

To: Senator Chris Bray, Chair, Senate Committee on Natural Resources and Energy

From: Mike Kline, Middlesex resident

Cc: Peter Walke, DEC Commissioner
Chris Cochran, ACCD, Director of Planning and Revitalization
Rob Evans, DEC Rivers Program Manager
Jon Groveman, Policy and Water Program Director, VNRC

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RE: S.237 and H.926 – River Corridors and Neighborhood Development Areas

I have testified before Senate Natural Resources and Energy in my past capacity as DEC Rivers Program Manager. Since 2010, when state policies to protect river corridors (Act 110) were first adopted into statute, I have been working tirelessly to educate Vermont communities and state agencies, stressing the importance of protecting a resource that is central to public safety, economic resiliency, water quality, and river environments. After Tropical Storm Irene, and all the destruction from riverine erosion and the interventions that followed, we passed acts 138, 107, and 16 that put Vermont in the forefront of a world-wide effort to make room for the river. A collective understanding of the science started to take hold, that, given the space and freedom, rivers will evolve from past abuses toward an equilibrium condition, a state of minimal erosion, that will improve our water quality, mitigate flood hazards, and restore the ecological integrity of our waters.

I am writing today to share a few insights about the combined benefits of H.926 and S.237, with regard to river corridor protection, and the inter-agency cooperation that has brought them about.

During the five years following Irene, the agencies of Commerce and Community Development and Natural Resources collaborated on the Vermont Economic Resiliency Initiative (VERI). ACCD staff led the Initiative identifying mitigation strategies for flood and fluvial erosion hazards affecting Vermont's economic centers, and subsequently became advocates for municipal river corridor protection.

When Neighborhood Development Areas were first established in statute, they could only be designated in areas outside river corridors. While seemingly a win for the intended river corridor values stated above, this action caused a collision of state policies—achieving the smart growth (anti-sprawl) policies desired in Vermont was being stymied because many of our historic settlements are next to rivers. Much frustration in Vermont's planning and development community has ensued, because the NDA designation was not proving to be an accessible tool.

At the same time, ANR staff were developing first-in-the-nation rules and procedures with no adverse impact standards for river corridors, that recognized the need for exceptions to allow infill and redevelopment in our more urban areas. The urban exception and performance standards within the Flood Hazard Area and River Corridor Protection Procedures were crafted so that, if the science indicates within an urban area, that the open space remains for a stable river meander to function, it would be protected from further encroachment. The rule and procedure also recognize that certain high risk and repetitive damage sites must be avoided. However, an urban infill that is no closer to the river than surrounding structures should be permissible, if it does not create new river management imperatives that make adjacent and downstream structures more vulnerable.

The proposed statutory revisions before Senate Natural Resources and Energy, I believe, will begin to converge state economic and environmental policies, by addressing the inadvertent miscue of the original NDA legislation. In light of Vermont's need for climate mitigation and adaptation, it is imperative that we seek a commitment to avoid sprawl and protect undeveloped river corridors.

Specifically, with regard to the current drafts of S.237, "*An act relating to promoting affordable housing,*" and H.926, "*An act relating to changes to Act 250,*" I would like to affirm and comment on:

- The language pertaining to flood hazard areas and river corridors in (Sec. 12 of S.237, page 20) that is key to rectifying the issue I have described above, specifically stating that local bylaws must contain provisions consistent with the Agency of Natural Resources rules required under 10 V.S.A. § 754(a) for protecting river corridors. The only concern I have is the provision lacks mention that local bylaws should pertain to river corridors throughout the municipality. This is a key technical point, in that if river corridors upstream of the NDA are developed, then the flows and forces of flood waters are diverted to the downstream areas that are being designated for development. If such a bylaw requirement were clearly stated as part of a balanced policy, it would achieve the desired flood hazard mitigation for NDAs.
- The language defining the jurisdictional areas covered Act 250 criterion 1(D) (Sec. 3 of H.926) to "flood hazard areas" and "river corridor" from the current "floodway" and "flood fringe" is a crucial change, if we are to align Act 250 with the science of flood and fluvial erosion hazards. Countless hours have been spent in both litigation and the redirection of development proposals because of the current outdated terms in 1(D).
- The language expanding the state rules and permitting of river corridor development to lands subject to Act 250 jurisdiction (Sec. 12 of H.926, starting on page 83) will increase the certainty around river corridor protection, which will serve everyone in the permitting process. If enacted, the protection of river corridors in Act 250 will no longer be the Secretary's 1(D) "*recommendation*" to a District Commission, but rather a DEC regulatory action, with direct appeal rights. Also, the rule making authority to designate certain highest priority river corridors, from a flood and fluvial erosion standpoint, is a significant start to the expansion of state jurisdiction targeting those corridors upstream of vulnerable lands and property. Should Rivers Program capacity allow (certainly not the case now), it might be in the state's interest to expand this rulemaking authority to those corridors that are highest priority from a water quality or habitat standpoint. These values often overlap with the value of flood hazard mitigation, but not always.

My intent with this memorandum is to share my experience with river corridor protection and clearly express my opinion that S.237 and H.926 will move the state closer to achieving the objectives set forth in the river corridor protection and community resilience policies of 10 V.S.A. Ch. 49: Protection of Navigable Waters and Shorelands.