STATE OF NEW YORK

9943--A

IN ASSEMBLY

April 26, 2024

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the town law, in relation to the Peconic Bay region community preservation funds; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1 and 3 of section 64-e of the town law, as amended by chapter 551 of the laws of 2015, paragraph (e) of subdivision 1 as separately amended by chapters 490 and 501 of the laws of 2018, are amended to read as follows:

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "Water quality improvement project" means[~~: (1) wastewater treatment improvement projects; (2) non-point source abatement and control program projects developed pursuant to section eleven-b of the soil and water conservation districts law, title 14 of article 17 of the environmental conservation law, section 1455b of the federal coastal zone management act, or article forty-two of the executive law; (3) aquatic habitat restoration projects; (4) pollution prevention projects; (5) the construction of public water mains and connections to provide drinking water to inhabitants whose drinking water supply has been contaminated by toxic chemicals as defined in section 37-0301 of the environmental conservation law, hazardous substances as defined in section 40-0105 of the environmental conservation law or emerging contaminants as defined in section eleven hundred twelve of the public health law; and (6) the operation of the Peconic Bay National Estuary Program, as designated by~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~the United States Environmental Protection Agency; and (6) a septic system replacement loan program, pursuant to section sixty-four-ee of the town law. Such projects shall have as their purpose the improvement of existing water quality to meet existing specific water quality standards. Projects which have as a purpose to permit or accommodate new growth shall not be included within this definition.~~

~~(f) "Wastewater treatment improvement project" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a wastewater treatment facility, including alternative systems to a sewage treatment plant or traditional septic system, to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants in treatment facility effluent, including permanent or pilot demonstration wastewater treatment projects, or equipment or furnishings thereof. Stormwater collecting systems and vessel pumpout stations shall also be included within the definition of a wastewater improvement project.~~

~~(g) "Aquatic habitat restoration project" means the planning, design, construction, management, maintenance, reconstruction, revitalization, or rejuvenation activities intended to improve waters of the state of ecological significance or any part thereof, including, but not limited to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.~~

~~(h) "Pollution prevention project" means the planning, design, construction, improvement, maintenance or acquisition of facilities, production processes, equipment or buildings owned or operated by municipalities for the reduction, avoidance, or elimination of the use of toxic or hazardous substances or the generation of such substances or pollutants so as to reduce risks to public health or the environment, including changes in production processes or raw materials; such projects shall not include incineration, transfer from one medium of release or discharge to another medium, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.~~

~~(i) "Stormwater collecting system" means systems of conduits and all other construction, devices, and appliances appurtenant thereto, designed and used to collect and carry stormwater and surface water, street wash, and other wash and drainage waters to a point source for discharge.~~

~~(j) "Vessel pumpout station" means a project for the planning, design, acquisition or construction of a permanent or portable device capable of removing human sewage from a marine holding tank~~] **projects designed to improve the quality of drinking and surface waters and projects, including operational expenses, related to the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency**.

(f) "Disadvantaged communities" shall mean a community that is identified pursuant to section 75-0111 of the environmental conservation law.

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such

interests and rights consistent with subdivisions nine and nine-a of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to implement water quality improvement projects in accordance with a plan to preserve community character. A maximum of twenty (20) percent of the fund may be utilized for the implementation of water quality improvement projects; provided that where such water quality improvement funds are utilized for the operation of the Peconic Bay National Estuary Program, the use of such funds shall only be utilized to match federal, state, county, or other public or private funds on a dollar for dollar basis, not to exceed ten (10) percent of the annual amount appropriated for water quality improvement projects. **Unused funds allocated for water quality improvement projects pursuant to this subdivision may be carried forward from year to year for utilization in future budgets. In towns with one or more disadvantaged communities, not less than ten (10) percent of the annual proceeds of the fund shall be utilized to benefit such disadvantaged communities.** If the implementation of the community preservation project plan, adopted by a town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

§ 2. Subdivision 4 of section 64-e of the town law, as amended by chapter 255 of the laws of 2020, is amended to read as follows:

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands provided, however, that farm buildings and structures used for the marketing of farm products produced on such agricultural lands shall be permitted; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline including those at significant risk of coastal flooding due to projected sea level rise and future storms; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; (n) preservation of lands necessary to protect fisheries and water dependent uses essential to maintain and enhance maritime heritage; [~~and~~] (o) **preservation of lands that contain significant cultural resources including the aboriginal lands of indigenous peoples, including but not limited to, burial sites, settlements, and lands utilized for ceremonial purposes; and (p)** undertaking any of the aforementioned in furtherance of the establishment of a greenbelt. Preservation of community character shall also include the protection and improvement of the quality of all water resources.

§ 3. Subdivision 9 of section 64-e of the town law is REPEALED and a new subdivision 9 is added to read as follows:

9. (a) Lands acquired pursuant to this section shall be administered and managed in a manner which maximizes public use and enjoyment in a manner compatible with the character of such lands.

(b) Lands acquired for open space purposes shall preserve the native biological diversity of such lands.

(c) With regard to lands acquired for open space purposes improvements shall be limited to minimal improvements that enhance access for passive use of such lands. Such improvements shall not degrade the ecological value of the land or threaten essential wildlife habitat.

(d) Historic and cultural property shall be preserved consistent with accepted standards for historic preservation. Adaptive reuse of such properties shall be consistent with the historic character and prior use of the property and shall be consistent with all local land use plans and regulations. Such historic and cultural properties shall maximize public use to the extent practicable.

(e) In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engaged in preservation activities to manage lands, including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any historic, cultural, or natural resources associated therewith. Where revenues are generated by such corporations on such lands pursuant to such agreements, disposition of such revenues shall be governed by the town pursuant to resolution or local law.

§ 4. Subdivision 9-a of section 64-e of the town law is REPEALED and a new subdivision 9-a is added to read as follows:

9-a. (a) Management and stewardship funds may only be expended for projects related to lands acquired for open space preservation and historic preservation purposes. Lands acquired for any other purpose shall not be eligible for management and stewardship funds. In the case of lands acquired for open space preservation purposes, management and stewardship projects shall be only expended for: (1) projects which promote the protection or enhancement of the natural, scenic, and open space character for which the interests or rights in real property were acquired; or (2) minimal improvements as permitted by subdivision nine of this section; or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures.

(b) In the case of interests or rights in real property acquired for historic preservation purposes, funds may be expended for the restoration, rehabilitation, or replacement of buildings and structures consistent with accepted standards for historic preservation.

(c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the management and stewardship portion of the fund, except that in the case of historic properties, where the town has entered into an agreement with a not-for profit corporation for the management of such properties as permitted by subdivision nine of this section, up to twenty (20) percent of the management and stewardship portion of the fund or two (2) percent of the total annual revenue of the fund, may be dedicated to the operation and maintenance of stewardship properties managed

by such corporations. Where a town enters into an agreement for the management of an historic property with a not-for-profit corporation and the town allocates management and stewardship funds for the operation and maintenance of such historic property, said corporation shall annually provide for a full accounting of such funds to the town board.

(d) Any project funded pursuant to this subdivision, except operation and maintenance expenses permitted pursuant to paragraph (c) of this subdivision, must have a useful life of five years or more under section 11.00 of the local finance law.

(e) Any expenditure from the fund for a purpose other than that permitted, herein, shall be deemed to be prohibited.

§ 5. Subdivision 11 of section 64-e of the town law is REPEALED and a new subdivision 11 is added to read as follows:

11. Notwithstanding any provision of law to the contrary, towns may enter into intermunicipal agreements pursuant to article five-G of the general municipal law for the following purposes:

(a) to jointly acquire interests or rights in real property, consistent with the purposes of this section, where the acquisition of such interests or rights promotes a regional public benefit for two or more towns pursuant to a regional plan;

(b) to provide for an independent financial audit of each town's fund; and

(c) to hire employees necessary to implement the provisions of this section.

§ 6. Section 64-e of the town law is amended by adding a new subdivision 14 to read as follows:

14. (a) The towns in the Peconic Bay region shall jointly establish, by intermunicipal agreement, the office of regional community preservation fund counsel to render legal opinions and interpretations to facilitate the efficient and consistent administration of the funds created pursuant to this section. All such opinions and interpretations rendered shall be published on each town's official website and shall be available to the public as a public record under article six of the public officers law.

(b) The towns in the Peconic Bay region shall jointly establish, by intermunicipal agreement, the Peconic Bay Region Advisory Committee to advise town boards regarding policy and administrative issues relating to funds established pursuant to this section. The committee shall consist of eleven (11) members. The members shall include each Town Supervisor or designee, a representative of village government to be jointly selected by the villages in the Peconic Bay region and five (5) members to be selected by the state legislative representatives representing the Peconic Bay region with expertise in land preservation, environmental protection, water quality protection, agriculture, historic preservation, or parks and recreation. The committee shall elect a chair from among its members. Said committee shall meet at least quarterly each year. The office of regional community preservation fund counsel shall attend the meetings of the committee and shall be further available to the committee chair for additional consultations. The committee shall be empowered to establish the rules for its operation, consistent with this section.

(c) The office and committee required to be established pursuant to this subdivision shall be implemented no later than ninety days after the effective date of this subdivision.

§ 7. This act shall take effect immediately.