

Recommended Amendments to the Housing Bank Act

The proposed amendments to the Housing Bank Act described below are recommended by the Coalition to Create the Martha's Vineyard Housing Bank. Proposed amendments are divided into separate sections based on who may approve the amendment (the HBRC or the Select Boards). All reference to line numbers are references to lines in the Housing Bank Act as filed with the Town Clerks.

HBRC Amendments

Section 1 - Definitions

- Insert a definition of “new construction” after the definition of “legal representative” (line 29) as follows:

“New Construction”, construction of a new building that is not attached to an existing building.

Explanation: The Housing Bank Act imposes different types of restrictions and conditions on the various activities that may be funded by the Housing Bank, including specific requirements when funding is used for new construction. Absent a definition in the Housing Bank Act, the Housing Bank Commission must construe what “new construction” means and would, presumably, adopt regulations defining this term. Including this definition in the Housing Bank Act means that this will be a defined term and not subject to interpretation.

- Corrections to the definition of a “Real property interest” (lines 51-53). The reference to “chapter 183 of the General Laws” should be to “chapter 183A of the General Laws”, and this definition is missing a period at the end of the definition.

Explanation: These are technical corrections that fix typographical errors.

Section 3 – Commission Composition and Election

- Update the year in which the initial at-large Housing Bank Commission member is elected (line 103) to **2024**.

Explanation: The draft Housing Bank Act requires that the at-large member is elected at the biennial state election in “[2022/2024].” The Housing Bank Act cannot be enacted and adopted prior to the 2022 election, so this can be updated to 2024.

- Insert a new subsection (g) (in line 130) as follows:

(g) No person shall serve concurrently as a member of the commission and a town advisory board.

Explanation: The Coalition has received input from multiple sources stating that Housing Bank Commission members should not be allowed to serve concurrently on a TAB.

Sections 25 & 26 – Adoption of the Transfer Fee

- Move Section 25 (line 589) to a new Section 26 and insert, in place thereof, a new Section 25 as follows:

SECTION 25. Notwithstanding anything herein or any general or special law to the contrary, sections 15, 17, 18, 19 and 20 of this chapter shall become effective upon the adoption of any general law authorizing the imposition of a transfer fee to support affordable housing. Acceptance of this act in the manner set forth in section 26 shall be construed as acceptance of any such general law that may be adopted after the effective date of this act and adoption of a transfer fee and exemptions as set forth in this act. In the event of any conflict between such general law and the provisions of this act, the terms of this act shall prevail.

Explanation: Based on conversations with Senator Julian Cyr, it is the Coalition’s understanding that the legislature intends to address transfer fee legislation through a general law rather than special laws. Currently, the legislature is considering a state-wide bill that is largely consistent with the transfer fee and exemptions described in the Housing Bank Act and which would permit a “regional affordable housing commission” like the Housing Bank to adopt a transfer fee and exemptions in accordance with the provisions of the special law creating such entity. Under the most recent iteration, the proposed general law would authorize a transfer fee of up to 3% to be determined by the locality and such exemptions as may be adopted by the locality. The Warrant Article specifies that the transfer fee shall be 2% and subject to an exemption in an amount to be determined by the Housing Bank Commission, but not less than the first \$1,000,000 of the purchase price. These requirements are set forth in the Housing Bank Act and fall within the parameters of the proposed general law.

The proposed revisions would impose the transfer fee and exemption provisions of the Housing Bank Act in accordance with such general law and allow the Housing Bank to be formed and begin work on items like adopting rules and regulations before the transfer

fee becomes available via general law. Upon enactment of the proposed general law, the Housing Bank transfer fee and exemptions would automatically become effective. In the unlikely event that the legislature does not enact the proposed general law, but adopts special laws establishing transfer fees for individual towns, a further amendment by our state legislators would be required to implement the transfer fee.

The Warrant Article also specifies that the transfer fee and additional exemptions shall be as set forth in the Housing Bank Act **OR** a general law. As such, this amendment is consistent with Warrant Article and may be adopted by the HBRC.

Select Board Amendments

Section 1 - Definitions

- Insert a definition of “previously developed property” before the definition of “purchaser” (line 30) as follows:

“Previously Developed Property”, land with an existing building or buildings or which had a building or buildings during the 50 years prior to the date that an application for Housing Bank funding is submitted pursuant to section 11.

Explanation: Not less than 75% of Housing Bank expenditures are required to be for activities or projects located on previously developed properties. Absent a definition in the Housing Bank Act, the Housing Bank Commission must construe what “previously developed properties” means and would, presumably, adopt regulations defining this term. Including this definition in the Housing Bank Act means that this will be a defined term and not subject to interpretation.

- Amend composition of the Town Advisory Boards (“TABs”) (lines 62-66) as follows:

“Town advisory board”, a town board created in each member town to assist the commission in administering this act, each to consist of 1 representative duly appointed, either from its membership or otherwise, by each of the following town boards: select board, conservation commission, planning board, zoning board, **board of assessors, housing committee**, board of health and, if one exists, wastewater committee. ~~and 2 appointed by the housing committee.~~

Explanation: The Coalition has received feedback from multiple sources indicating that Towns would like their boards of assessors to have a voice on their TABs, and that only one member of each TAB should be appointed by the housing committee.

Section 10 – Housing Bank Funding Requirements

- Amend the first paragraph of Section 10 as follows:

SECTION 10. ~~The~~ Housing bank **funding** shall address the greatest community need as determined from time to time by the commission according to prevailing data, and subject to the provisions of this act. Not less than 75 per cent of the expenditures and funding commitments approved by the commission in any fiscal year shall be allocated to activities or projects on ~~properties~~ previously developed ~~properties with existing~~

~~buildings~~, or to fund infrastructure, including wastewater disposal and utilities, associated with such ~~projects~~-**properties**.

Explanation: A definition of “previously developed properties” has been proposed as described above. Proposed amendments to this section would incorporate that definition into the limit on use of Housing Bank funds. This would modify the requirement that 75% of Housing Bank expenditures be made for projects or activities on previously developed properties to include properties that were developed within the 50 years prior to submission of an application for funding to the Housing Bank. Additional changes are minor drafting changes that do not affect the meaning of this Section.

- Amend the second paragraph of Section 10 (lines 266-277) as follows:

The commission shall require that all projects funded in whole or part by the housing bank under section 11 minimize disturbances to the local ecology. New construction funded in whole or part by the housing bank shall: **(i) protect land classified by the United States Department of Agriculture Natural Resources Conservation Service, or any successor agency, as prime farmland; (ii) not be in priority habitat areas as defined by the Massachusetts Endangered Species Act, or any successor act; (iii)** be prohibited from using fossil fuels on site except as needed during construction, renovation, repair, temporary use for maintenance, or vehicle use. ~~All new construction funded in whole or in part by the housing bank shall be required to (i); (iv)~~ achieve a home energy rating service rating of zero; and ~~(ii)(v), to the maximum extent possible,~~ produce no new net nitrogen pollution **to the maximum extent that evolving technology allows, and, if necessary, provide nitrogen offset mitigation according to then-current Martha’s Vineyard Commission standards. New construction Projects** on undeveloped properties of more than five acres funded in whole or part by the housing bank shall be required to (i) preserve a minimum of 40 per cent of the property as open space, and (ii) minimize tree removal. The foregoing requirements shall apply to all units in a project receiving housing bank funding including income-restricted, market-rate, and other units. Satisfaction of each of the provisions of this section shall be as determined by the commission.

Explanation: The second paragraph of Section 10 establishes requirements that must be met if Housing Bank funds will be used to fund new construction. The proposed amendments add two new requirements: that new construction projects funded with Housing Bank funds protect land classified by the Natural Resources Conservation Service as “prime farmland” and such projects may not be built in priority habitat area as defined by the Massachusetts Endangered Species Act. The proposed amendments also modify the existing standard regarding nitrogen pollution to require that: (i) new

construction projects produce no net nitrogen pollution to the extent that technology allows; and (ii) nitrogen offset mitigation shall be required pursuant to standards adopted by the Martha's Vineyard Commission.

Section 11 – Projects eligible for Housing Bank Funding

- Amend the second paragraph of Section 11 (lines 299-306) as follows:

In selecting proposals for funding, the commission shall prioritize proposals that: (i) are close to existing services; (ii) **consist of infill development; (iii) reduce nitrogen loading on developed properties** ~~are not in priority habitat areas as defined under the Massachusetts Endangered Species Act, or any successor act;~~ **(iv) are located on developed properties;** and ~~(iii)~~ **(v)** mitigate the effects of climate change, such as projects which (a) do not involve acquisition of fossil fuel equipment and (b) have a master plan to delineate a path to fossil-fuel free operation and net-zero annual site energy consumption. In considering projects for funding, the commission shall use as guidelines town or regional master plans, wastewater plans, watershed management plans, open space plans, and climate and energy goals.

Explanation: The second paragraph of Section 11 requires the Housing Bank to prioritize funding for projects that meet certain criteria. The proposed amendments add the following projects that shall be prioritized:

- Projects that consist of infill development;
- Projects that reduce nitrogen loading on existing developed properties; and
- Projects that are located on existing developed properties.

The proposed amendments also delete the reference to projects that are not in priority habitat, which would be made a requirement for new construction projects pursuant to the amendments proposed for Section 10.

Section 12 – Restrictions

- Add the following sentence at the end of Section 12 (line 316):

Notwithstanding anything herein to the contrary, Housing Bank funds may be used to pay for nitrogen offset mitigation associated with a project funded pursuant to Section 11 on such terms and conditions, and subject to only such restrictions, as the Commission may determine appropriate in each case.

Explanation: Interest in nitrogen offset mitigation measures has increased since the Housing Bank Act was drafted, and it appears likely that such measures will become imposed with greater frequency in the future. This language is intended to clarify that Housing Bank funds may be used to pay for nitrogen offset mitigation on any parcel of land subject only to such restrictions as the Housing Bank Commission determines, provided that such expenditure is made in connection with a project that otherwise meets all of the requirements for receiving Housing Bank funding.

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