

Minutes  
March 13, 2008

*Vermont Commission  
On  
Native American Affairs*

Mark Mitchell, Chairman  
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**Commission Members:**

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

**Members Present** Tim de la Bruere, Co-Chair; Don Stevens, Judy Dow, Jeanne Brink, Hillary Casillas

**Staff:** Diane McInerney, Executive Assistance DHP; Giovanna Peebles, VT State Archeologist

**Guests:** Doris Seale, Burlington; William Whitney, Northfield; Jedd Kettler, Country Courier; Paul Erlbaum, VT Human Rights Commission

This meeting was brought to order by the Co-Chairman, Tim de la Bruere at 1:02 pm in the AOT Board Room, 5<sup>th</sup> Floor, National Life Building; Montpelier, Vermont.

**Minutes from January 24, 2008 and February 25, 2008**

Minutes from both meetings will be approved at the March 27, 2008 meeting.

**1. Update on Proposed Amendment S117 (Bill 226607-01-08-705)**

Judy spoke to the Commission about her, Don, and Tim's attendance that morning at the state house hearing where testimony was presented on behalf of S117. Originally the Commission

received a letter saying there would be no testimony, but that those present may be called upon to speak. Judy was surprised when there was an agenda of speakers presented: Fred Wiseman, Jeff Benay, and April Merrill. A new 5.1 draft was also presented, accepting the Commission's proposal as written, but with the recognition of 3 existing bands: Koasek, Missisquoi and Nulhegan. All other Native Americans would have to go through the process. The Committee did decide to do something, but did not tell anyone what that would be. Tim said it was frustrating to hear that the Commission's words were being used in the draft by people who had not attended any of the VCNAA meetings, and were not aware of the procedure that brought about the amendment.

The Committee spoke about the urgency of this amendment, but never mentioned the Indian Arts and Crafts Law that states artisans can be recognized as Abenaki descent until the bill is passed.

For the record, Don informed the Commission that, although he is a member of the Missisquoi Tribe, he is not a part of any governmental decision making process for them, and he resigned last year from the Abenaki Self-Help program. Don noted that he does not represent the Tribal Council; he does not represent the ASHAI Board, and he does not speak for April Merrill or the tribe. As an enrolled member, Don speaks only on his own behalf.

Tim told the Commission that the Committee alluded to using the Commissions language in the bill, but amended the bill with language that would retroactively recognize members of 3 tribes: Koasek, Missisquoi, and Nulhegan. Judy and Don explained that the Nulhegan Band testified that they do not have genealogy records and that their Band relies on oral history. The El-Nu Tribe would be recognized through their affiliation with the Koasek. Tim said the bill will now go out of the Committee and on to the floor for a vote, and that the Commission needs to work on their next plan of action.

Judy volunteered to write a letter to the Legislative Committee addressing the time element with the appropriate language from the Indian Arts and Crafts Law imbedded in this letter. Tim mentioned that the Committee was not given a copy of the new draft 5.1 at the hearing and the Senators were not able to read the latest amendment to the bill. Committee members were confused by the reference to "certified genealogists" and Judy noted that there is no formal "certification" for a genealogist, but that they can be "qualified." Commission members felt that the legislature needs to have a more informed outlook regarding the Indian Arts and Crafts Law before making any final decisions.

Don moved to appoint Judy as the author of a letter to the Legislative Committee about the Commission's concerns that would include the language from the Indian Arts and Crafts law along with a copy of the 5.1 amended draft. This letter will be e-mailed tonight before the bill hits the floor on Friday, March 14, 2008. Jeanne seconded the motion. The Commission discussed having Hilary also write a longer version of the Commission's concerns that would then be sent to all Senators. Judy moved to appoint Hilary to work on this letter, addressing Commission procedures and how they are connected to the amendment through the work the Commission has

done for the past two years; Don seconded. Commission members agreed that the original amendment drafted by the members be taken into consideration and understood by Committee members. Hilary thought that the amended draft 5.1 is what will be voted on when it hits the floor. Judy is hoping for a floor amendment approving the Commission's original amendment to S117. The motion was amended to appoint Judy to write the e-mail to be immediately sent to the Committee and to appoint Hilary to draft a longer version to be sent to all Senators. There was a call to vote and a consensus by Commission members for this work.

Giovanna was able to retrieve a copy of the amended draft 5.1 from the legislative web site and presented it to the Commission for their understanding of exactly what is being presented on the floor for a vote tomorrow.

## **2. Update on the Intervale**

Judy shared with the Commission members a folder of letters, violations and scientific data concerning the Intervale since January 11, 2008. She summarized the letters with a short paragraph of the information from each. Judy also read the bill H.873 that has been passed through the Committee for Fish and Wildlife concerning 43 composting sites located on the lake, the river, and in the Intervale; all areas where Native ancestors lived. The bill will make composting facilities exempt from Act 250. Act 250 is the only law in Vermont that covers archeological remains. Judy agreed to send all members a copy of her explanation of the contents in the folder. Major issues are the flood plain regulations, structures that impede the floodway (compost piles and hoop houses), flood plain management, and state/federal flood plain insurance. Towns and Cities with National Flood Insurance are supposed to be state inspected every 5 years, but inspectors have not been to Burlington for 15 years until they arrived on January 10, 2008. There is no department for enforcement of the National FEMA rules.

On January 11, 2008 ICP turned in their solid waste application. A letter to Mayor Kiss from Rob Evens, Flood Plain Management, regarding the January 10<sup>th</sup> inspection alerted the city on 2 major issues with the development that is happening in the Burlington Intervale.

1. The City of Burlington's Floor Hazard Regulations are not in compliance with NFIP regulations. The Intervale was requested to submit a copy of NFIP complaint flood hazard regulations along with the clerk's certificate confirming adoption of a new city plan by April 30<sup>th</sup>.

2. The City was asked to submit a copy of the Hydraulic Analysis, and a no-rise certificate in conformance with the enclosed FEMA guidelines by March 14, 2008. ICP wrote in a news release that they were not able to submit this information “due to the exorbitant costs.” This information was to be submitted with ICP’s January application, but the report was incomplete and “seasonal” information was not included in the application. An effective Hydraulic Analysis would have consisted of 18 drilled holes, and this would have constituted archeology work that ICP felt they could not afford. Instead, ICP tested only 3 holes, one time. This information is inconclusive and inaccurate, but is what the City of Burlington will be submitting for analysis. It is possible that the City of Burlington could drop their 37 flood insurance policies if they chose not to comply with FEMA guidelines.

The 1,700 acres of land at the Intervale that are currently listed on the State Historic Register as an archeological sensitive site are under the protection of Act 250. At a meeting with the Assistant Attorney General in late February, ICP was informed of all their violations. Shortly after this meeting the Intervale announced they were closing. ICP has also filed a petition with the Agency of Agriculture, requesting that the “accepted agricultural practices” be amended to accept “hoop houses” not as a structure, but as a fence, or minor project, no longer a structure in the flood way. This would make the 30 current hoop house structures an acceptable practice. On March 10, 2008 a letter was sent to the Department of Agriculture stating that hoop houses are indeed a structure, and not a fence or minor project.

A stipulated order to notify the Division for Historic Preservation when any structure is to be built within the 1,700 acre State Historic Archeological District is continually being violated when a hoop house is constructed without notification.

On February 15, 2008, the Natural Resources Board issued a jurisdictional opinion to Gardeners Supply, part of the 53 acres of the Rena Calkin’s Farm. Gardeners Supply is claiming that their 5.13 acres is not part of the 53 and is no longer under the jurisdiction of Act 250. Originally part of the 53 acres, Gardener Supply purchased the 5.13 acres in 2006. ICP has yet to respond to the Natural Resources Board.

On March 3, 2008, shortly after ICP announced they were closing, ANR issued a letter addressing the incomplete and inconclusive testing ICP had submitted with their solid waste application. ANR requested a meeting with ICP to discuss a schedule for

their closure plan, but ICP was not available. ICP has no intention of closing their facility even though testing has shown there are toxic levels of arsenic, lead, and phosphorus in the leachate that is seeping into the ground and river water from their composting facility. E-coli bacteria levels at 77 parts per liter are enough to close public beaches; e-coli levels at the Intervale have been positively tested at 32,500 parts per liter.

Commission members agree that this is not just a Native American issue; it is a public health issue that affects every human living in proximity to the Intervale as well as fish and wildlife. Judy has been preparing a presentation for the Senate Committee on Fish & Wildlife, and has been tracking the leachate run-off from the 43 composting facilities addressed in H.873. Judy thanked Scott Dillon and Jane Lendway for assisting with Power Point Presentations to government agencies focusing on the archeological sensitive sites in the State Historic Archeological District at the Intervale. Commission members agreed that these issues need to be addressed and the public needs to be informed of the facts about the toxic levels of contaminants that far exceed the accepted EPA limits at the Intervale Composting Facility .

Don moved to have Judy come back to the Commission with a draft press release about the violations and toxic levels of contaminants for their approval and Hilary seconded. There was Commission consensus to have Judy draft the press release.

### **3. Update on Museum**

Jeanne showed Commission members pictures of the space that will be available for them at the Native American Museum in East Montpelier. Members discussed projects, flyers, brochures, and artifacts for presentation. The Commission agreed not to make a decision about involvement yet, and will ask Todd to come to the next meeting with more information about how the museum will be secured.

### **4. Other Business**

Giovanna presented a proposed conference to complete the Voyages of Discovery project started last year; a kick-off event for the 2009 Quidricentennial, Lake Champlain commemoration. This day-long conference would include lectures by historians, archeologists, and other specialists juxtaposed with lectures by Abenakis and Iroquois presenting past and contemporary knowledge on relevant topics. Giovanna asked Commission members for their suggestions about topics and to identify speakers. She distributed a working draft of the possible events and speakers for the conference. Giovanna would like to make available a reading program and

website information prior to the conference that will take place at the Vergennes Opera House on September 25, 2008. A tape will also be made of the conference for anyone who is not able to attend. Giovanna would like to link websites and will be sending a letter of intent to the Humanities Council for their acceptance. Judy agreed to work with Giovanna.

The meeting was adjourned at 3:04 p.m.

Respectfully submitted,  
Diane McInerney (say-air-kee-wayn-chukws)