



**Vermont Commission
On
Native American Affairs**

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Commission Members:

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

January 25, 2007

Members Present: Mark Mitchell, Chairman; Jeanne Brink (arrived at 1:10), Judy Dow, Tim de la Bruere, Charlene McManis, Don Stevens, Hilary Casillas

Staff: Jane Lendway, SHPO; Scott Dillon, Survey Archeologist; Diane McInerney, Executive Administrative Assistant

Guests: John Moody; Donna Moody; Tod Ebert; Tina de la Bruere; Chinka Buck; Phyllis Donovan; Helen Sawyer; Beverly Tarto; Dawn Macle; Jed Cutter, County Courier; Robert Appel, Human Rights Commission; Kelly Noltan, Intern; Bill Griffin, Assistant Attorney General, Susanne Young, Governor's Office; Jim Douglas, Governor

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

Approval of December 28, 2006 Minutes

A correction was made to the minutes by Chairman Mitchell on page 2; section 3 under Arts & Crafts; paragraph 4; the term 'Indian Tribe' means, as provided by the two United States Codes should have read, (A) any Indian group that has been formally recognized as an Indian Tribe by the State Legislature, or by State Commission, or similar organization Legislatively vested with tribal recognition authority. Mark asked for consensus on the minutes and the Commission unanimously approved the minutes with corrections from the December 28, 2006 meeting.

1. Update Education

Mark began this discussion by informing Commission members and guests about a previous meeting with the Commissioner of Education, as well as an afternoon meeting with Sigrid Lumbrá, Social Studies Coordinator for the Department of Education, that Charlene McManis, Judy Dow, and he attended. Mark asked Judy to speak about what transpired at this meeting conducted on January 24, 2007.

Judy expressed her satisfaction with the meeting in general and that the Commissioner was interested in the VNAACs proposal. A draft, *Essential Understanding Regarding Vermont Indians*, was presented to the Commissioner at that meeting. Judy also passed out this same draft to Commission members. Long and short term goals were also discussed with the Commissioner.

A later meeting with Sigrid Lumbrá included a discussion constructing a time line that would parallel the time line for the Lake Champlain Quadracentennial that would

include teacher training, and hopefully the creation of basic information; things teachers may have difficulty with. Judy noted that both Sigrid and the Commissioner were very receptive.

Mark expressed an interest in community members from this state who may have an educational background, or the Native perspective from their part of the state of Vermont, to participate in an education meeting here in the future as the Commission begins to develop curriculum. This would wrap around the Quadracentennial and information will be available on the NAAC web site. The Commission looks forward to individuals interested in children's education and stories that can be included in the curriculum to help bring the Abenaki experience to all school systems in the state of Vermont.

Charlene McManis informed the Commission about teacher workshops that may occur in the summer months of 2007; preparing for the Quadracentennial in the summer of 2009. Mark spoke about the long term goals concerning the *Great Expectation* standards of the social studies curriculum where one of two tribes would be designated as the Abenaki experience. Judy noted that Sigrid Lumbra suggested curriculum that might be embedded into the *Great Expectations* standards so that this might become the model curriculum that educators might build on. Essential understanding might become a chapter and members from different parts of the state would contribute to the understanding with their own perspective. This may grow into a guidebook, but would originally be a model curriculum to guide educators.

2. Update on the Winooski Interval

Mark expressed his pleasure in the forward progression taking place with the Intervale and asked Judy to update the Commission. Mark also asked for an update from Jane Lendway as well, and Jane suggested asking Scott Dillon, Survey Archeologist, to assist the Commission with Act 250 issues regarding the Intervale. After a short break Scott arrived and entered into the **discussion**.

ACT 250

Peter Kiebel sent us a letter stating "The Intervale Compost Products operation is a commercial operation on a parcel of land greater than 10 acres and commenced construction of improvements, at least in the fall of 1996. I am prepared to issue a Notice of Alleged Violation that an Act 250 permit was triggered and no permit application was made. The extent of the violation is dependent on the "impact" that the commercial business has had on the 10 criteria of Act 250. The Compliance Directive of the NOAV will require that Intervale compost Products file a complete Act 250 application and address the impacts from the project on the criteria of ACT 250."

This letter has officially placed the Division of Historical Preservation into action. The ACT 250 law is the only law that has a provision to protect pre-historical sites. Scott Dillion is currently working on this case now. Peter Kiebel and the ACT 250 lawyers

are currently writing a Jurisdiction Opinion on 53 acres of land from the original Calkins Farm which may include the Intervale Center, Intervale Compost Products and Garden's Supply owned by Will Rapp.

Water Quality Division

The Agency of Natural Resources the Water Quality Division has determined that the Intervale Compost Products operation has until the spring to apply for a Multi-Sector General Permit for storm water discharge from industrial activities. This new permit was passed into law in the late spring of 2006. Due to the fact that the Intervale Center had been operating under the opinion they were agriculture they felt they were not in need of this permit. At this time it is undetermined whether they will be able to get this permit because of their location in a "flood way". However to continue operation this permit will be needed.

Vermont Solid Waste Management Program

Once again hiding under the curtain of "agriculture" the Intervale Center has been renewing their collection permit every five years as required by law. However now that it has been determined they are commercial by ACT 250 and the Water Quality Division, Solid Waste has no choice but to also declare them commercial. Opening up yet another set of criteria for the Intervale Compost facility to follow. Their current location in the flood way is against FEMA regulation and the city of Burlington participates in FEMA Insurance causing some concern and distress within the Building and Zoning dept. in Burlington. It is debatable at this time if this permit will be reissued. I have collected the necessary signatures to require a public hearing to discuss this issue and have submitted these signatures to the Solid Waste Division. And I would also like the Commission to send an official letter requesting a public hearing. The letter has been drafted and is awaiting your approval. This hearing would allow open discussion and community involvement; something I feel is greatly needed at this time.

City of Burlington

Zoning and Planning

The Intervale Compost Center is currently located in Burlington on land zoned Recreational, Conservation and Open Space. Due to the fact that the Intervale Compost Center has been deemed commercial they have been informed that they are now operating as a commercial entity and this is a non-conforming use. A recent letter from the city's Senior Planner, Scott Gustin explains it in this way. "As such, the use may continue, as is, indefinitely. However, based on current regulations, any expansion or change in use would require zoning permit review by the city - the agricultural exemption to zoning no longer applies. Note that any expansion would be

limited to 25% and any change in use would be limited to a use with lesser impacts than the present use.

In the future, if the recently proposed zoning rewrite amendment is adapted, nonconforming uses such as the composting facility will be further limited, as the proposed amendment prohibits any expansion of such uses.”

Kirsten Merriman CEDO/Cemetery Commission

It has been requested in writing that the City of Burlington amend its unmarked burial protocol to include the land “called the Intervale” by the Intervale Center. This is currently following the chain of command and its procedure throughout the city’s various depts. for final approval.

Winooski Valley Park District

Mark and I have a meeting scheduled to meet with Jennifer Ely tomorrow at 1:00 to discuss the cultural significance and historical value of their land. If you recalled the article in the Burlington Free Press this summer recommended that Devil’s Den a very sacred place in the Winooski Intervale be used for tourism and spelunking. They currently own 1700 acres of land including 22 miles of hiking trails along the Winooski River, Brown’s River and Colchester Pond. This includes 12 miles of trails on lake shores and the rivers edge.

Their mission is; “The mission of the Winooski Valley Park District shall be the planning, acquisition, and management of lands and waters within the boundaries of its member municipalities in the Winooski River valley for purposes of conservation, preservation of natural areas, establishment of parks, and passive recreation.” They are operating much like the Intervale Center. They believe they have an agreement with the state that if they label all construction as maintenance they will not need state permits. At this time we have seen no such agreement.

Mark felt that the Intervale 10 year plan needs to be reviewed. Burlington has concerns about maintenance at the Intervale and Mark believes the appeal to Act 250 will prevail. Jane Lendway asked if the Commission had hired a consultant. Judy said a grant has been written for amend the 10 year plan and Brian Hsiang was hired to do this work. Burlington still owns approximately 250 acres of the Intervale. Judy noted that she will post the date of the solid waste meeting on the VNAAC web site.

Issues about unmarked burial sites and sensitivity were then discussed. John Moody was concerned that test pits may interfere with these traditional and cultural sites, and that surveys should include evaluation from the Abenaki Tribe. Scott assured the Commission that archeology surveys are highly variable in this area and surveyors are sensitive to Native American concerns. Mark noted that the Commission is not here to stop development but to be responsible and follow the law. Judy said that the Intervale does not feel responsible for any wrong doing and that criterion is only subjective. Scott assured the Commission that under Act 250, federal laws will require responsibility from the Intervale. Donna Moody felt that even burial sites on private land should be subject to Act 250.

ARTS & CRAFTS

Mark Introduced Assistant Attorney General Bill Griffin who was present to discuss statute regarding the marketing and labeling of Native American crafts. Giffin said the intentions of the legislature were for the Commission to assist Native Americans (Abenaki) in marketing their crafts. At this time Governor Douglas arrived and Bill politely stepped down and allowed the Governor to address the Commission.

Commission Priorities and Goals for 2007 – Governor Douglas

Mark welcomed the Governor and expressed his appreciation for recognizing the Abenaki people as a tribe on May 10, 2006, and for appointing, under Vermont statute, all Native American people to the present Commission. Marked thanked the Governor for the opportunity to share the goals and priorities of the Commission's

Don shared the plan to protect Native American ancestors through the unmarked burial project. He noted that the state of Vermont does not yet have a law concerning unmarked burial sites and that the Commission will be education the public about the sacredness of these sites; that they may be afforded the same respect and honor as marked burial sites in Vermont today. The goal of the Commission is to bring a meaningful bill to the house and senate for repatriation to care for Native American ancestors in the event that they are disturbed. The Commission feels that homeowners and developers are looking for direction in this area. Compensation for landowners may alleviate the fear of reporting discovery of an unmarked burial, and the Commission looks forward to working with legislature on a comprehensive plan for the future.

Mark expressed the Commission's educational goals of bringing the Abenaki experience to children in all schools and that this is a high priority. Judy then shared the Commission's plan for implementing the educational goals, and bringing the Abenaki language, culture, tradition, and heritage from a historical perspective to all young children. Through this instruction Abenaki children will be able to develop a better sense of who they are and will establish good feelings with honor and pride about their identity. These children will develop a more complete picture of Vermont's history showing many perspectives and the Commission would like to have an equal education for all children. Currently the Commission is working with the Department of Education and Sigrid Lumbrá to assist in the development of curriculum that will imbed elements of the Abenaki into existing standards. Schools should not have to add another curriculum but rather supplement current programs with culturally relevant materials and essential understanding. It is the Commission's belief that it is important to establish Indian education for all by developing appropriate guides and materials for required cultural and historical training available for teachers to be able to successfully teach all children about the Abenaki experience. The Commission's ultimate goal in this area of education would be to work toward a state Indian Education Act that would guarantee a long term commitment within the Vermont schools for the study of the Abenaki experience.

Mark then shared the recent creation of the Commission's web site, (www.vcnaa.com), and asked Charlene for an update on this work. She explained that the information highway has become a reality for disseminating information both regional and global, and that this web site communicates the latest news from Indian country with events and links to various Indian organizations and Nations here in Vermont. The Commission believes that this is a necessary tool for reaching the native population here in Vermont. This information also helps the non-native community understand Native American issues and concerns. Charlene was proud to announce that this website does not rely on state funding.

Mark then asked Tim to share updates for the 2009 Quadracentennial. Tim explained that Fred Wiseman has been representing the Abenaki people in numerous Quad meetings. The Commission has been assisting Sigrid Lumbra with the development of educational materials that will assist teachers in the training and education of their students. The Commission's plan is to collect news paper articles and other printed remembrances to create a scrap book for schools to use for the historical record of events. The Commission has been working with Caro Thompson and Vermont public television to create a video on Lake Champlain history. The Commission's goal is to establish an ancient village somewhere in the Intervale Center with a focus on an accurate history for a long lasting educational and tourist attraction here in the state of Vermont. The 2009 celebration will be an excellent time to share Abenaki heritage with those living in and visiting Vermont.

Mark then shared the last goal for the commission which is to establish a process of permitting the sale and labeling of Native arts and crafts. It has been brought to this Commission's attention that the language of S117 may not have intended for this commission to be vested with the authority to formally provide State tribal recognition for the sole purpose of protecting individuals under the 1990 Indian Arts and Craft Art. 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 being the case means that the legislation would still have that authority and would need to either exercise that right or delegate that to this commission for an Indian to be protected under the Act.

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.

Governor Douglas then spoke and thanked Mark for his leadership and the Commission members for their time and service. The Governor appreciated the

explanation of the Commission's goals over the next 2 years with focus and structure for accomplishment, as well as their participation in the Quadracentennial, an important time in Vermont's history. Douglas was pleased with the relationship between the Commission, the Department of Education, and the Division for Historic Preservation. Douglas felt that it is an important goal to help developers understand what steps should be taken when encountering unmarked burial sites, respecting Native American heritage in spite of development. Douglas agreed that dealing with federal partners can be difficult, but that he and Suzanne Young are available for assistance. Finally, Governor Douglas shared his personal appreciation for the work done by the Commission.

ART & CRAFT (continued)

Bill Griffin stated that state law gives this commission the ability to assist Native American Tribal Councils, organizations, and individuals to display and sell arts and crafts, and label them as Indian, or Native American. These are consumer protection laws that protect the public as well as Native Americans. Bill distributed copies of a draft for "Procedure to Permit Labeling of Native American Arts and Crafts" along with an application form that may assist the Commission with this process. Bill informed the Commission that the most his office could do would be to advise the Commission and that they should assist artists with the current laws as they stand.

The Commission members were opposed to identifying individuals as tribal members. They felt that tribes should be the ones that identify their people. Bill felt that individual's applications could be put on the VNAAC web site for several weeks giving the public time to respond and comment on tribal relations before the individual is approved at the next meeting. Each approval would be awarded a certificate for authenticity. There would be no risk of civil action since the certificate would then be valid. Bill suggested that the Commission adopt procedure at a public meeting; indicating this on the agenda where a motion is seconded for approval.

Dawn Macle spoke for her tribe of 100+ members, The Nulhegan Band of the Koasek-Abenaki People, and felt that the state needs to formalize bands so they can identify their own people. The Commission would be more willing to protect individuals that are already members of a recognized tribe / band, as long as they had been formally approved by the Commission through an application process. The Commission felt this discussion should be continued at the next meeting.

The meeting was adjourned by the Chairman at 3:04 p.m.

Respectfully submitted,

Diane McInerney (say-air-kee wayn-chukws)

