

**Vermont Commission
On
Native American Affairs**

Mark Mitchell, Chairman
vcnaa@earthlink.net
www.vcnaa.com

Commission Members:

Jeanne A. Brink
Timothy de la Bruere
Hilary Casillas
Judy Dow
Charlene R. McManis
Donald W. Stevens

February 22, 2007

Members Present: Mark Mitchell, Chairman; Jeanne Brink; Judy Dow; Tim de la Bruere; Charlene McManis; Don Stevens

Staff: Diane McInerney, DHP Exec. Admin. Asst.

Guests: Lee Kahrs, St. Albans Messenger; Doug Brink; John Moody; Hall Bill, County Zoning; Ficerek Vando; Kine Hathoway; Fred Wiseman; Doris Sedle; Jeff Benay; Jesse Arocque; Robert Appel, Exec. Dir. Human Rights; Scott Manning, NFVT; Patty Manning

The February meeting of the Vermont Commission on Native American Affairs was brought to order by Mark Mitchell at 1:00 pm in the AOT Board Room, 5th floor of the National Life Bldg., Montpelier, Vermont.

1. There were no changes to the minutes of the January 25, 2007 meeting and the Commission approved the minutes by consensus.
2. Mark began the first discussion by expressing his concern with the current restrictions on the Commission in regard to providing Native American artists with proper labeling for their work. Out of respect to the State's established protocols, this Commission approached the AG's office for a legal opinion in reference to protecting individuals under the 1990 Indian Arts and Crafts Act.

It was the hopes of this Commission that S117 would be a new beginning for the State of Vermont and the Abenaki and today "the weight of history", hangs over this Commission, and heavy today as this Commission works on reaching consensus on whether to identify individuals or tribes / bands for the purpose of allowing Abenaki to:

Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian- or Native American-produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B).

In review of S117 Act Summary it states that the bill is:

Limited to the purpose of providing the Abenaki with the right to use the Indian produced or Native American produced label on any arts and crafts produced by them. Mr. Griffin, Asst AG, has stated that the newly appointed VCNAA does not have authority to designate Native American status to Vermont tribes/bands under the Vermont Bill S117.

Mr. Griffin's announcement indicated that only permission would be allowed for the current Commission the right to "protect" individuals, which is not within the Commission's authority and violates federal law. This belief is based on the fact that no other state to our knowledge recognizes individuals for certification as Native artisans in the manner suggested by Mr. Griffin.

The historic passage of this bill provided the Western Abenaki long-sought recognition by the State of Vermont, creating the VCNAA to assist "Native American tribal councils to permit the creation, display, and sale of their Native American arts and crafts...legally labeling them as Indian or Native American." The Federal Indian Arts and Crafts Law of 1990 clearly prohibits any Native American to label their items "Indian" or "Native American" made unless they from an Indian group "that has been formally recognized as an Indian tribe by a State legislature or by a State commission...legislatively vested with State tribal recognition authority..." 18 U.S.C. &115 (c) (3) (B) and 25 U.S.C. &305e (d) (3) (B)."

S. 117 does not define what or who an Abenaki person is in Vermont. It is quite vague according to the Indian Arts and Crafts Board and it's the responsibility of this Commission, created by the bill, to make that determination.

Just because a person claims to be an Abenaki from Vermont does not mean that particular individual is a state recognized Indian person or is an American Indian craftsperson as defined by the Federal Indian Arts and Crafts Act.

The Indian Arts and Craft Board have clarified for this commission the necessary requirements to protect an Indian under the Act.

"If someone is NOT an enrolled member of a state recognized tribe in the sense that the tribe has been recognized and is a tribe and individuals can be members of the tribe, they are NOT able to sell their art as Indian for the purposes of the Act."

This places the Commission at a disadvantage in receiving legal advice from the AG's office, as they have by the rash of judicial decisions over the past years continued to erode tribal sovereignty and immunity.

In fairness to this Commission we need common ground with legal representation in the spirit of mutual respect and cooperation, to promote and sustain collaboration, and sharing of resources for the benefit of the Native community.

To simply not address this issue properly would be an embarrassment to this country and the state of Vermont if the tribes are not formally recognized for the sole purpose of meeting the requirements of the 1990 Indian arts and craft act, especially since this is a country that prides itself on protecting human rights.

Those who disagree should contact their Congressional delegation in Washington to reform the 1990 Indian Arts and Crafts Act.

Judy motioned to leave the proposal on the web site for another thirty days for input and bring it up for discussion and vote at our next scheduled meeting. The motion was seconded by Tim de la Bruere. The criteria will then be adopted at the March meeting. The Commission agreed unanimously.

The discussion ensued with guests sharing their feelings about the current identity crisis, and criteria for native artists. Kine Hathoway, Akwesasne Mohawk, expressed her personal experience and recommendations for the Commission to consider. It was her belief that tribes/bands should be the ones to decide which individuals are members from accurate information through the aboriginal history of each tribe/band.

Mark explained that the Commission has developed the criteria to make appropriate decisions and it is up to the individuals applying to live up to that criterion. Mark noted that tribes/bands need to be recognized; if not by the legislature, then by the Commission according to S.117. Judy encouraged those interested to visit the web site, and offer their input into the process. She explained the 3 criteria: That the tribe/band shows a connection to the land, a connection to kinship, and a connection to each other. She noted that the Abenaki is a unique tribe, and that policy and procedure will have to consider each tribe/band as unique. There also seems to be a difference between what the Indian Arts & Crafts people are saying and what the BIA is interpreting; ultimately making it difficult for the Commission to work through legislative issues.

3. Intervale Center - Judy informed the Commission that a letter was received from Kit Perkins, Executive Director of the Intervale Center. After a meeting Kit summarized the Intervale's wishes and goals for the future and Judy shared some of Kit's comments:

“We hear your concerns and are committed to addressing them. We believe your desired outcomes are aligned with ours,...Our desire is to build and sustain a trusting relationship with you and the Abenaki community...One immediate next step is to try and improve/make accurate our Intervale history-telling on our website and any other places where the history conveyed...While I am not aware of the extent of the potential size need (sic) for a reburial/repatriation area, this is something I believe we can accommodate for on lands that we own that will be untouched by any of our program operations into the future...we are grateful that you offered this experience as an opportunity. It is indeed an opportunity for the IC to become a model of accountability in managing culturally sensitive materials.”

Kit requested a presentation at the next Commission meeting and Mark has taken steps to place her on the agenda. The Act 250 meeting scheduled for February 14th was canceled and rescheduled for February 28th and the Commission was invited to attend.

4. Act 250 – A jurisdictional opinion written by Peter Kiebel was issued on January 29, 2007. The letter states the following:

....For the reason set forth below, I have determined that an Act 250 permit was required for the construction activities at the facility.

1. ICP operates a composting facility...the extent of the physical operation is currently over 10 acres.
2. According to the written and photographic record the Administration building was constructed around 1994.
3. At a site inspection on September 11, 1996 Dwight Moody, Environmental Engineer for the ANR Waste Management Division observed asphalt being laid down for the construction of a tipping pan.
4. According to ICP's application for a Recycling Center Certification dated January 14, 1994 the site was located on land of the Rena Calkins Farm that consisted of 53 acres.
5. According to staff from ICP the north storm water pond was constructed in 2005 and the west storm water pond was constructed in 2006.
6. The ANR Water Quality Division has assigned a SIC code of 2875 for the facility classifying ICP as an industrial discharge.
7. The City of Burlington has duly adopted subdivision and zoning regulations.

5. ANR Waste Management Division – A technical review has been sent to the Intervale Compost Products from Waste Management. The requests of this technical review are required before the collection permit can be considered for renewal. The requests are as follows:

1. Detailed mapping of the area showing existing and proposed contours/elevations and the clear delineation of the FEMA SFHA (100 year flood plan) at the location of the ICP facility.
2. A map of the entire facility site.
3. A written description as well as a plan view detailing where materials are to be stored and processed.
4. Flood Frequency – a description of all flood vents together with areas of the facility and areas surrounding the facility site that have been flooded since August 2, 1993.
5. Birds – a written assessment of the level of bird activity at the facility site, the areas where the birds are feeding or congregating, the reasons for bird activity and what is being done.
6. Liquids Storage Tank – a written plan for managing the liquids collection and storage tank located at the facility receiving pad.
7. Food Waste Drop-Off Area – review food waste drop-off area operations to improve upon the overall management of the incoming materials.

6. CEDO/Kirsten Merriman Shapiro – The draft proposal to declare the Intervale Cemetery land has not thoroughly been reviewed by the City of Burlington's attorney's office. Another request has been submitted to complete the review. Kirsten may still

share the draft with the necessary city people even if the attorney's office has not completed their review.

7. **Education goals/Quadracentennial** – The Commission will be looking for funding that may help in the CD project for essential understanding that will be available for school use. These tapes will be simple stories geared for 3rd and 4th graders with native words, places, and cultural stories that will include interactive capabilities. This project may tie in with the Quadracentennial time line. There were many Quadracentennial projects described by Fred that may interest the Commission and they are currently looking for tribal members who may be able to help in the building of a traditional long house, and a village at the Intervale.

8. **New Business** – Charlene McManis suggested that Abenaki tribal members celebrate May 3rd on the State House lawn in recognition of the role the Abenaki are now playing in state government. Fred reminded the Commission that Governor Dean established the first week in May as Abenaki Heritage week and that this would coincide with that day. It was suggested that a resolution be written in appreciation for the Governor's recognition of the tribe in 2006, the forming of the Commission, and for the Commission's role in moving forward with their goals and the cultural issues set before them. A resolution will be discussed at the next meeting.

The meeting was adjourned at 2:40 pm.