



Vineyard Conservation Society

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Dear Housing Bank Review Committee members:

The Vineyard Conservation Society (VCS) is a non-profit land conservation and environmental advocacy organization that has been working for more than fifty years to protect the land, water, and unique character of Martha's Vineyard.

The purpose of our testimony today is to respectfully ask the committee to ensure that the bill you ultimately deliver to the legislature contains the strongest possible environmental protection language. To that end, VCS offers the following set of comments and suggestions for amended language for your consideration. We have shared these proposed changes with the Coalition authors of the bill. Any specific line references are to the 3/24/2022 draft of the proposed legislation.

SCOPE OF AUTHORITY

The warrant articles passed at Town Meeting provide for the creation of the Housing Bank Review Committee (HBRC), with appointees from each town, authorized to amend the bill prior to submission to the legislature. It also provides that, after the bill is delivered to the State House, the legislature may amend it as well. However, the legislature's ability to amend is more limited: any substantive changes beyond editing and clerical corrections would require the bill to return to MV, where the Select Boards of at least two thirds of the towns must approve those legislatively-sponsored amendments before the bill returns to the State House for possible action.

Because there has been some confusion on this point, we wish to stress that HBRC does have latitude to amend the bill at this stage of the process, provided that amendments retain "to the maximum extent possible" the broad "parameters" or substantive components of the bill. It is only the legislature that is constrained to making only clerical or editorial changes. The will of the voters, as expressed by the Town Meeting vote, was to empower the HBRC to amend the bill before it goes up to the State House for approval.

SUMMARY OF COMMENTS

The VCS suggestions are meant to clarify and enhance the bill's existing environmental protections without frustrating the intent of the warrant article vote. They include:

- defining more clearly what is meant by "local ecology"
- prohibiting new construction in priority habitat and on prime farm soils

- encouraging the 25% portion of the funding stream that may be used in the built environment to be deployed consistent with “Smart Growth” principles
- calling for enhanced energy efficiency not just in new construction, but in rehab projects as well.

SPECIFIC LINE RECOMMENDATIONS

Line 266 – existing language reads:

*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**.*

COMMENT: The word “ecology” here is imprecise. Ecology is defined as a branch of biology (the study of the interactions of organisms and their environment), but is not itself a value or attribute of the environment. Consider changing “ecology” to “natural resources and ecological functioning” and inserting an additional sentence describing the kinds of disturbance to be avoided. Avoiding construction on prime farm soils and in priority habitat (as described later in the bill at Line 300) is recommended. Our suggestion is to accomplish this by inserting a sentence at Line 267:

No new development shall be sited on prime agricultural soils or harm important habitat for flora and fauna, including priority habitat areas as defined under the Massachusetts Endangered Species Act, or any successor act.

Line 299 – existing language:

*In selecting proposals for funding, the commission shall **prioritize** proposals that: (i) are close to existing services; (ii) are not in priority habitat areas as defined under the Massachusetts Endangered Species Act, or any successor act; and (iii) 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.*

COMMENT: The word “prioritize” above leaves open the possibility of development in priority habitat areas. Consider using a word that forecloses that possibility. Now is the time. during this drafting review process, to put clear guardrails in place to signal to future developers exactly what is and is not permitted for the use of public housing bank dollars. We suggest using stronger language:

*In selecting proposals for funding, the commission shall **only consider** proposals that: (i) are close to existing services; (ii) are not in priority habitat areas as defined under the Massachusetts Endangered Species Act, or any successor act ...*

Line 271 – Typo, the [HERS](#) Index acronym should be Home Energy Rating **System**

Lines 267 – 272 – existing language:

***New** housing funded in whole or part by the housing bank shall be prohibited from using fossil fuels on-site except as needed during construction, renovation, repair, temporary use for maintenance, or vehicle use. All **new** housing funded in whole or in part by the housing bank shall be required to (i) achieve a*

home energy rating *service* rating of zero and (ii), to the maximum extent possible, produce no new net nitrogen pollution.

COMMENT: New housing is the target of only 25% of the housing bank revenue stream. Consider inserting similarly stringent energy and nitrogen pollution requirements for the other 75%, that is, for rehabbing the existing buildings where most housing bank funds will be targeted. That would align with the MV Commission’s recently drafted Climate Action Plan, and other planning goals.

Recognizing that this raises the possibility of unintended consequences like needless tear-downs, we defer to the energy and wastewater experts for how best to implement strategies to accomplish this. Mandatory connection to municipal sewer and installations of “Innovative/Alternative” nitrogen-removal systems would seem to make sense wherever possible. The bill should also permit HB resources to be tapped to achieve offsite monetary mitigation to achieve no-new-net-nitrogen-pollution in both new and existing structures. Also consider addressing the situation where housing bank funds are used to acquire existing housing stock, but with no immediate plans for rehabilitation, by adding language similar to that used later (at Line 303) requiring a plan for moving towards improved energy efficiency. The language change to accomplish this at Line 267 may be:

New and rehabilitated existing housing funded in whole or part by the housing bank shall be prohibited from using fossil fuels on site except as needed during construction, renovation, repair, temporary use for maintenance, or vehicle use. All new and rehabilitated existing housing funded in whole or in part by the housing bank shall (i) [delete to the maximum extent possible], produce no new net nitrogen pollution, (ii), for rehabilitated existing housing, shall achieve a Home Energy Rating System (HERS) index of _____, and (iii) for rehabilitated and for existing housing without immediate plans for rehabilitation, shall have a master plan to delineate a path to reduced nitrogen pollution and annual site energy consumption.

Line 265

COMMENT: There are properties in the settled areas of towns that are not yet developed with existing buildings. Smart growth principles would counsel in favor of steering the 25% “new construction” portion of the housing bank revenue stream to these areas, in proximity to the existing “built environment.” Benefits include the strengthening of walkable communities, and limiting the effect of habitat fragmentation. Please consider including an explicit statement along those lines after Line 265:

Consistent with Smart Growth principles, it is the intent of this act that the remaining 25% portion of expenditures be allocated in the already built environment, primarily as “infill” in town and village centers.

Line 277 – existing language:

Satisfaction of each of the provisions (of Section 10) shall be as determined by the commission.

COMMENT: Because this includes determinations that require subject-matter expertise, for example in areas like energy efficiency (HERS index, etc) or defining “minimal disturbance to ecology” (or, as per our previous suggestion, “natural resources and ecological functioning”), we suggest language that reflects that need, e.g.:

Satisfaction of each of the provisions of this section shall be verified by local or regional experts identified by the commission.

Line 335-337

COMMENT: How best to guard against a gift that comes with a condition that it be used for an inconsistent purpose? Consider adding clarification language at the end of the sentence:

*Grants or gifts of money or other assets to the housing bank shall be expended only for the purposes of the grant or gift and subject to any restrictions or limitations imposed thereon by the grantor or donor thereof, **and to all the restrictions, limitations, and guidelines laid out elsewhere in the Act.***

Line 439

COMMENT: the intent of this subsection needs clarity. Consider inserting the word “existing”

*(n) transfer of a real property interest that is subject to and used consistent with an **existing** affordable housing restriction as defined in section 31 of chapter 184 of the General Laws...*

Line 283 – existing language:

*Only activities and projects that create, preserve or support perpetual year-round housing, community housing or **housing-related infrastructure** that serves perpetual year-round housing or community housing, shall be eligible for funding.*

COMMENT: Consider adding “Housing Related Infrastructure” to the Definitions section at Line 25, for example:

Housing Related Infrastructure shall include, but not be limited to, investments in wastewater infrastructure, transportation (including sidewalks, school buses, Transit Authority bus stops), and support for municipal and/or regional budgets for public services including, for example, schools, police, and fire.

Thank you for considering our input. We wish the HBRC the very best in your efforts to help guide this important piece of legislation. Please feel free to reach out with any questions.

Sincerely,
Brendan O’Neill
VCS Executive Director