



Testimony of Jon Groveman
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on H.120
April 15, 2021

Thank you for the opportunity to testify on the provisions of H.120 that improve protections for river corridors. For the record I am the Policy and Water Program Director for the Vermont Natural Resources Council (VNRC). My professional background related to this issue includes work at VNRC to address a variety of water quality issues. In addition, in the past I served as the Director of the former Vermont Water Resources Board.

I was General Counsel for the Agency of Natural Resources (ANR) during tropical storm Irene which, as you know, caused widespread extreme flooding in Vermont and significant damage to natural resources and public and private property. The havoc caused by tropical storm Irene highlighted work that had been going on for decades in Vermont to identify and protect river corridors and put the spot light on the need to better protect river corridors in Vermont.

In addition, I have significant experience with Act 250. I was the ANR Act 250 Attorney from 1995-1999. In that time, I appeared before ever District Commission and the former Environmental

Board. I have represented VNRC and citizens before District Commissions and the Environmental Court when appeals were transferred there. In addition, I chaired the Natural Resources Board, which administers Act 250, during the Shumlin Administration. Accordingly, I have experienced Act 250 from many different angles.

What are river corridors? *River Corridors encompass the area of land surrounding a river that provides for the meandering, floodplain, and the riparian functions necessary to restore and maintain the naturally stable or least erosive form of a river thereby minimizing erosion hazards over time. Lands within and immediately abutting a river corridor are at higher risk to fluvial erosion. Giving rivers room to move is critical in avoiding the stream armoring and berming measures used to protect within-corridor development that so often leads to increases in erosion upstream and downstream and adversely affects public safety, riparian landowners, and river ecosystems.*

It may seem like common sense that rivers move and we need to account for this movement when development is proposed in river corridors and initiatives to manage our water resources are developed and implemented. However, in Vermont and across the country, this is not how river protection has historically been approached. Historically rivers have been bermed and riprapped to keep rivers in their channel so roads, structures and other infrastructure, which has been built along our river systems, does not get damaged.

State and federal law has protected floodplains - the low-lying area along rivers that typically flood - but have not accounted for the fact that rivers move over time and our efforts to prevent rivers from moving will lead to downstream impacts, erosion and property damage when the attempts to prevent a river from moving inevitably fail.

In the late 1990s/early 2000s, ANR scientists began advocating that river corridor mapping be conducted and river corridor protection be included in our environmental policies. Over the last two decades river science has evolved significantly and river corridor protection and policies have become a crucial part of Vermont's environmental policy.

Act 250, which was created in 1970, obviously, could not factor in current river science. As a result, the Act 250 criteria focus of floodplain protection and not river corridor protection. This disconnect has caused confusion between ANR recommendations on Act 250 applications with regard to flooding and river protection issues.

VNRC strongly supports the proposal to update the Act 250 criteria to account for modern river science. I strongly encourage you to hear from Mike Kline, a leading expert on this issue and Rob Evans at ANR who runs river program who have significant expertise on this issue.

VNRC also strongly supports requiring regulatory review over development in river corridors. After Irene, seeing damage the damage caused by the storm, and knowing the science behind the importance of protecting river corridors, ANR leadership and staff worked to develop policies that would mitigate the damage that could be done by future "Irenes," understanding that climate change made this inevitable. One policy we worked on was to create a state program to regulate development in river corridors.

At the time, we discussed either setting up a program at ANR to regulate development in river corridors or requiring that development in river corridors trigger Act 250. With regard to creating an ANR rivers permit, the thinking was that there could be a permit with a fee to fund the program, and ANR river

scientists could create criteria targeted to address the impacts of new development in river corridors and proposals to expand or alter existing development in river corridors. The permit could be used like other ANR permits as a rebuttable presumption to comply with the relevant Act 250 criteria. We also recommended updating the Act 250 criteria to address river corridors, as H.120 proposes to do today.

As noted, we also considered proposing that any development in mapped river corridors trigger Act 250. This is the proposal in H.120. This approach would take advantage of the existing Act 250 permit program to protect river corridors and would likely discourage development in river corridors because applicants would be motivated to avoid Act 250.

Some disadvantages that we identified to the Act 250 approach is that it would not create a funding stream (a permit fee) to add staff to ANR to review the additional proposals for development in river corridors. In addition, all ten Act 250 criteria would apply to developments in river corridors, many of which have nothing to do with the impacts that the state is seeking to address.

VNRC is open to either method of better regulating development in river corridors. The bottom line is creating such a state program through Act 250 or at ANR is long overdue.