To: Senate Natural Resources Committee
From: Maura Collins, Vermont Housing Finance Agency
Date: February 16, 2022
Re: Priority Housing Project definition

The Vermont Legislature is again considering changes to some definitions under the Act 250 section of statute impacting “priority housing projects” (PHPs).

In short, the key benefit of being a PHP is exemption from the traditional Act 250 process, which, a report in 2017 estimated saves $33,000 in permit fees and 6 months in development time (page 14), although costs and timelines have certainly increased since then.

To qualify as a PHP, projects must contain a minimum number of homes (currently at least 25-75 units, adjusted by population of the municipality). And, according to 10 VSA §6001:

> *(35) "Priority housing project" means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:*
>
> > *(A) mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district, designated new town center, designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or*
> >
> > *(B) mixed income housing and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.*

***

> *(27) "Mixed income housing" means a housing project in which the following apply:*
>
> > *(A) Owner-occupied housing. At the option of the applicant, owner-occupied housing may be characterized by either of the following:*
> >
> > > *(i) at least 15 percent of the housing units have a purchase price that at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or*
> > >
> > > *(ii) at least 20 percent of the housing units have a purchase price that at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency.*
> >
> > *(B) Rental housing. At least 20 percent of the housing units that are rented constitute affordable housing and have a duration of affordability of not less than 15 years.*

***

A brief history

The homeownership definition above references VHFA's "**new construction, targeted area purchase price limits**." In 2009, because of the Great Recession's housing crisis, VHFA shifted its mortgage business and as a result no longer sets "new construction" purchase price limits. Since then, our mortgage programs use two sources of funding and only one requires that we set purchase price limits. These are not set based on **newly constructed homes**, as they had been previously.

If any developer, municipality, District Commission, or court were to attempt to verify VHFA's "new construction, targeted area purchase price limit" over the past decade it would have no such published number to reference, therefore statute needs to change.

For mission-based reasons, VHFA has *chosen* to impose purchase price limits to only serve low- and moderate-income Vermonters. VHFA's limits are currently set at $300,000 and $350,000, depending on the program. We do not differentiate by region of the state, size of the home, or number of bedrooms.

A need for change

For several years, VHFA has brought this to the attention of the Legislature, but passage of such a fix has been tied up in larger Act 250 issues, and such a change has never passed. In fact, this change has been considered and supported by Senate Natural Resources and Senate Economic Development, Housing and General Affairs Committees in previous sessions.

As an outgrowth of Act 157 of 2016, VHFA began publishing an annual chart of "Maximum Rent and Purchase Price Affordability Thresholds" which translates income estimates set by HUD into affordability thresholds by region of the state and home size.

VHFA, along with the State's Department of Housing and Community Development, Vermont Housing and Conservation Board, and Vermont Affordable Housing Coalition, have all testified in years past in support of eliminating the reference to VHFA's new construction purchase price limits and instead pointing to prices affordable at 120% AMI as shown on VHFA's annual chart. The benefits of moving to this include:

- **Untethers Act 250 from VHFA's mortgage business.** VHFA's mortgage business has, and will continue to, evolve over years and the state's PHP definition should not be governed by the source of capital VHFA uses to fund its programs. For example, only one of VHFA's two mortgage programs requires a purchase price limit at all. If VHFA moves solely to a program with no limits, the PHP definition would have no purchase price limit.
- **Guaranteed annual updates based on recent data.** VHFA does not update its purchase price limits each year, so using the annual affordability chart ensures the limits are following the market both up and down.
- **Adjustments by number of bedrooms ensures more accurate limits by size of home.** Unlike the current definition, this chart adjusts limits by the number of bedrooms, which correlates to the size of the household. Therefore, smaller homes have smaller purchase price limits, which protects affordability.
- **Regional differences are considered.** Whereas VHFA's current purchase price limits do not differentiate the differences between hot and cool markets, the annual affordability chart follows the guidance of Chapter 117 in VT State Statute, which calls for using the greater of the local or statewide median income.

- **Affordability based on income, not home prices.** VHFA's previous practice of setting "new construction purchase price limits" was based on the sales price of newly constructed homes, and therefore VHFA's limits would rise with increasing home prices, regardless of if most Vermonters could afford those newly constructed homes. That is different from the [Maximum Rent and Purchase Price Affordability Thresholds], which sets the affordability of homes for sale based on the median income of Vermonters, regardless of the price that homes are currently selling for, meaning it ensures the homes created are affordable to more Vermonters.
    - To illustrate the importance of this: between 2016 and 2021 the median purchase price of a primary residence in Vermont increased 32% whereas during that same time HUD's income limits only increased by 5%, thereby making homes are more affordable.
- **Price limits set on HUD income estimates, not VHFA's Board of Commissioners.** VHFA's purchase price limits are set by VHFA's Board of Commissioners, whereas the annual chart published by VHFA is based on HUD's income limits.

Proposed solution

Eliminate the reference to homes needing to be 85% or 90% of VHFA's "new construction, targeted area purchase price limits" and replace it with

> *"At least 20 percent of the housing units meet the requirements of affordable owner-occupied housing under subdivision (29)(A) of this section, adjusted for the number of bedrooms, as established and published annually by the Vermont Housing Finance Agency."*

In doing so, the state will:

- Maintain the goal of prioritizing housing that includes a meaningful amount of affordable housing;
- Eliminate the reference to VHFA's programmatic limits that no longer exist;
- Ensure geographic market realities are considered; and
- Protect the affordability of homes by ensuring smaller sized homes are priced lower than larger homes, based on the number of bedrooms.

Lastly, what qualifies for "affordable housing?" 10 VSA §6001 states:

> *(29) "Affordable housing" means either of the following:*
>
> > *(A) Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, **does not exceed 30 percent of the gross annual income of a household at 120 percent** of the highest of the following:*
> >
> > > *(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;*
> > >
> > > *(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or*
> > >
> > > *(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.*

This is the calculation VHFA uses when setting the [Maximum Rent and Purchase Price Affordability Thresholds](), based on HUD's median incomes.

By referencing this definition, which already exists in Act 250, it streamlines an already complicated topic and sets the affordability threshold where it is most commonly set: that affordable homeownership should be set at 120% of the area median income for homeowners.

Why 120%? Why not something lower and even more "affordable?"

1. It is imperative to remember that exemption from Act 250 because of being a PHP does not mean any public subsidy has been invested in the development. Meaning, to lower the purchase price from 120% AMI to what's affordable to the median income Vermonter, the purchase price would need to be reduced by roughly $64,000. Meaning, unless the state is willing to *ensure* that every housing development that qualifies as a PHP is getting at least that amount of financial benefit, then the state is asking for more than it is giving in setting an affordability threshold below 120% AMI.

2. When VHFA *did* set "new construction, targeted area purchase price limits" the methodology for doing so resulted in **far higher** limits than 120% AMI. The federal rules governing that calculation allowed us to look at the median sales price of only newly constructed homes in Vermont, and then in our "targeted areas" we could set our purchase price limit at 140% of the median newly constructed home.

3. Median income is calculated based on all Vermonters: which includes those without homes, renters, and owners. Therefore, the median renter income is always lower than the median homeowner's income. By determining affordability based on an overall median income which blends these two together, the median income of homeowners is already suppressed