

Memorandum

To: House Natural Resources, Fish & Wildlife Committee
Date: February 8, 2021
From: Mike Kline, Middlesex resident
RE: H.120 – Act 250 and River Corridor Protection

I have testified before House Natural Resources, Fish, and Wildlife in my past capacity as DEC Rivers Program Manager. I retired from state service in August, 2019 and have stayed active in Vermont river and floodplain science and policy as a part-time consultant. The purpose of my memorandum is to urge the committee to remove *“the construction of improvements for commercial, industrial, or residential purposes within a river corridor,”* from the current H.120 definition of Development (§6001 (3)(A)(xii)) and replace it with the language drafted in H.926 (2020):

Sec. 10. 10 V.S.A. § 754 is amended to read:

§ 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM MUNICIPAL REGULATION

(a) Rulemaking authority

(2) On or before November 1, 2022, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that designate highest priority river corridors and establish requirements for the issuance and enforcement of permits applicable to uses located in highest priority river corridors. Highest priority river corridors are those that provide or have the potential to provide critical floodwater storage or flood energy dissipation thereby protecting adjacent and downstream lands and property that are highly vulnerable to flood-related inundation and erosion.

(f)(1) Permit requirement

(B) Beginning on November 1, 2021, a person shall not commence construction of a development or subdivision that is subject to a permit under chapter 151 of this title without a permit issued pursuant under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection (g) of this section.

(C) Beginning on November 1, 2023, a person shall not commence or conduct a use located in a highest priority river corridor without a permit issued pursuant under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection (g) of this section.

Rationale: Protecting river corridors is vitally important to Vermont’s policy goals for flood resiliency (i.e., avoidance and recovery from both flood and fluvial erosion damages), water quality, and biodiversity. For these reasons, river corridor protection is being recognized as essential in Vermont’s efforts to adapt to climate change. The work to protect river corridors started after the passage of Acts 110 (2010) and 138 (2012). Since then, the ANR has been promoting the adoption of municipal river corridor bylaws and now regulates state activities and land uses exempt from municipal regulation. While important, these efforts are falling far short of the achieving the goals stated above. Approximately two-thirds of Vermont municipalities are not protecting river corridors, and those that

have are often very challenged to administer their river corridor bylaws as adopted. New development and consequent stream channelization are creating unstable and erosive streams and resulting in the loss of natural floodplain function.

After 20 years of working to initiate and build Vermont's river corridor programs, I applaud the Committee's effort to increase river corridor protections, however, as the Rivers Program Manager, I was acutely aware of how important it is to administer an efficient and accessible regulatory program that maintains public support. It is for this reason that I would advocate for an increase in ANR jurisdiction in river corridors designated as highest priority for their *"potential to provide critical floodwater storage or flood energy dissipation thereby protecting adjacent and downstream lands and property that are highly vulnerable to flood-related inundation and erosion."* While this added jurisdiction would still require an increase in staff, it would be far less than the doubling of Program regulators (plus legal, mapping, and administrative assistance) necessary to regulate activities along 14,200 miles of streams in Vermont⁹ (i.e., those with drainage areas greater than 0.25 square miles).

Lastly, I would like to stress the importance of expanding the states permit authority and have that permit enjoy a presumption under Act 250, rather than expanding the entirety of Act 250 jurisdiction to all river corridors (i.e., consistent with H.926 language above). This change goes to heart of creating an efficient and accessible permit program that enjoys public support. Rather than triggering all Act 250 criteria to get at just a ANR recommendation to the District Commissions under 1(D) (or 2(D) as proposed in H.120), the Agency would issue a decisive permit, but limited to the purposes of and appealable under the Flood Hazard Area and River Corridor Rule.

Should the HNRFW Committee move to take public testimony for H.120, I would like to offer this memorandum as my testimony, and I would be happy to appear before the Committee to answer questions about my testimony.