



## NATURAL RESOURCES BOARD

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**TO:** Senate Committee on Finance (“Committee”)  
**FROM:** Diane Snelling, Vermont Natural Resources Board (“NRB”) Chair  
**RE:** S.237 and the Percentage of Area Median Income Used to Define Affordable Housing in Act 250  
**DATE:** May 19, 2020  
**CC:** Ellen Czajkowski, Legislative Counsel  
Faith Brown, Committee Assistant  
Greg Boulbol, NRB General Counsel  
Evan Meenan, NRB Associate General Counsel  
Chris Cochran, Agency of Commerce and Community Development  
Maura Collins, Vermont Housing Finance Agency (“VHFA”)

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On March 12, 2020, S.237 (An act relating to promoting affordable housing) was referred to the Committee. The Committee conducted a virtual walk through of [S.237 as Recommended by the Senate Committee on Economic Development](#) on Thursday, May 7, 2020. This memo explains how, for Act 250 purposes, Section 5 of S.237 may raise the maximum allowable sales price for some types of owner-occupied housing by increasing the existing affordability threshold.<sup>1</sup> To explain how this is so, this memo will briefly explain:

1. How affordable housing is currently measured in Act 250;
2. The potential problem Section 5 of S.237 is intended to correct;
3. How S.237 may increase the price of some owner-occupied housing; and
4. How the Agency of Natural Resources’ January 14, 2020 proposal (“Administration’s Proposal”) suggests correcting the same problem as Section 5 of S.237.

The NRB is not taking a position on what affordability threshold the Committee should approve. Rather its primary interest is explaining to the Committee the full scope the proposed changes to Act 250.

### **Affordable Housing Under Act 250**

There are two Act 250 statutory provisions that deal with housing affordability and are relevant to the present conversation: 10 V.S.A. § 6001 and 10 V.S.A. § 6093.<sup>2</sup> The former contains definitions that dictate when certain types of affordable housing projects trigger Act 250 jurisdiction. The later states that some types of affordable housing projects don’t have to mitigate impacts on primary agricultural soils.

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<sup>1</sup> This memo is limited to the Act 250 exemption for priority housing projects and does not discuss affordability thresholds in other contexts, such as federal and state affordable housing financing programs.

<sup>2</sup> 10 V.S.A. §§ 6081(o) and (p) also pertain to priority housing projects, but it isn’t necessary to analyze them as part of the present conversation.

## 10 V.S.A. § 6001 - Definitions

Section 6001 contains six separate definitions relevant to housing affordability.

First, Section 6001(3)(A)(iv) states that, in general, the construction of 10 or more housing units fits the definition of “development” and triggers Act 250 jurisdiction.

Second, Section 6001(3)(A)(iv)(I) increases this unit-based jurisdictional threshold if the housing development meets the definition of “priority housing project.”

Third, Section 6001(35) defines “priority housing project” as a housing development that consists of either:

1. Mixed income housing, mixed use, or a combination of both in a designated downtown, new town center, growth center, or village center that is also a neighborhood development area; or
2. Mixed income housing in a designated Vermont neighborhood or neighborhood development area.

Fourth, Section 6001(27) defines “mixed income housing.” This definition is split into two parts: one for owner-occupied housing and one for rental housing. A housing project meets the definition of “owner-occupied mixed income housing” if either: (i) 15 percent of the housing units have an initial purchase price that does not exceed 85 percent of the new construction, targeted area purchase price limits established by VHFA; or (ii) 20 percent of the housing units have an initial purchase price that does not exceed 90 percent of the new construction, targeted area purchase price limits established by VHFA. VHFA has set the targeted area purchase price limit at \$300,000. See <https://www.vhfa.org/partners/municipalities-planners> (last visited May 12, 2020). This results in a maximum potential purchase price of \$270,000.

Fifth, Section 6001(29) defines “affordable housing.” This definition is also split into two parts: one for owner-occupied housing and one for rental housing. A housing project meets the definition of “owner-occupied affordable housing” if the total costs of ownership do not exceed 30 percent of 120 percent of the area median income as defined in one of three listed sources.

Sixth, Section 6001(3)(C)(v) defines “permanently affordable housing” as affordable housing that is subject to housing subsidy covenants that preserve affordability for 99 years.

Collectively, these definitions establish three points. First, the definition of “owner-occupied mixed income housing” is the pertinent definition under the special jurisdictional trigger for “priority housing projects.” Second, the definition of “owner-occupied affordable housing” is the pertinent definition under the special jurisdictional trigger for “permanently affordable housing.” Finally, the definitions of “owner-occupied mixed income housing” and “owner-occupied affordable housing” contain different affordability metrics: percentage of targeted area purchase price limits versus percentage of area median income. This means that what is “affordable” under one definition might not be “affordable” under the other.

10 V.S.A. § 6093 – Mitigation of Primary Agricultural Soils

Section 6093 provides that a housing project does not have to mitigate for impacts to primary agricultural soils when a certain volume of units within the project meet the definition of “affordable housing” and are subject to housing subsidy covenants that preserve affordability for 99 years. Importantly, this is similar, but not identical to the definition of “permanently affordable housing” in Section 6001(3)(C)(v).

**The Problem Sec. 5 of S.237 is Intended to Correct**

Neither the definition of “mixed income housing” nor the definition of “affordable housing” specify the size of the housing unit that someone receives after paying the amount set by these definitions. For example, under the definition of “mixed income housing,” a housing developer could build 100 units consisting of 20 studio sized condos and 80 single-family homes. The developer could then charge \$270,000 for the studio sized condos and the market rate for the single-family homes. This is possible even if the market rate for similar studio sized condos where the development is located is less than \$270,000. This is a problem because the development will qualify for the preferential treatment given to priority housing projects even though the studio sized condos are not any more affordable than the going rate for similar units that didn’t qualify for this preferential treatment.

During the walk-through of S.237, Attorney Czajkowski accurately noted that Sec. 5 attempts to correct his problem by adjusting the affordability threshold for each housing unit in the development by “the number of bedrooms” in the unit.

**S.237 May Increase the Maximum Allowable Sales Price of Some Owner-occupied Housing**

Sec. 5 of S.237 also amends the affordability metric used in the definition of “owner-occupied mixed income housing.” It does so by incorporating by reference the definition of “owner-occupied affordable housing.” The result is that both “owner-occupied mixed income housing” and “owner-occupied affordable housing” will use the same affordability metric: 30 percent of 120 percent of area median income. Interestingly, however, this proposed change doesn’t reduce the total number of definitions (six) in Section 6001 that relate to affordable housing.

Based on data from VHFA’s website, if this approach is used, then in Chittenden, Franklin, and Grand Isle Counties a one-bedroom “affordable” home could cost \$295,500, a two-bedroom “affordable” home could cost \$355,000, and a three-bedroom “affordable” home could cost \$417,000. See VHFA Table, available at <https://www.housingdata.org/documents/purchase-price-and-rent-affordability.pdf> (last visited May 12, 2020). This is \$25,500, \$85,000, and \$147,000 higher than the highest possible purchase price established under the existing definition of “owner-occupied mixed income housing.” If this approach is used in, for example, Essex County a one-bedroom “affordable” home could cost \$254,500, a two-bedroom “affordable” home could cost \$306,000, and a three-bedroom “affordable” home could cost \$353,500. Only the one-bedroom home would cost less than the highest possible purchase price established under the exiting definition of “owner-occupied mixed income housing.” A two-bedroom home would cost \$36,000 more and a three-bedroom home would cost \$83,500 more.

The NRB suggests the Committee take additional testimony from VHFA and/or others with affordable housing knowledge to confirm these figures and better understand their ramifications for potential homeowners.

### **The Administration's Proposal**

On January 14, 2020, the Agency of Natural Resources submitted the Administration's Proposal to the House Natural Resources Committee. *See Proposal, available at <https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Natural/Act%20250/Written%20Testimony/W~Matt%20Chapman~ANR-%20Act%20250%20Proposed%20Language~1-14-2020.pdf>* (last visited May 12, 2020). This proposal suggests an alternate solution consisting of the following components:

1. Page 4, Lines 6-11; Page 7, Line 16 to Page 8, Line 18; and Page 60, Lines 5-14 – Collectively, these changes repeal the definition of “affordable housing,” move the definition of “permanently affordable housing” in Section 6001(3)(C)(v) to Section 6001(29) where the definition of “affordable housing” currently is, and simplify Section 6093 by referencing the new definition of “permanently affordable housing” rather than reciting the mandatory affordability duration. This in turn means:
  - a. There is one Act 250 jurisdictional trigger for affordable housing (the one for priority housing projects);
  - b. The only special treatment given to housing that is affordable for 99 years is a reprieve from having to mitigate for impacts to primary agricultural soils; and
  - c. There is one less definition in Act 250 related to affordable housing.
2. Page 6, Line 15 to Page 7, Line 14 – Amends the definition of “mixed income housing” in Section 6001(27). Regarding owner-occupied affordable housing, this amendment:
  - a. Requires the housing remain affordable for 15 years;
  - b. Ties the sales price of each unit to the number of bedrooms in the unit; and
  - c. Sets the affordability metric at 85 percent of area median income rather than the 120 percent proposed by VHFA.

85 percent is the same percentage used in the existing definition of “owner-occupied mixed income housing” in Section 6001(27)(A), but there is an important caveat. That existing definition looks at 85 percent of the targeted area purchase price limits established by VHFA, which (as stated above) maxes out at \$270,000. The proposed amendment looks at 85 percent of area median income. Relying on the VHFA Table discussed above, under that metric, in Chittenden, Franklin, and Grand Isle Counties, the maximum purchase prices could be approximately \$209,500 for a one-bedroom unit, \$251,500 for a two-bedroom unit, and \$290,500 for a three-bedroom unit. In, for example, Essex County the maximum purchase prices could be approximately \$179,500 for a one-bedroom unit, \$216,000 for a two-bedroom unit, and \$251,000 for a three-bedroom unit. All these figures are rough estimates calculated by multiplying the purchase price of each unit type at 100 percent of area median income by 0.85 and then rounding to the nearest \$500.

VHFA or others with affordable housing knowledge may be able to provide more accurate estimates so the Committee can better determine what percentage of area median income to use as an affordability metric.

### **Conclusion**

The NRB thanks the Committee for considering the important issue of affordable housing in Vermont. The NRB also remains available to answer any questions regarding Act 250 and the various proposals to amend it.