRC's Legislative Team:** From left: Steve Holmes, Jon Groveman, Patrick Berry, Jamey Fidel, and Elizabeth Courtney.



**Gregg Harris, VNRC's 2005 Legislative Assistant.**



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## CITIZEN ACTION DAY

VNRC and friends invite you to Citizen Action Day 2005 on February 15 at the State House in Montpelier. Join your fellow Vermonters in the call to make conservation and the environment a priority this legislative session. Help us ensure that Vermont's Legislature protects our waters from pollution, keeps public lands off limits from rampant ATV use, promotes a responsible energy future, and safeguards our communities from sprawling development. Together we can build a more sustainable, prosperous future for Vermont!

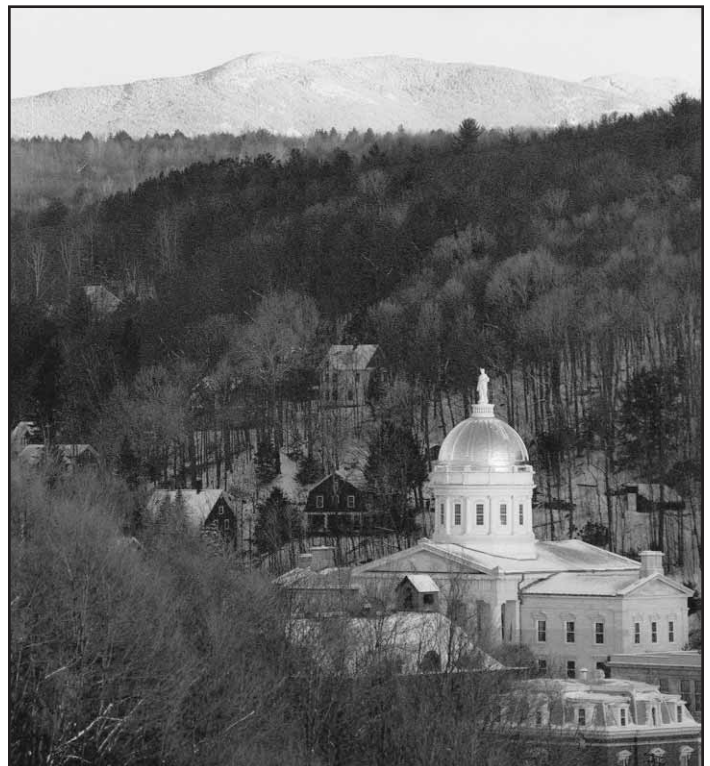
Lawmakers want to hear from you. Make your voice heard!

Join us at 11 a.m., Tuesday, February 15, 2005, at the Episcopal Church on State Street, Montpelier for lobbying training and an overview of the most important environmental issues currently facing Vermont.

To register or find out more about Citizen Action Day, please contact Johanna Miller at 802.223.2328 ext. 112, or [jmiller@vnrc.org](mailto:jmiller@vnrc.org), or visit [www.VtEnvironmentalLobbyDay.org](http://www.VtEnvironmentalLobbyDay.org).

Generous support for this event is provided by Ben and Jerry's.

VNRC has launched its new website at [www.vnrc.org](http://www.vnrc.org). VNRC is also introducing a site, [www.vermontwal-martwatch.org](http://www.vermontwal-martwatch.org), that exposes the impacts that Wal-Mart can have on Vermont and outlines what you can do to help.



Job Wallace-Brodour